

Deputy Attorney General Paul McNulty told a Senate committee that the firings were all for "performance-related" reasons, although he conceded that the highly respected U.S. attorney in Little Rock, Ark., was forced out so the job could be given to a protege and former aide to White House political adviser Karl Rove.

The "performance-related" defense began to crumble when the department's internal evaluations started to leak out and it turned out that most of the ousted attorneys had been capable, competent and well regarded.

Democrats on the Senate Judiciary Committee are threatening to summon the dismissed prosecutors to testify and to subpoena their performance evaluations. It would be an opportunity for the eight to rebut a gratuitous slap at their reputations.

Better yet would be to repeal the offending provision. A bill to do that has bipartisan support in the Senate, but is being held up in a procedural wrangle. Let's hope the lawmakers unsnarl the obstacle quickly, because this provision has the potential to give us a badly flawed criminal-justice system.

Make sure Fitzgerald keeps his job

Chicago Daily Herald
February 23, 2007 Friday

As the country's attention has been focused on Iraq, Iran, global warming and presidential campaigning - and more urgent matters like Anna Nicole Smith's demise and Britney Spears' nervous breakdown - at least seven U.S. attorneys have been forced to resign by the very administration that hired them.

In San Diego, Calif., Carol Lam was given her walking papers even though local law enforcement officials praised her work, which included the conviction of former Rep. Randy "Duke" Cunningham, and indictments of defense contractor Brent Wilkes, and Kyl "Dusty" Foggo, former No. 3 man at the CIA, in an ongoing bribery scandal.

In Arkansas, Bud Cummins was dismissed and initially replaced by Tim Griffin, a former aide to Bush political maven Karl Rove, who has minimal experience as a prosecutor, but plenty as an opposition researcher for the Republican National Committee. (Griffin withdrew his name, citing Democratic partisanship as an impediment.)

They and at least five others were replaced under a provision slipped into the USA Patriot Act when that law was renewed last year. It essentially allows the attorney general to indefinitely appoint interim U.S. attorneys, without confirmation by the Senate. Previously, an interim appointee was subject to a Senate confirmation within 120 days. If that didn't occur, the local federal district court would appoint a replacement U.S. attorney.

Earlier this month, Democratic senators moved to undo this new provision but were blocked by Republican Sen. Jon Kyl, of Arizona, who argued - as the administration does

- that having federal judges appoint attorneys who serve in the executive branch raises separation of powers questions.

Why does this matter to us here in suburban Chicago?

One name: Patrick Fitzgerald.

While pursuing corruption in Chicago, Cook County and Springfield, our U.S. attorney this week also rested his perjury case against I. Lewis "Scooter" Libby, former chief of staff to Vice President Dick Cheney. And did so in a way that leaves little doubt that he believes Cheney himself was involved in blowing the cover of former CIA agent Valerie Plame Wilson.

Perhaps we sound paranoid here - and we categorically state we have no evidence that Fitzgerald now wears a target on his suit - but is it really beyond comprehension that some local and state Democrats might be whispering here and there to some in the Republican Bush administration about getting rid of a man who is, to many of them, a bipartisan pest?

We think not.

Fortunately, Illinois' two U.S. senators are in a position to keep a close eye on this story and keep Fitzgerald right where he is. Richard Durbin sits on the Senate Judiciary Committee, which already is investigating these firings. And we all know what Barack Obama is doing these days.

We expect them to have Fitzgerald's back. Because Fitzgerald has ours.

Politics and prosecutors

Chicago Tribune

January 22, 2007

EDITORIAL

The appointment of federal prosecutors is not normally a subject that generates much controversy. But some 11 U.S. attorneys have left in the last 10 months, some of them at the request of the Justice Department, and critics charge the White House is purging the ranks for political reasons, while installing administration cronies in their place. Lending credence to these charges is a change in the law made last year that allows the attorney general to install successors without going through Senate confirmation. Sen. Dianne Feinstein (D-Calif.) accuses President Bush of "pushing out U.S. attorneys from across the country under a cloak of secrecy and then appointing indefinite replacements."

We enjoy a good conspiracy theory as much as anyone, but in this case, the evidence is pretty thin. Keep in mind that the prosecutors being replaced are themselves Bush appointees--which casts doubt on the idea that political motivations are at work. U.S. attorneys serve at the pleasure of the president, and it's not unusual for them to leave because they have other career plans--or for the attorney general to relieve prosecutors whose performance he finds unsatisfactory. As for trying to operate without Senate approval, Atty. Gen. Alberto Gonzales did all he could to dispel that fear when he appeared Thursday before the Senate Judiciary Committee.

"I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in the country, we will have a presidentially appointed, Senate-confirmed United States attorney," he said. When Feinstein said she thinks the Senate should get to review all appointments, he replied, "I agree with you." The Justice Department also notes that since the law was changed, the president has sent 15 nominees to the Senate. So much for the charge of plotting to circumvent the usual process.

Whether the administration has made sound appointments is subject to debate. Critics are particularly suspicious of Timothy Griffin, a former aide to the Republican National Committee, who was named to the job in the Eastern District of Arkansas. But Griffin has also served as an Army prosecutor and a special assistant U.S. attorney. If he is shown to be unsuitable for the job for one reason or another, the Senate can vote him down.

Another alleged victim of the purge is Carol Lam of San Diego, who prosecuted GOP Rep. Randy "Duke" Cunningham of California for bribery. But her dismissal may have something to do with the sharp drop in the number of prosecutions during her term, or with the complaints of Border Patrol agents that she gives low priority to prosecuting illegal immigrants.

Senators are free to pursue issues like these during confirmation and oversight hearings. But for the moment, the administration deserves better than the presumption of guilt.

DAG000001502

Los Angeles Times editorial
January 26, 2007

The rumor bill

Sen. Dianne Feinstein's concerns about the departure of a high-profile U.S. attorney are premature.

IT'S NEVER A good idea to write legislation in response to a rumor, yet that's exactly what Sen. Dianne Feinstein appears to have done in the case of Carol Lam. Lam is the U.S. attorney in San Diego who oversaw the prosecution of former Rep. Randy "Duke" Cunningham, who pleaded guilty to receiving \$2.4 million in bribes from military contractors and evading more than \$1 million in taxes. Lam is one of half a dozen U.S. attorneys, including one in San Francisco, who are stepping down.

Feinstein at least acknowledges that she is responding to a rumor that Lam is being forced out not because of policy or personality differences with her superiors but because she is preparing other cases that might ruffle influential feathers. Lam's office has been investigating a politically connected defense contractor who was described as an unindicted co-conspirator in the Cunningham case.

This conspiracy theory has another strand: a suddenly controversial provision in the Patriot Act that allows the attorney general to name an acting U.S. attorney who can serve until the Senate confirms a new nominee. Feinstein has proposed a bill that would restore the previous arrangement, in which local federal judges named U.S. attorneys on an interim basis.

The Justice Department persuasively argues that it hasn't abused its new authority to bypass the usual Senate confirmation process. Even after they are confirmed by the Senate, U.S. attorneys still serve at the president's pleasure, and they can be removed if they are underperforming or if their priorities conflict with the administration's.

A further problem with the conspiracy theory is that it is not easy, as even Watergate demonstrated, for an administration to stymie a criminal investigation. If the Bush administration has been scheming to prevent the prosecution of prominent Republicans, it has been remarkably unsuccessful: Just ask Cunningham, former Rep. Bob Ney or I. Lewis "Scooter" Libby.

Where politics undeniably plays a role — and not just in this administration — is in the selection of U.S. attorneys, who often are prominent members of the president's party.

Yet precisely because these positions are political plums, professionals in the Justice Department and the FBI traditionally exert huge influence in prosecution decisions. Those same professionals are likely to blow the whistle on improper interference.

Feinstein and other senators certainly should keep their ears pricked for any such alarm. They also should press Atty. Gen. Alberto R. Gonzales to explain the personnel changes

DAG000001503

(in closed session if necessary) and to abide by his commitment to the Judiciary Committee that the names of new U.S. attorneys be submitted expeditiously to the Senate. But cries of a conspiracy are premature, and so is Feinstein's legislation.

The Pot Calling the Kettle "Interim"

Democrats with short memories rail about Bush's removal of U.S. attorneys.

By Andrew C. McCarthy

In lambasting the Bush administration for politicizing the appointment of the nation's United States attorneys, Democrats may be on the verge of redefining *chutzpah*.

The campaign is being spearheaded on the Judiciary Committee by Senator Dianne Feinstein. She contends that at least seven U.S. attorneys — tellingly, including those for two districts in her home state — have been “forced to resign without cause.” They are, she further alleges, to be replaced by Bush appointees who will be able to avoid Senate confirmation thanks to a “little known provision” of the Patriot Act reauthorization law enacted in 2006.

Going into overdrive, Feinstein railed on the Senate floor Tuesday that “[t]he public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988 has said, ‘This is like nothing I’ve ever seen in my 35-plus years.’”

Yes, the public, surely, is about as “shocked, shocked” as Claude Raines’s Captain Renault, and one is left to wonder whether Mr. Nunez spent the 1990s living under a rock.

One of President Clinton’s very first official acts upon taking office in 1993 was to fire *every* United States attorney then serving — except one, Michael Chertoff, now Homeland Security secretary but then U.S. attorney for the District of New Jersey, who was kept on only because a powerful New Jersey Democrat, Sen. Bill Bradley, specifically requested his retention.

Were the attorneys Clinton fired guilty of misconduct or incompetence? No. As a class they were able (and, it goes without saying, well-connected). Did he shove them aside to thwart corruption investigations into his own party? No. It was just politics, plain and simple.

Patronage is the chief spoil of electoral war. For a dozen years, Republicans had been in control of the White House, and, therefore of the appointment of all U.S. attorneys.

President Clinton, as was his right, wanted his party’s own people in. So he got rid of the Republican appointees and replaced them with, predominantly, Democrat appointees (or Republicans and Independents who were acceptable to Democrats).

We like to think that law enforcement is not political, and for the most part — the day-to-day part, the proceedings in hundreds of courtrooms throughout the country — that is

true. But appointments are, and have always been political. Does it mean able people are relieved before their terms are up? Yes, but that is the way the game is played.

Indeed, a moment's reflection on the terms served by U.S. attorneys reveals the emptiness of Feinstein's argument. These officials are appointed for four years, with the understanding that they serve at the pleasure of the president, who can remove them for any reason or no reason. George W. Bush, of course, has been president for six years. That means every presently serving U.S. attorney in this country has been appointed or reappointed by this president.

That is, contrary to Clinton, who unceremoniously cashiered virtually all Reagan and Bush 41 appointees, the current President Bush can only, at this point, be firing *his own appointees*. Several of them, perhaps even all of them, are no doubt highly competent. But it is a lot less unsavory, at least at first blush, for a president to be rethinking his own choices than to be muscling out another administration's choices in an act of unvarnished partisanship.

Feinstein's other complaint, namely, that the Bush administration is end-running the Constitution's appointment process, which requires Senate confirmation for officers of the United States (including U.S. attorneys), is also unpersuasive.

As she correctly points out, the Patriot Act reauthorization did change prior law. Previously, under the federal code (Title 28, Section 546), if the position of district U.S. attorney became vacant, it could be filled for up to 120 days by an interim appointee selected by the attorney general. What would happen at the end of that 120-day period, if a new appointee (who would likely also be the interim appointee) had not yet been appointed by the president and confirmed by the senate? The old law said the power to appoint an interim U.S. attorney would then shift to the federal district court, whose appointee would serve until the president finally got his own nominee confirmed.

This was a bizarre arrangement. Law enforcement is exclusively an executive branch power. The Constitution gives the judiciary no role in executive appointments, and the congressional input is limited to senate confirmation. U.S. attorneys are important members of the Justice Department — the top federal law enforcement officers in their districts. But while the attorney general runs the Justice Department, U.S. attorneys work not for the AG but for the president. They are delegated to exercise executive authority the Constitution reposes only in the president, and can thus be terminated at will by the president. Consequently, having the courts make interim appointments made no practical sense, in addition to being constitutionally dubious.

The Patriot Act reauthorization remedied this anomaly by eliminating both the role of the district courts and the 120-day limit on the attorney general's interim appointments. The interim appointee can now serve until the senate finally confirms the president's nominee.

Is there potential for abuse here? Of course — there's no conceivable appointments

structure that would not have potential for abuse. Like it or not, in our system, voters are the ultimate check on political excess.

So yes, a president who wanted to bypass the Constitution's appointments process could fire the U.S. attorney, have the attorney general name an interim appointee, and simply refrain from submitting a nominee to the senate for confirmation. But we've also seen plenty of abuse from the Senate side of appointments — and such abuse was not unknown under the old law. Though the president can nominate very able U.S. attorney candidates — just as this president has also nominated very able *judicial* candidates — those appointments are often stalled in the confirmation process by the senate's refusal to act, its imperious blue-slip privileges (basically, a veto for senators from the home state of the nominee), and its filibusters.

But that's politics. The president tries to shame the senate into taking action on qualified nominees. Senator Feinstein, now, is trying to shame the White House — making sure the pressure is on the administration not to misuse the Patriot Act modification as an end-around the confirmation process.

Why is Feinstein doing this? After all, the next president may be a Democrat and could exploit to Democratic advantage the same perks the Bush administration now enjoys.

Well, because Feinstein is not going to be the next president. She is still going to be a senator and clearly intends to remain a powerful one. Aside from being enshrined in the Constitution, the confirmations process is a significant source of senatorial power no matter who the president is. Practically speaking, confirmation is what compels a president of either party to consult senators rather than just peremptorily installing the president's own people. Over the years, it has given senators enormous influence over the selection of judges and prosecutors in their states. Feinstein does not want to see that power diminished.

It's worth noting, however, that the same Democrats who will be up in arms now were mum in the 1990s. President Clinton not only fired U.S. attorneys sweepingly and without cause. He also appointed high executive-branch officials, such as Justice Department civil-rights division chief Bill Lann Lee, on an "acting" basis even though their positions called for senate confirmation. This sharp maneuver enabled those officials to serve even though it had become clear that they would never be confirmed.

Reporting on Lee on February 26, 1998, the *New York Times* noted: "Under a Federal law known as the Vacancy Act, a person may serve in an acting capacity for 120 days. But the [Clinton] Administration has argued that another Federal law supercedes the Vacancy Act and gives the Attorney General the power to make temporary law enforcement assignments of any duration."

What the Clinton administration dubiously claimed was the law back then is, in fact, the law right now. Yet, for some strange reason — heaven knows what it could be — Senator Feinstein has only now decided it's a problem. Like the public, I'm shocked.

— Andrew C. McCarthy is a senior fellow at the Foundation for the Defense of Democracies.

Politics and the Corruption Fighter
The New York Times
January 18, 2007

EDITORIAL

Abstract: Editorial scores Bush administration for removing several United States attorneys from their jobs; cites removal of US Atty Carol Lam, prosecutor who was investigating Rep Jerry Lewis

In its secretive purge of key United States attorneys, the Bush administration is needlessly giving comfort to any number of individuals now under federal investigation. Most prominently, there is Representative Jerry Lewis, the California Republican whose dealings as appropriations chairman have been under scrutiny in the continuing investigation of lawmakers delivering quid pro quo favors for contractors and lobbyists.

U.S. Attorney Carol Lam of San Diego is one of a number of prosecutors (there's no official tally) being forced from office without the courtesy of an explanation. A career professional, Ms. Lam ran a first-rate investigation of Randy Cunningham, the former Republican congressman from California, who admitted taking more than \$2.4 million in bribes.

Ms. Lam then turned her attention to Mr. Lewis as she plumbed Congress's weakness for "earmarks" -- legislation that lawmakers customize on behalf of deep-pocketed campaign contributors. The focus moved to Mr. Lewis -- who has denied any wrongdoing -- after the disclosure that one of his staff aides became a lobbyist and arranged windfall contracts worth hundreds of millions.

Stymied by the previous Republican Congress, Ms. Lam was negotiating with the new Democratic leadership to obtain extensive earmarks documentation for her investigation when the administration forced her resignation.

Legal professionals are defending Ms. Lam, with the F.B.I. chief in San Diego asking: "What do you expect her to do? Let corruption exist?" It's especially alarming that the White House can use a loophole in the Patriot Act to name a successor who will not have to face questions or confirmation by the Senate. The administration owes the nation a full explanation of a move that reeks of politics.

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Surging And Purging

DAG000001507

The New York Times
January 19, 2007

EDITORIAL

Abstract: Paul Krugman Op-Ed column says dismissals of several federal prosecutors show Bush administration is trying to protect itself from corruption investigations by purging independent-minded US attorneys; cites sudden replacement of Arkansas prosecutor Bud Cummings by J Timothy Griffin, Republican operative for Karl Rove; notes list also includes Carol Lam, who successfully prosecuted congressman Duke Cunningham; sees purges as pre-emptive strike against gathering forces of justice and mocks Atty Gen Alberto Gonzales's denials (M)

There's something happening here, and what it is seems completely clear: the Bush administration is trying to protect itself by purging independent-minded prosecutors.

Last month, Bud Cummins, the U.S. attorney (federal prosecutor) for the Eastern District of Arkansas, received a call on his cellphone while hiking in the woods with his son. He was informed that he had just been replaced by J. Timothy Griffin, a Republican political operative who has spent the last few years working as an opposition researcher for Karl Rove.

Mr. Cummins's case isn't unique. Since the middle of last month, the Bush administration has pushed out at least four U.S. attorneys, and possibly as many as seven, without explanation. The list includes Carol Lam, the U.S. attorney for San Diego, who successfully prosecuted Duke Cunningham, a Republican congressman, on major corruption charges. The top F.B.I. official in San Diego told The San Diego Union-Tribune that Ms. Lam's dismissal would undermine multiple continuing investigations.

In Senate testimony yesterday, Attorney General Alberto Gonzales refused to say how many other attorneys have been asked to resign, calling it a "personnel matter."

In case you're wondering, such a wholesale firing of prosecutors midway through an administration isn't normal. U.S. attorneys, The Wall Street Journal recently pointed out, "typically are appointed at the beginning of a new president's term, and serve throughout that term." Why, then, are prosecutors that the Bush administration itself appointed suddenly being pushed out?

The likely answer is that for the first time the administration is really worried about where corruption investigations might lead.

Since the day it took power this administration has shown nothing but contempt for the normal principles of good government. For six years ethical problems and conflicts of interest have been the rule, not the exception.

For a long time the administration nonetheless seemed untouchable, protected both by

Republican control of Congress and by its ability to justify anything and everything as necessary for the war on terror. Now, however, the investigations are closing in on the Oval Office. The latest news is that J. Steven Griles, the former deputy secretary of the Interior Department and the poster child for the administration's systematic policy of putting foxes in charge of henhouses, is finally facing possible indictment.

And the purge of U.S. attorneys looks like a pre-emptive strike against the gathering forces of justice.

Won't the administration have trouble getting its new appointees confirmed by the Senate? Well, it turns out that it won't have to.

Arlen Specter, the Republican senator who headed the Judiciary Committee until Congress changed hands, made sure of that last year. Previously, new U.S. attorneys needed Senate confirmation within 120 days or federal district courts would name replacements. But as part of a conference committee reconciling House and Senate versions of the revised Patriot Act, Mr. Specter slipped in a clause eliminating that rule.

As Paul Kiel of TPMmuckraker .com -- which has done yeoman investigative reporting on this story -- put it, this clause in effect allows the administration "to handpick replacements and keep them there in perpetuity without the ordeal of Senate confirmation." How convenient.

Mr. Gonzales says that there's nothing political about the firings. And according to The Associated Press, he said that district court judges shouldn't appoint U.S. attorneys because they "tend to appoint friends and others not properly qualified to be prosecutors." Words fail me.

Mr. Gonzales also says that the administration intends to get Senate confirmation for every replacement. Sorry, but that's not at all credible, even if we ignore the administration's track record. Mr. Griffin, the political-operative-turned-prosecutor, would be savaged in a confirmation hearing. By appointing him, the administration showed that it has no intention of following the usual rules.

The broader context is this: defeat in the midterm elections hasn't led the Bush administration to scale back its imperial view of presidential power.

On the contrary, now that President Bush can no longer count on Congress to do his bidding, he's more determined than ever to claim essentially unlimited authority -- whether it's the authority to send more troops into Iraq or the authority to stonewall investigations into his own administration's conduct.

The next two years, in other words, are going to be a rolling constitutional crisis.

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No way to appoint justice
THE SAN FRANCISCO CHRONICLE
January 25, 2007

EDITORIAL

THE RECENT resignation of Kevin Ryan as U.S. attorney for the Northern District of California probably didn't happen because Ryan wasn't partisan enough. Unfortunately, given the rush of U.S. attorneys' resignations during the last few months, there's no way to be sure.

Curious things are afoot in the Justice Department, thanks to an overlooked provision of the renewed Patriot Act, which allows U.S. Attorney General Alberto Gonzales to indefinitely appoint new U.S. attorneys without Senate confirmation. Michael Teague, communications director for Arkansas Sen. Mark Pryor, said that when it came up for discussion, senators were told that the power would only be used in case of emergencies - - such as if a U.S. attorney was killed in a terrorist attack, for example, and a quick substitute was necessary.

It hasn't worked out that way.

In Arkansas, a well-respected and effective U.S. attorney has been replaced with a political partisan whose qualifications seem thin. In New Mexico, the U.S. attorney said he was asked to leave without explanation. In Nevada, the recently resigned U.S. attorney cited "political" reasons for his departure. That same week in California, saw the departures of not just Ryan, but also the U.S. attorney in San Diego -- who had been criticized for not prosecuting enough gun and immigration violations. Most of their successors have not been named, but if Arkansas is any indication, things look nasty for justice in America.

With U.S. attorneys responsible for so many crucial prosecutions -- including terrorism, violent crime and civil rights -- they should be held to the highest standards. If they aren't, the fallout will be tremendous -- in Arkansas, a defense attorney has filed a motion against the new appointee, declaring his appointment unconstitutional. If we can't believe in the credibility of our U.S. attorneys, how can we believe in the credibility of the courts?

Sen. Dianne Feinstein, D-Calif., is co-sponsoring a bill to restore appointment authority to the U.S. District Courts, thereby removing politics altogether. We couldn't agree more.

Politics v. Justice

St. Louis Post-Dispatch (MO)
January 23, 2007

Editorial

Last October, when Harry E. "Bud" Cummins III, the U.S. attorney for the Eastern District of Arkansas, closed his investigation into the way Missouri Gov. Matt Blunt's administration handled Missouri's license fee offices, he emphasized, "This office does not intend to elaborate further about this closed matter."

We hope that now will change. Mr. Cummins was identified last week as one of at least nine U.S. attorneys around the country who had been asked by the Bush administration to resign so they could be replaced by new political appointees. Among the nine are prosecutors who had been pursuing corruption cases against Republican office-holders and contributors.

The message, spoken or unspoken, in the requests for resignations, was "back off of our pals."

Mr. Cummins, who was replaced last week by J. Timothy Griffin, a former operative for White House political director Karl Rove, said that he'd been asked to step down in June. That would have been the time when the fee office investigation was in full swing.

The investigation followed news reports that young staffers and politically connected friends of Mr. Blunt had created management companies to benefit from the sale of drivers licenses and license plates. Another aspect of the story, one never mentioned when the investigation was dismissed, was that Mr. Blunt's office had steered state agencies to politically connected lobbyists.

Among the other U.S. attorneys asked to resign were Carol Lam in San Diego and Kevin Ryan in San Francisco. Ms. Lam sent former Republican Rep. Randy "Duke" Cunningham to prison for bribery and now is investigating Rep. Jerry Lewis, R-Calif., the former chairman of the House Appropriations Committee. Mr. Ryan made the infamous BALCO steroid cases and kicked off a national investigation of corporate stock option fraud. Like Mr. Cummins, Ms. Lam and Mr. Ryan are Republicans appointed to their jobs by President George W. Bush.

Politics and justice are inextricably intertwined. The 93 U.S. attorneys around the country and their staffs prosecute federal crimes, but the U.S. attorneys themselves often are not experienced prosecutors. They usually are chosen for their political connections, swept in or out with every change of administration. Even so, because political corruption is a top priority for their offices, they are supposed to be above politics.

Mr. Cummins, for example, got the task of investigating the Missouri fee office scandal because both of the U.S. attorneys in Missouri at the time had political conflicts

But with last year's renewal of the U.S.A. Patriot Act, one of the key safeguards against political interference with the U.S. attorneys offices was removed. A new provision allows the attorney general to name replacements for U.S. attorneys when they resign instead of having the president name new ones. This gets around the time-consuming requirement of Senate confirmation, which ostensibly would help in the war on terror.

Instead, it looks like it's being used to get around the war on political corruption.

U.S. Attorney General Alberto Gonzales adamantly denied that last week, but Democratic Sens. Mark Pryor of Arkansas, Dianne Feinstein of California and Patrick Leahy of Vermont want Congress to take a second look at the law that allows appointees to skirt Senate confirmation.

That's an excellent idea. We look forward to hearings on the issue, and trust Mr. Cummins will be asked to testify about the reasons for his dismissal.

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You're fired: Furtive Justice Department boots attorneys

Sacramento Bee

January 22, 2007

Editorial

Since the November elections, the Justice Department has asked an unknown number of U.S. attorneys around the country, including two in California, to resign before the end of their terms. As Sen. Dianne Feinstein, D-Calif., has said, these are forced resignations in districts that have major ongoing cases.

Last week at the Senate Judiciary Committee hearing, Feinstein asked Attorney General Alberto Gonzales how many U.S. attorneys were being fired, but he would not give a number.

One Californian departing is Carol Lam, the U.S. attorney in San Diego who is pursuing corruption related to the prosecution of Rep. Randy "Duke" Cunningham, now in prison, thanks to her. The other is Kevin Ryan, the U.S. attorney in San Francisco who is in the middle of investigating whether 25 companies illegally withheld information about lucrative stock options for top executives.

It is customary that U.S. attorneys are prepared to leave office when a new president is elected. At the beginning of their terms, presidents have the discretion to name the 93 U.S. attorneys, who then must be confirmed by the Senate. They typically serve until the president leaves office. These midterm U.S. attorney firings are unusual, particularly because there are no allegations of misconduct.

Feinstein is alarmed that a little-known, last-minute change to the USA Patriot Act Reauthorization in March 2006 allows the attorney general to replace U.S. attorneys without Senate confirmation. The change was not in the original bills approved by the House and Senate, and thus never got a hearing. At the request of the Justice Department, Sen. Arlen Specter, R-Pa., added the provision during a House-Senate conference committee, which reconciles House and Senate bills for a final vote.

Under the old law, the attorney general could name an interim U.S. attorney for 120 days and when that term expired, the U.S. District Court would name a replacement until a presidential nominee was confirmed by the Senate. Feinstein has introduced a bill to restore the old law.

Presidential appointment with Senate confirmation remains an important check and balance in our system of government. The Senate and the House should approve Feinstein's bill immediately to prevent an unwarranted tilt toward presidential power.

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A CASE OF JUSTICE THAT STINKS

Roanoke Times, The (VA)

January 21, 2007

EDITORIAL

This is a new old story, about one of those "little-noticed" provisions in complex legislation that draws attention only when it starts to stink.

The complex law is the Patriot Act. The smelly provision -- one of many, but a noticeable one of late -- is an innocuous-seeming change in the way the executive branch makes interim appointments of U.S. attorneys.

In effect, the change allows the attorney general to replace federal prosecutors without Senate approval.

The Bush administration seems to be using this new power, in part, to rid the Justice Department of prosecutors deep into political corruption investigations and to put political hacks in their place.

Congress should act quickly to strip the law of a provision so ripe for abuse.

Distressingly, lawmakers passed the change without debate last year when the GOP-dominated Congress approved the USA Patriot Improvement and Reauthorization Act.

The political blog TPMmuckraker.com reports that a spokesman for one of the bill's Republican managers, Rep. James Sensenbrenner, said then-Senate Judiciary Chairman Arlen Specter slipped the new language into the bill at the last minute. Separate measures passed earlier in both houses did not include the change.

U.S. attorneys are appointed by the president and approved by the Senate. When appointees leave, voluntarily or not, the attorney general can make an interim appointment that is not subject to a Senate vote.

Formerly, such an appointment could last up to 120 days, after which a local federal district court would name a replacement until the vacancy was filled. Now interim appointments can last indefinitely, at least until the end of a president's term, a process that circumvents the Senate's check on executive power.

That change began stinking after a series of forced resignations that includes the impending departure of Carol Lam, the U.S. attorney for San Diego. Lam focused her office's efforts on successfully prosecuting former Rep. Duke Cunningham for corruption.

The head of the FBI's San Diego office bemoans Lam's ouster, saying it will jeopardize a continuing investigation that has touched several Republican lawmakers. He and several former federal prosecutors say her firing smells of politics.

Not so, Attorney General Alberto Gonzales insists. He testified at a congressional hearing Thursday, assuring Democratic Sens. Dianne Feinstein and Patrick Leahy that U.S. attorneys are never removed to retaliate for or interfere with an investigation or court case.

"Sources" suggest other reasons for Lam's firing, from her pursuit of public corruption and white-collar crime at the expense of drug smuggling and gun cases to a poor track record for convictions. Suspicions that politics underlies all would be hard to prove -- but they are also hard to dismiss.

One of Gonzales' interim appointments, after all, is J. Timothy Griffin, since late December the interim U.S. attorney for the Eastern District of Arkansas. His career up to then was spent largely doing "opposition research" -- digging up dirt on Democrats -- for the Republican Party and, from 2005 to 2006, for Karl Rove.

The Justice Department forced Griffin's predecessor to resign.

Such examples illustrate, at the least, the potential for putrefying politics to corrupt the Justice Department's use of truly awesome powers.

Feinstein and Leahy have filed a bill to restore the district court's authority to make interim appointments. Gonzales' protestations of high principle do not persuade. The senators should press on.

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Dropping like flies: Resignations of U.S. attorneys raise suspicion of politically motivated Justice Department purge.

The Houston Chronicle

DAG000001514

January 25, 2007

Editorial

IN the past year 11 U.S. attorneys have resigned their positions, some under pressure from their Justice Department superiors and the White House, even though they had commendable performance records.

Democratic senators are concerned that the high turnover is linked to an obscure, recently passed provision of the Patriot Act. The provision allows the Bush administration to fill vacancies with interim prosecutors for the remainder of the president's term without submitting them to the Senate for confirmation. Previously, interim appointments were made by a vote of federal judges in the districts served by the outgoing U.S. attorneys.

U.S. Sen. Mark Pryor, D-Ark., contends that in his state U.S. Attorney Bud Cummins was improperly ousted in favor of a protégé of Bush political adviser Karl Rove. Likewise in California, U.S. Attorneys Carol Lam of San Diego and Kevin Ryan of San Francisco were forced from their positions. Sen. Diane Feinstein, D-Calif., alleged that Lam fell out of favor with her Washington bosses for spearheading the bribery prosecution and conviction of Republican Congressman Randy "Duke" Cunningham last year. Lam reportedly had other politicians in her sights.

"I am particularly concerned because of the inference ... that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. attorney," Feinstein stated. "In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor."

U.S. Attorney General Alberto Gonzales denied political motives figured in the multiple resignations of top prosecutors, and pledged that all interim appointments would be submitted to the Senate for confirmation. He reiterated that U.S. attorneys serve at the pleasure of the president and can be removed for a number of reasons, including job performance and their standing in their districts. That isn't good enough for Feinstein and her Democratic colleagues, who have introduced legislation to reinstate the appointment of interim prosecutors by federal judges.

Gonzales is correct that the president is vested with the power to appoint U.S. attorneys. Unfortunately, the Patriot Act change eliminated the ability of the Senate to exercise its constitutional oversight of those nominations to make sure they are qualified and not simply political plums handed out to supporters in the waning years of the administration.

The attorney general's pledge to bring the wave of interim appointees before the Senate for confirmation is welcome, providing it is done in a speedy fashion. Still, the Patriot Act needs to be amended to restore judicial appointment of interims.

No president should be able to fire top government prosecutors from their positions for political reasons and then install successors without a thorough vetting by the constitutionally charged legislative body.

FEINSTEIN LETTER RE
USA CAROL LAM

DAG000001517



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of any such prosecution or intake guidelines would not be appropriate for public release because the more criminals know of such guidelines, the more they will conform their conduct to avoid prosecution.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

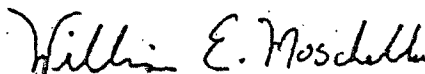
Prosecutions for alien smuggling in the Southern District under 8 U.S.C. sec. 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.

DAG000001518

The Honorable Dianne Feinstein
Page Two

There are few if any matters that are more deeply felt than the relationship between parent and child, and we understand and fully empathize with the enormity of the loss being felt by Mr. Smith. We very much appreciate your interest in this matter as well. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,


William E. Moschella
Assistant Attorney General

United States Attorneys -- Criminal Caseload Statistics¹
 Southern District of California
 Standard Matter and Case Counts
 Immigration

Cases & Defendants -- Filed, Pending, & Terminated															
Fiscal Year ²	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		284		1.31	308		340		1.10
94	272	-17.6%	290	-18.8%	1.07	137	-36.9%	191	-32.7%	1.39	345	12.0%	378	10.8%	1.09
95	851	212.9%	884	204.6%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,347	80.6%	1,425	81.2%	1.04	227	46.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,853	35.6%	1,949	36.8%	1.05	259	14.1%	352	17.3%	1.36	1,819	40.9%	1,892	41.1%	1.04
98	1,918	3.5%	2,093	7.4%	1.09	479	84.9%	826	77.8%	1.31	1,695	-8.8%	1,811	-4.3%	1.07
99	1,684	-13.2%	1,778	-15.1%	1.07	448	-6.5%	566	-9.8%	1.26	1,667	-0.5%	1,837	1.4%	1.09
00	2,116	27.2%	2,223	25.0%	1.05	601	34.2%	710	25.4%	1.18	1,961	18.2%	2,070	12.7%	1.06
01	1,907	-9.8%	1,988	-10.8%	1.04	498	-17.5%	580	-18.3%	1.17	2,006	2.3%	2,112	2.0%	1.05
02	1,821	0.7%	2,059	3.6%	1.07	854	27.8%	781	31.2%	1.20	1,782	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	739	18.6%	818	7.5%	1.11	2,359	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,632	2.9%	1.04	818	10.4%	918	12.2%	1.13	2,506	8.2%	2,588	3.8%	1.03
05	1,441	-43.0%	1,514	-42.5%	1.05	645	-21.0%	714	-22.2%	1.11	1,828	-35.1%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	872	4.2%	776	8.7%	1.15	1,412	-13.2%	1,492	-13.9%	1.06
Average	1,578	22.1%	1,666	21.0%	1.03	466	13.1%	556	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

¹ Caseload data extracted from the United States Attorneys' Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

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United States Attorneys - Criminal Caseload Statistics¹
 Southern District of California
 Standard Sentencing Courts
 Immigration

Sentencing								
Fiscal Year ²	Defendants In Cases Filed	Defendants in Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
93	357	340	324	18		308		94.4%
94	280	378	357	22	22.2%	335	9.5%	93.8%
95	884	860	841	50	127.3%	791	136.1%	94.1%
96	1,425	1,341	1,318	180	280.0%	1,128	42.6%	85.8%
97	1,949	1,892	1,852	302	58.9%	1,550	37.4%	83.7%
98	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%
99	1,778	1,837	1,737	82	-47.4%	1,655	4.4%	95.3%
00	2,223	2,070	1,942	62	-24.4%	1,880	13.6%	96.8%
01	1,988	2,112	1,877	80	28.0%	1,897	0.8%	96.0%
02	2,059	1,877	1,759	74	-7.5%	1,685	-11.2%	95.8%
03	2,558	2,487	2,385	92	24.3%	2,303	16.7%	96.2%
04	2,632	2,568	2,408	36	-60.9%	2,370	2.9%	98.5%
05	1,514	1,732	1,551	49	38.1%	1,502	-36.8%	96.8%
06	1,580	1,492	1,372	40	-18.4%	1,332	-11.3%	97.1%
Average	1,668	1,630	1,541	90	28.5%	1,451	17.5%	93.9%

Sentencing															
Fiscal Year ²	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to 1-12 Months	Percent of Defendants Sentenced to 1-12 Months	Defendants Sentenced to 13-24 Months	Percent of Defendants Sentenced to 13-24 Months	Defendants Sentenced to 25-36 Months	Percent of Defendants Sentenced to 25-36 Months	Defendants Sentenced to 37-60 Months	Percent of Defendants Sentenced to 37-60 Months	Defendants Sentenced to 61+ Months	Percent of Defendants Sentenced to 61+ Months	Defendants Sentenced to Life In Prison	Percent of Defendants Sentenced to Life In Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death
93	308	83	20.8%	223	72.9%	10	3.3%	5	1.6%	5	1.6%	0	0.0%	0	0.0%
94	335	41	12.2%	281	83.9%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%
95	791	54	6.8%	704	88.0%	6	0.8%	18	2.0%	11	1.4%	0	0.0%	0	0.0%
96	1,128	146	12.9%	904	80.1%	16	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%
97	1,550	457	28.5%	994	64.1%	28	1.8%	32	2.1%	39	2.5%	0	0.0%	0	0.0%
98	1,585	404	25.5%	718	45.3%	340	21.5%	67	4.2%	58	3.5%	0	0.0%	0	0.0%
99	1,655	374	22.8%	474	28.8%	828	38.0%	100	6.0%	78	4.7%	0	0.0%	0	0.0%
00	1,880	755	40.2%	573	30.5%	496	26.4%	42	2.2%	14	0.7%	0	0.0%	0	0.0%
01	1,887	931	49.1%	580	30.8%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%
02	1,685	747	44.3%	561	33.3%	328	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%
03	2,303	1,035	44.8%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%
04	2,370	898	37.8%	745	31.4%	592	25.0%	118	4.8%	21	0.9%	0	0.0%	0	0.0%
05	1,502	338	22.5%	512	34.1%	329	21.9%	248	16.4%	77	5.1%	0	0.0%	0	0.0%
06	1,332	364	28.0%	444	33.3%	188	14.0%	278	20.7%	42	3.2%	0	0.0%	0	0.0%
Average	1,451	473	32.8%	607	41.8%	265	18.2%	78	5.4%	29	2.0%	0	0.0%	0	0.0%

¹ Caseload data extracted from the United States Attorneys' Case Management System.
² FY 2008 numbers are straight-line projections based on actual data through the end of March 2008.

DAG000001521

DIANNE FEINSTEIN
CALIFORNIA



COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

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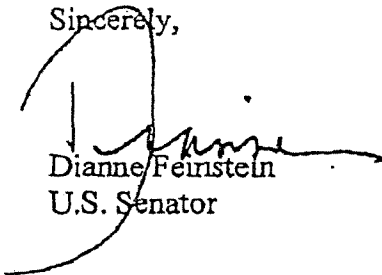
U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,



Dianne Feinstein
U.S. Senator

BELL/MEADOR IN JOURNAL
OF LAW AND POLITICS

DAG000001525

FROM VOLUME 9 of THE JOURNAL OF LAW AND POLITICS, beginning at page 247 (1992-1993)
By Former Attorney General Griffin Bell and Daniel J. Meador, Assistant Attorney General
in the Carter Administration

The major concern of the Attorney General in relation to U.S. Attorneys is to see to it that the government is represented effectively in every district by competent attorneys of integrity who are responsive to policies formulated by the Attorney General. The best way to achieve this is for the Attorney General to be able to select such persons and to have them serve only as long as they perform effectively and carry out those policies.

Reasonable minds, all equally dedicated to improving the process, can differ as to what method would produce the best results. In our view, placing the appointing power in the President alone or in the Attorney General alone would probably be an improvement over the present process. All things considered, however, we believe that the method most likely to produce the best results in the long run is to place the power of appointment and removal of U.S. Attorneys solely in the Attorney General. This method seems more promising than any other to assure high quality in the appointees, to minimize the stigma of political patronage surrounding these appointments, and to foster effective departmental management.

This conclusion rests on the legal and practical realities of the situation. ... the Attorney General discharges a large part of that responsibility ["take care that the laws be executed faithfully"] through the ninety-four U.S. Attorneys throughout the country. They must be persons in whom the Attorney General has complete confidence and who in turn are responsible to the Attorney General alone. U.S. Attorneys are major arms of the executive branch, and they should be entirely accountable to the constitutionally and statutorily ordained superior executive officers. Giving the Attorney General the power to hire and fire these subordinates provides the best guarantee of consistent and effective administration and enforcement of federal laws.