

CONGRESSMAN
HOWARD L. BERMAN
2221 Rayburn House Office Building
Washington, D.C. 20515
202-225-4695
202-225-3196 (fax)
(Facsimile Transmission Cover Sheet)

Date 11/17/07
Fax# 202-514-4507

To Attorney General Alberto Gonzales

Number of pages (including cover sheet): 2

From:

<input checked="" type="checkbox"/> Howard L. Berman Member	<input type="checkbox"/> Gene Smith Chief of Staff	<input type="checkbox"/> Deanne Samuels Executive Secretary	<input type="checkbox"/> Doug Campbell Legis. Director
<input type="checkbox"/> Bari Schwartz Counsel	<input type="checkbox"/> Julia Massimino Legis. Counsel	<input type="checkbox"/> Shanna Winters Legis. Counsel	<input type="checkbox"/> Stephanie Williamson Legis. Assistant
<input type="checkbox"/> Jami Crespo Legis. Assistant	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Intern

Message: _____

DAG000001471

DAG000001472



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disserves their interests. In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law

DAG000001473

Letter to Chairman Leahy and Senator Feinstein
January 16, 2007
Page 2

enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

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. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

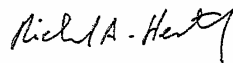
Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

DAG000001474

Letter to Chairman Leahy and Senator Feinstein
January 16, 2007
Page 3

every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Hertling". The signature is fluid and cursive, with the first name "Richard" and last name "Hertling" clearly distinguishable.

Richard A. Hertling
Acting Assistant Attorney General

Enclosure

DAG000001475

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- Erik Peterson – Western District of Wisconsin;
- Charles Rosenberg – Eastern District of Virginia;
- Thomas Anderson – District of Vermont;
- Martin Jackley – District of South Dakota;
- Alexander Acosta – Southern District of Florida;
- Troy Eid – District of Colorado;
- Phillip Green – Southern District of Illinois;
- George Holding – Eastern District of North Carolina;
- Sharon Potter – Northern District of West Virginia;
- Brett Tolman – District of Utah;
- Rodger Heaton – Central District of Illinois;
- Deborah Rhodes – Southern District of Alabama;
- Rachel Paulose – District of Minnesota;
- John Wood – Western District of Missouri; and
- Rosa Rodriguez-Velez – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- Central District of California – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- Southern District of Illinois – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);

DAG000001476

- Northern District of Iowa – FAUSA Judi Whetstone is acting United States Attorney (Whetstone is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- Eastern District of North Carolina – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- Northern District of West Virginia – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- Eastern District of Virginia – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- Eastern District of Arkansas – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- District of Columbia – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- District of Nebraska – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- Middle District of Tennessee – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- Western District of Missouri – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL’S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

DAG000001477

FAUSA to serve as interim United States Attorney. These districts include:

- District of Puerto Rico – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- Eastern District of Tennessee – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- District of Alaska – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- Eastern District of Virginia – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- Eastern District of Arkansas – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- District of Columbia – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- District of Nebraska – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- Middle District of Tennessee – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- Western District of Missouri – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

DAG000001478

11/99/6
SM

United States Senate

WASHINGTON, DC 20510

January 9, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

Recently, it has come to our attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions by the end of the month, prior to the end of their terms without cause. We also understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether.

We are very concerned about this allegation, and we believe, if true, such actions would be intemperate and ill-advised. We have asked our staffs to look into changing the law to prevent such actions and are introducing legislation today that will return the law to its previous language providing a district court with the authority to appoint an interim U.S. Attorney for the district in which a vacancy arises. Therefore, we ask that if such requests have been made that you desist from moving forward with these efforts and hold the requests in abeyance.

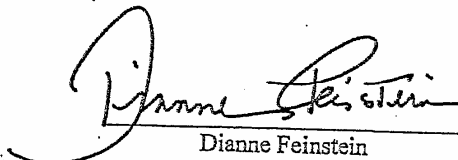
As you know, U.S. Attorneys around the country serve important functions bringing many of the most important and difficult cases. Our U.S. Attorneys are responsible for taking the lead on public corruption cases and many of the anti-terrorism efforts across the country. U.S. Attorneys also play a vital role in combating traditional crimes like narcotics trafficking, bank robbery, guns, violence, environmental crime, civil rights violations and fraud. U.S. Attorneys are also taking the lead on prosecuting computer hacking, Internet fraud and intellectual property theft; accounting and securities fraud and computer chip theft. Continuity in these positions is of utmost importance, and freedom from any inappropriate influences or the appearance of influence must be avoided at all costs.

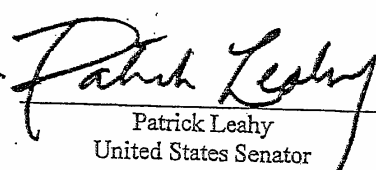
DAG000001479

Please provide information regarding all instances in which you have exercised the authority to appoint an interim United States Attorney. In addition, please provide us with information on whether any efforts have been made to ask or encourage the former or current U.S. Attorneys to resign their position.

We would appreciate your prompt attention to this matter and written answers prior to your appearance before the Judiciary Committee on January 18, 2007. Please contact us or Senator Feinstein's chief counsel, Jennifer Duck (202-224-6975), should you have any questions.

Sincerely yours,


Dianne Feinstein
United States Senator


Patrick Leahy
United States Senator

DAG000001480

FEINSTEIN STATEMENT

DAG000001481

- **Lam is Asked to Step Down:** "The Bush administration has quietly asked San Diego U.S. Attorney Carol Lam, best known for her high-profile prosecutions of politicians and corporate executives, to resign her post, a law enforcement official said." *San Diego Union Tribune* – 1/12/07.
http://weblog.signonsandiego.com/uniontrib/20070112/news_1n12lam.html

- **Nevada U.S. Attorney Given Walking Papers:** "The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday." *Las Vegas Review Journal* – 1/16/07.
www.reviewjournal.com/lvrj_home/2007/Jan-15-Mon-2007/news/11980257.html

The following is a transcript of Senator Feinstein's floor speech:

"Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.

Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions -- some by the end of this month -- prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.

I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.

How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.

To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.

In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The 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.'

He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is 'extremely rare' unless there is an allegation of misconduct.

DAG000001483

To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.

The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.

While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.

As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.

Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.

How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

DAG000001484

5. The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. 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. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight on, and I believe very strongly we should change the law back to where a Federal judge makes this appointment on an interim basis subject to regular order, whereby the President nominates and the Senate confirms a replacement"

DAG000001485

EDITORIALS

DAG000001486

Why Have So Many U.S. Attorneys Been Fired? It Looks a Lot Like Politics

ADAM COHEN
NY Times
February 26, 2007

Carol Lam, the former United States attorney for San Diego, is smart and tireless and was very good at her job. Her investigation of Representative Randy Cunningham resulted in a guilty plea for taking more than \$2 million in bribes from defense contractors and a sentence of more than eight years. Two weeks ago, she indicted Kyle Dustin Foggo, the former No. 3 official in the C.I.A. The defense-contracting scandal she pursued so vigorously could yet drag in other politicians.

In many Justice Departments, her record would have won her awards, and perhaps a promotion to a top post in Washington. In the Bush Justice Department, it got her fired.

Ms. Lam is one of at least seven United States attorneys fired recently under questionable circumstances. The Justice Department is claiming that Ms. Lam and other well-regarded prosecutors like John McKay of Seattle, David Iglesias of New Mexico, Daniel Bogden of Nevada and Paul Charlton of Arizona — who all received strong job evaluations — performed inadequately.

It is hard to call what's happening anything other than a political purge. And it's another shameful example of how in the Bush administration, everything — from rebuilding a hurricane-ravaged city to allocating homeland security dollars to invading Iraq — is sacrificed to partisan politics and winning elections.

U.S. attorneys have enormous power. Their decision to investigate or indict can bankrupt a business or destroy a life. They must be, and long have been, insulated from political pressures. Although appointed by the president, once in office they are almost never asked to leave until a new president is elected. The Congressional Research Service has confirmed how unprecedented these firings are. It found that of 486 U.S. attorneys confirmed since 1981, perhaps no more than three were forced out in similar ways — three in 25 years, compared with seven in recent months.

It is not just the large numbers. The firing of H. E. Cummins III is raising as many questions as Ms. Lam's. Mr. Cummins, one of the most distinguished lawyers in Arkansas, is respected by Republicans and Democrats alike. But he was forced out to make room for J. Timothy Griffin, a former Karl Rove deputy with thin legal experience who did opposition research for the Republican National Committee. (Mr. Griffin recently bowed to the inevitable and said he will not try for a permanent appointment. But he remains in office indefinitely.)

The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.

DAG000001487

Three theories are emerging for why these well-qualified U.S. attorneys were fired — all political, and all disturbing.

1. Helping friends. Ms. Lam had already put one powerful Republican congressman in jail and was investigating other powerful politicians. The Justice Department, unpersuasively, claims that it was unhappy about Ms. Lam's failure to bring more immigration cases. Meanwhile, Ms. Lam has been replaced with an interim prosecutor whose résumé shows almost no criminal law experience, but includes her membership in the Federalist Society, a conservative legal group.

2. Candidate recruitment. U.S. attorney is a position that can make headlines and launch political careers. Congressional Democrats suspect that the Bush administration has been pushing out long-serving U.S. attorneys to replace them with promising Republican lawyers who can then be run for Congress and top state offices.

3. Presidential politics. The Justice Department concedes that Mr. Cummins was doing a good job in Little Rock. An obvious question is whether the administration was more interested in his successor's skills in opposition political research — let's not forget that Arkansas has been lucrative fodder for Republicans in the past — in time for the 2008 elections.

The charge of politics certainly feels right. This administration has made partisanship its lodestar. The Washington Post reporter Rajiv Chandrasekaran revealed in his book, "Imperial Life in the Emerald City," that even applicants to help administer post-invasion Iraq were asked whom they voted for in 2000 and what they thought of *Roe v. Wade*.

Congress has been admirably aggressive about investigating. Senator Charles Schumer, Democrat of New York, held a tough hearing. And he is now talking about calling on the fired U.S. attorneys to testify and subpoenaing their performance evaluations — both good ideas.

The politicization of government over the last six years has had tragic consequences — in New Orleans, Iraq and elsewhere. But allowing politics to infect U.S. attorney offices takes it to a whole new level. Congress should continue to pursue the case of the fired U.S. attorneys vigorously, both to find out what really happened and to make sure that it does not happen again.

Congress should strike provision to oust attorneys: Congress should strike provision to oust attorneys

East Valley Tribune (Mesa, Arizona)
February 28, 2007

DAG000001488

Feb. 28--Congress clearly didn't take much notice of an obscure provision the Bush administration slipped into the USA Patriot Act last year. But now it seems clear that the measure is being used to conduct a political purge of U.S. attorneys' offices.

So far, at least eight are known to have been forced out by the Justice Department, and there may be others. The departures were facilitated by a provision that allows the president to appoint interim U.S. attorneys for an indefinite period without the usual Senate confirmation. The ouster that raised the biggest stink was of Carol Lam, the U.S. attorney for San Diego, who nailed former Rep. Randy "Duke" Cunningham for accepting over \$2 million in bribes. The suspicion was that the White House acted because her investigation was still ongoing and widening. Various news reports say Paul Charlton, the former U.S. Attorney for Arizona, was told to quit because he wasn't pursuing enough death-penalty sentences.

Deputy Attorney General Paul McNulty told a Senate committee the firings were all for "performance-related" reasons, although he conceded the U.S. attorney in Little Rock, Ark., was forced out in favor of a protege of White House political adviser Karl Rove.

The "performance-related" defense began to crumble when the department's internal evaluations leaked out, showing 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. The eight could rebut the 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.

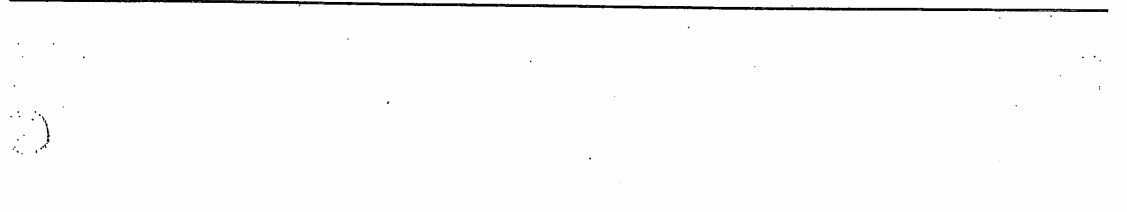
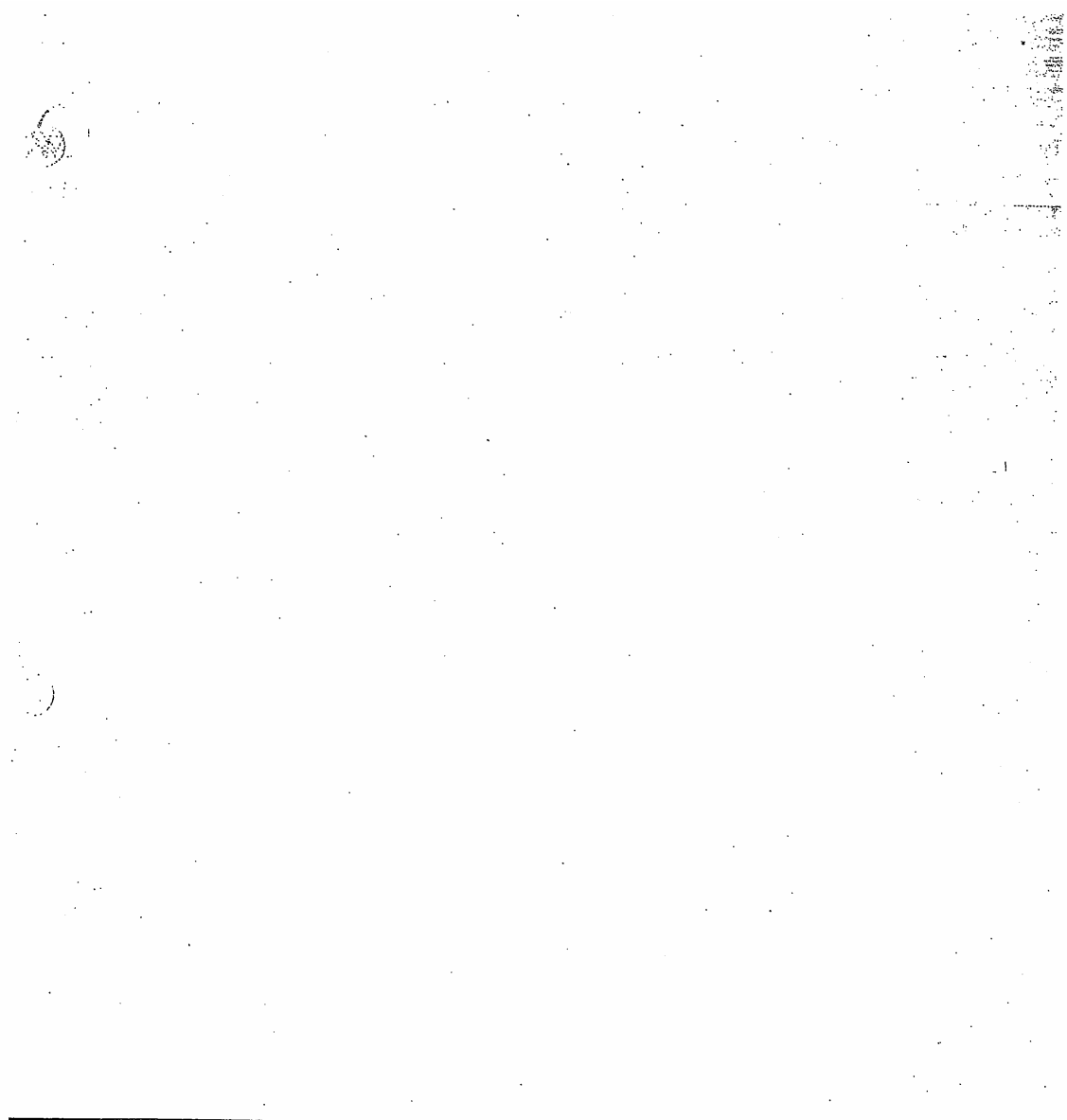
Everything's just dandy at Justice Department

SHEILA SUESS KENNEDY
The Indianapolis Star (Indiana)
February 27, 2007

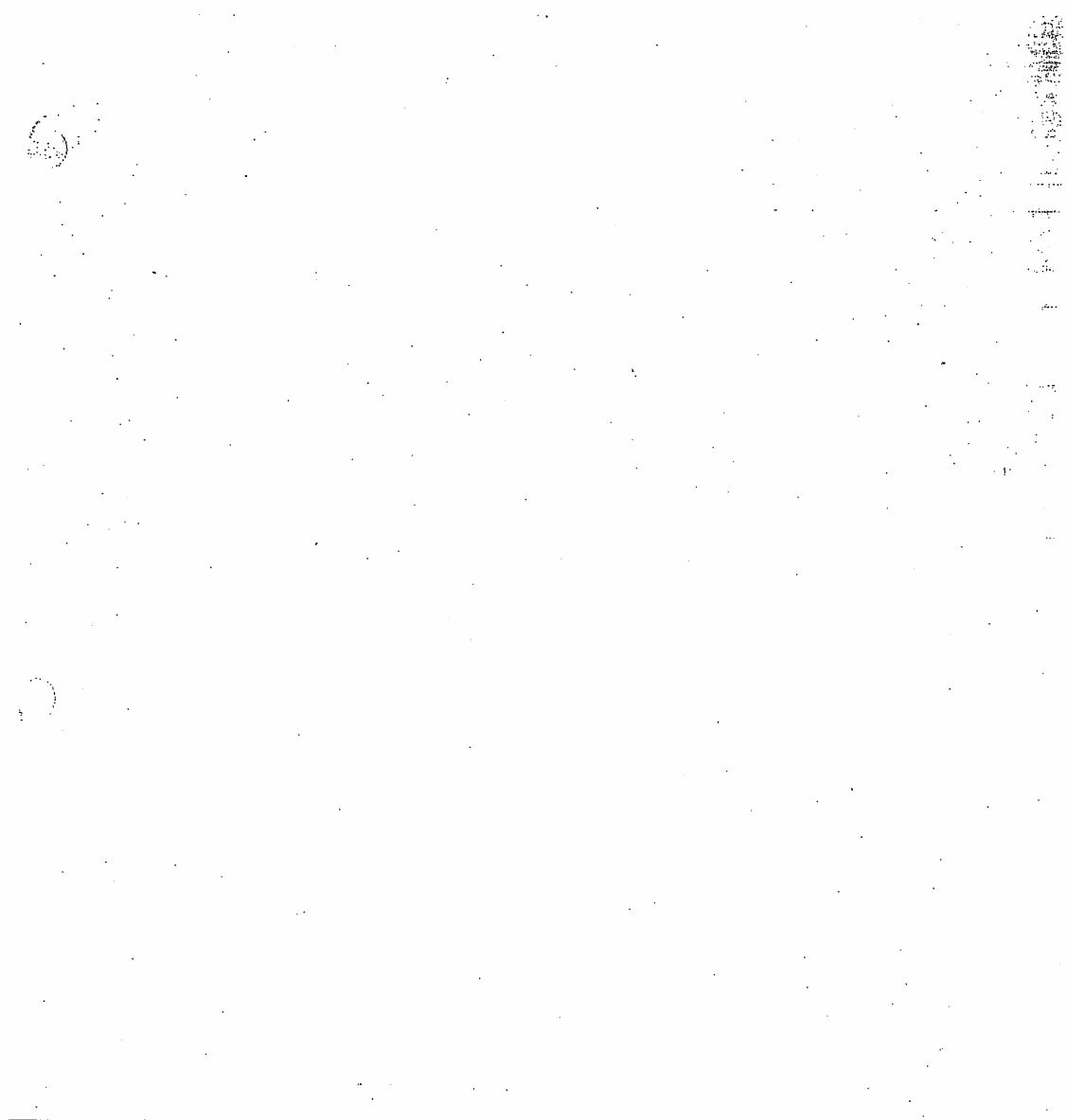
It isn't only FEMA. Everywhere you look, Bush administration officials are doing "a heck of a job."

A recent audit of the Justice Department, conducted by the department's own inspector general, concluded that only two of Justice's 26 issued reports of terrorism prosecutions have been accurate. The department has routinely inflated the number of terrorists being charged by including immigration, marriage fraud and drug-trafficking cases entirely unrelated to terrorist activities.

DAG000001489



DAG000001490



DAG000001491

Maybe this was just an honest series of reporting errors, rather than an effort to pad the statistics for political purposes, but either way it is just one more disquieting piece of evidence that -- to put it mildly -- all is not well at Alberto Gonzales' Justice Department.

While it's no secret that constitutional scholars have been critical of Gonzales' embrace of the so-called "unitary executive" theory (which places the president above the law in many situations), his interpretation of presidential authority can be categorized as an honest difference in perspective. Other problems cannot be so easily dismissed.

There is, for example, the case of Sue Ellen Woolridge, until last month chief of the department's environmental enforcement division. Woolridge bought a million-dollar vacation home with Don Duncan, the top lobbyist for ConocoPhillips. Nine months later, on behalf of the Justice Department, she signed a settlement agreement with ConocoPhillips that allowed the oil company to delay installing pollution-control equipment and to delay paying fines. Making this deal smell even worse was the identity of the other co-owner of this beach house: Woolridge's "boyfriend," Stephen Griles, a former lobbyist for the oil industry who had been appointed to an environmental enforcement position at the Department of the Interior and who is under investigation in connection with Jack Abramoff.

Can we spell "appearance of impropriety"?

The congressional investigation into Woolridge's activities has now been joined by several inquiries into the firings of seven U.S. Attorneys. All were Republicans appointed by Bush, and all but one had received positive job reviews. The Washington Post reports that "most of the prosecutors were overseeing significant public-corruption investigations at the time they were asked to leave." One of them -- Carol Lam of San Diego -- had obtained a guilty plea from Randy "Duke" Cunningham and had just indicted others in connection with that case, among them a high-ranking CIA official.

Gonzales has thus far ignored communications from congressional committees requesting an explanation of these firings.

John Dean, former White House counsel for Richard Nixon, recently summed up the situation at the Justice Department. Calling for Gonzales to resign, Dean's criticism was trenchant. "In the history of U.S. Attorneys General, Alberto Gonzales is constantly reaching for new lows. So dubious is his testimony that he is not afforded the courtesy given most Cabinet officers when appearing on Capitol Hill: Congress insists he testify under oath. Even under oath, Gonzales' purported understanding of the Constitution is historically and legally inaccurate, far beyond the bounds of partisan interpretation."

Heck of a job.

Kennedy is associate professor of law and public policy at the Indiana University School of Public and Environmental Affairs in Indianapolis.

U.S. attorney: victim of politics?

Kalamazoo Gazette (Michigan)
February 26, 2007 Monday

U.S. Attorney Margaret Chiara has been described by a federal judge in Grand Rapids as one of the best U.S. attorneys he has seen in his two decades on the bench.

That wasn't enough to protect the former Cass County prosecutor. She was the latest in a string of U.S. attorneys abruptly fired by the U.S. Justice Department.

The Justice Department says that six of the seven U.S. attorneys fired before Chiara, 63, announced her resignation were dismissed for "performance-related" issues. All of the attorneys are Republicans. But some Democrats are questioning whether the dismissals were politically motivated.

U.S. attorneys are the nation's top federal prosecutors, overseeing federal cases within their districts. Chiara's was the Western District of Michigan, the western Lower Peninsula, which includes southwestern Michigan.

Since they serve at the pleasure of the White House, it is common for a changing of the guard among U.S. attorneys when the occupant of the White House changes. They can be fired for any reason, but it is unusual for a wholesale firing of U.S. attorneys in the middle of a president's term.

Chiara was appointed in 2001 by the newly elected President Bush to replace Clinton appointee Michael Dettmer.

U.S. District Judge Robert Holmes Bell, the judge who spoke highly of her performance, told The Grand Rapids Press he was "shocked to learn that her resignation had been requested. She's clearly part of a larger pattern."

The Washington Post reported that most of those dismissed had good performance reviews, but said many had run afoul of the White House over political issues like the death penalty or immigration.

Chiara, who opposed the death penalty, announced her dismissal on Thursday, the same day she announced a 23-count indictment against the owners of a Florida company that provided illegal aliens as workers to businesses across the country, including Michigan.

Sen. Charles E. Schumer, D-N.Y., who has criticized the removals, said he would seek a fuller explanation in a public hearing.

The public deserves to know the reasons for these dismissals.

DAG000001493

6

DAG000001494

6

7

DAG000001495

6

7

8

DAG000001496



DAG000001497

Firing of U.S. attorneys is not Bush's finest hour.

Tom Teeppen
San Gabriel Valley Tribune (California)
February 26, 2007 Monday

THE purge of U.S. attorneys, begun last December, continues apace. The eighth to be fired surfaced during the weekend: Margaret Chiara, in Grand Rapids, Mich.

Like nearly all of the others, she had a sound record, but ... well, you know, politics.

And not necessarily partisan politics. The administration did send sailing out the window two who were handling corruption cases against high-ranking Republicans.

Most of the firings appear to be more nearly ideological, punishing attorneys who bucked Bush administration doctrine, for instance recommending against capital punishment in iffy cases.

The administration claims all but one of the attorneys - and we'll come back to that case - in a moment - were canned for "performance-

related" issues, suggesting incompetence, but that can't be so.

At least six carried positive job reviews. U.S. attorney John McKay, in Seattle, had received a laudatory audit just last fall. Federal Judge Robert Lasnik, speaking, he said, for the whole Seattle federal bench, rated McKay

"absolutely superb."

Similar judicial praise followed Chiara out the door in Michigan.

In a rare stumble into

candor, the Justice Department admitted that one firing was flat-out political. U.S. attorney Bud Cummins, in Little Rock, Ark., was pushed out to let Bush appoint a longtime aide to Karl Rove, the president's political advisor/schemer. That deal was so obvious and rank the nominee himself backed out, presumably to get away from the stink.

U.S. attorneys serve at a president's pleasure. They are typically fired wholesale when the presidency is switched from one party to the other - servants entombed with

pharaoh. But typically, too, the positions are treated by incoming presidents as

responsible, professional postings and are refilled accordingly. Appointees are vetted by Congress and, once approved, operate with considerable

independence. Together, the nation's 93 provide one of the strengths of the justice system and conform, in practice, more to legal continuity than to the pitch and sway of policy lurches.

DAG000001498

A provision that was sneaked into the renewal last year of the Patriot Act set U.S. attorneys up for this fall.

In the past, vacancies during a presidency could be filled either by temporary judicial appointment or by a presidential nomination that would be Senate-reviewed.

The Patriot Act was gimmicked so the president could dodge Congress and make indefinite appointments

unilaterally - still more power snatched by this grabby White House.

That indulgence caught even most congressional Republicans unaware. Many would reverse the provision. Three joined with Democrats on the Judicial Committee to restore the previous, long-standing system, but GOP leadership is blocking a floor vote.

Despite the political tumults that have always swirled around it, our national government traditionally has been buttressed from within thanks to the respect presidents paid to its larger purposes, staffing its inherently apolitical offices with professionals and then, barring misfeasance, letting the professionals work

professionally. Not this president, but perhaps the notoriety that the matter finally is attracting at least will pull the firings up short of decimation.

Bush, of all people, can't very well cite anything "performance-related" in his own defense.

U.S. attorneys should be confirmed

Dale McFeatters

Scripps Howard News Service
February 26, 2007

Congress clearly didn't take much notice of an obscure provision the Bush administration slipped into the USA Patriot Act last year. But now it seems clear that the measure is being used to conduct a political purge of U.S. attorneys' offices.

So far, at least eight are known to have been forced out by the Justice Department, and there may be others. The departures were facilitated by a provision that allows the president to appoint interim U.S. attorneys for an indefinite period without the usual Senate confirmation.

The ouster that raised the biggest stink was that of Carol Lam, the U.S. attorney for San Diego, who nailed Randy "Duke" Cunningham, then a senior House Republican, for accepting over \$2 million in bribes. The suspicion was that the White House acted because her investigation was still ongoing and widening.

DAG000001499

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 protégé 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

DAG000001500

- 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.

DAG000001501

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

DAG000001505

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 supersedes 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.

DAG000001506

— 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.

Copyright (c) 2007 The New York Times Company

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 Cummins 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

DAG000001508

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 TPMuckraker .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.

Copyright (c) 2007 The New York Times Company

DAG000001509

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

DAG000001510

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.

DAG000001511

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.

Copyright (c) 2007 St. Louis Post-Dispatch

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.

DAG000001512

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.

Copyright 2007 The Sacramento Bee

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 TPMuckraker.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.

DAG000001513

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.

Copyright (c) 2007 The Roanoke Times

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.

DAG000001515

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.

DAG000001516

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
William E. Moschella
Assistant Attorney General

DAG000001519

United States Attorneys - Criminal Case Load Statistics¹
Southern District of California
Standard Matter and Case Counts
Investigation

Fiscal Year ²	Cases & Delinquents - Filed, Pending, & Terminated									
	Cases Filed	Cases Pending	Cases Terminated	Percent Change	Delinquents Filed	Delinquents Pending	Delinquents Terminated	Percent Change	Average # of Delinquents per Case Pending	Average # of Delinquents per Case Terminated
83	230	217	288		257	214	340		1.31	1.10
84	272	137	345	-36.9%	290	191	276	12.0%	1.39	1.09
85	851	155	878	13.1%	894	221	850	140.3%	1.43	1.03
86	1,597	227	1,201	46.5%	1,425	300	1,241	55.7%	1.32	1.04
87	1,853	239	1,816	14.1%	1,549	352	1,892	40.9%	1.36	1.04
88	1,918	479	1,895	84.9%	2,093	826	1,811	-8.8%	1.31	1.07
89	1,564	448	1,687	-4.3%	1,770	568	1,837	-0.5%	1.26	1.09
90	2,118	601	1,961	34.2%	2,223	710	2,070	18.2%	1.18	1.06
91	1,907	608	2,006	-17.5%	1,888	540	2,112	2.3%	1.17	1.05
92	1,821	534	1,792	27.6%	2,059	781	1,677	-11.2%	1.20	1.05
93	2,463	739	2,259	18.5%	2,558	818	2,407	32.4%	1.11	1.06
94	2,527	818	2,506	10.4%	2,632	918	2,588	4.2%	1.13	1.03
95	1,441	645	1,828	-21.0%	1,514	714	1,732	-35.1%	1.11	1.07
96	1,422	672	1,412	4.3%	1,580	778	1,492	-32.2%	1.15	1.06
Average	1,578	468	1,545	13.1%	1,804	553	1,830	18.4%	1.20	1.05

¹ Case load data extracted from the United States Attorney's Case Management System.
² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

DAG000001520

United States Attorney - Criminal Case/Classified Statistics¹
 Southern District of California
 Standard Sentencing Courts
 Immigration

Fiscal Year ²	Sentencing				Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
	Defendants In Cases Filed	Defendants Terminated	Total Defendants	Guilty Defendants Not Sentenced To Prison			
83	317	340	324	18	22.2%	33.5	34.4%
84	200	218	317	22	22.2%	33.5	33.8%
85	884	860	841	50	127.3%	791	135.1%
86	1,425	1,341	1,218	180	280.0%	1,128	42.8%
87	1,948	1,882	1,853	202	58.8%	1,550	37.4%
88	2,093	1,811	1,741	152	-45.3%	1,595	31.0%
89	1,778	1,827	1,727	87	-47.4%	1,655	44.4%
90	2,223	2,079	1,945	62	-24.4%	1,880	12.6%
91	1,988	2,112	1,917	80	28.0%	1,887	0.8%
92	2,059	1,877	1,759	74	-7.5%	1,685	-11.2%
93	2,558	2,487	2,395	93	24.3%	2,303	36.7%
94	2,432	2,588	2,406	36	-46.6%	2,270	2.8%
95	1,514	1,722	1,651	49	36.1%	1,592	36.8%
96	1,580	1,492	1,372	40	-19.4%	1,332	-11.3%
Average	1,668	1,630	1,541	80	26.5%	1,451	17.5%

Fiscal Year ²	Sentencing										Percent of Guilty Defendants Sentenced To Prison
	Number of Guilty Defendants Sentenced To Prison	Percent of Defendants Sentenced To Prison	Percent of Defendants Sentenced To Prison 1-12 Months	Percent of Defendants Sentenced To Prison 13-24 Months	Percent of Defendants Sentenced To Prison 25-36 Months	Percent of Defendants Sentenced To Prison 37-60 Months	Percent of Defendants Sentenced To Prison 61+ Months	Percent of Defendants Sentenced To Prison Life in Prison	Percent of Defendants Sentenced To Prison Life in Prison	Percent of Defendants Sentenced To Prison Death	
83	300	83	20.6%	223	72.9%	10	3.3%	5	1.6%	0	0.0%
84	325	41	12.7%	281	83.9%	4	1.2%	4	1.2%	0	0.0%
85	791	54	6.8%	704	88.0%	6	0.8%	18	2.3%	0	0.0%
86	1,128	146	12.9%	904	80.1%	16	1.4%	45	4.0%	0	0.0%
87	1,550	437	28.2%	994	64.1%	28	1.8%	22	2.1%	0	0.0%
88	1,595	404	25.3%	718	45.1%	240	21.5%	67	4.2%	0	0.0%
89	1,623	374	22.8%	474	28.8%	829	33.0%	100	6.0%	0	0.0%
90	1,860	755	40.7%	573	30.5%	486	26.4%	42	2.3%	0	0.0%
91	1,887	711	37.5%	580	30.8%	323	17.0%	50	2.6%	0	0.0%
92	1,685	747	44.3%	561	33.3%	328	19.3%	28	2.3%	0	0.0%
93	2,203	1,035	46.9%	735	34.1%	418	18.7%	22	2.3%	0	0.0%
94	2,370	698	29.4%	748	31.4%	392	20.0%	116	4.9%	0	0.0%
95	1,502	328	21.8%	513	34.1%	392	26.0%	248	16.4%	0	0.0%
96	1,332	384	28.8%	444	33.3%	168	14.0%	272	20.7%	0	0.0%
Average	1,451	473	32.6%	607	41.8%	285	19.6%	78	5.4%	0	0.0%

¹ Classified data extracted from the United States Attorney's Case Management System.
² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

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

DAG000001522

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.

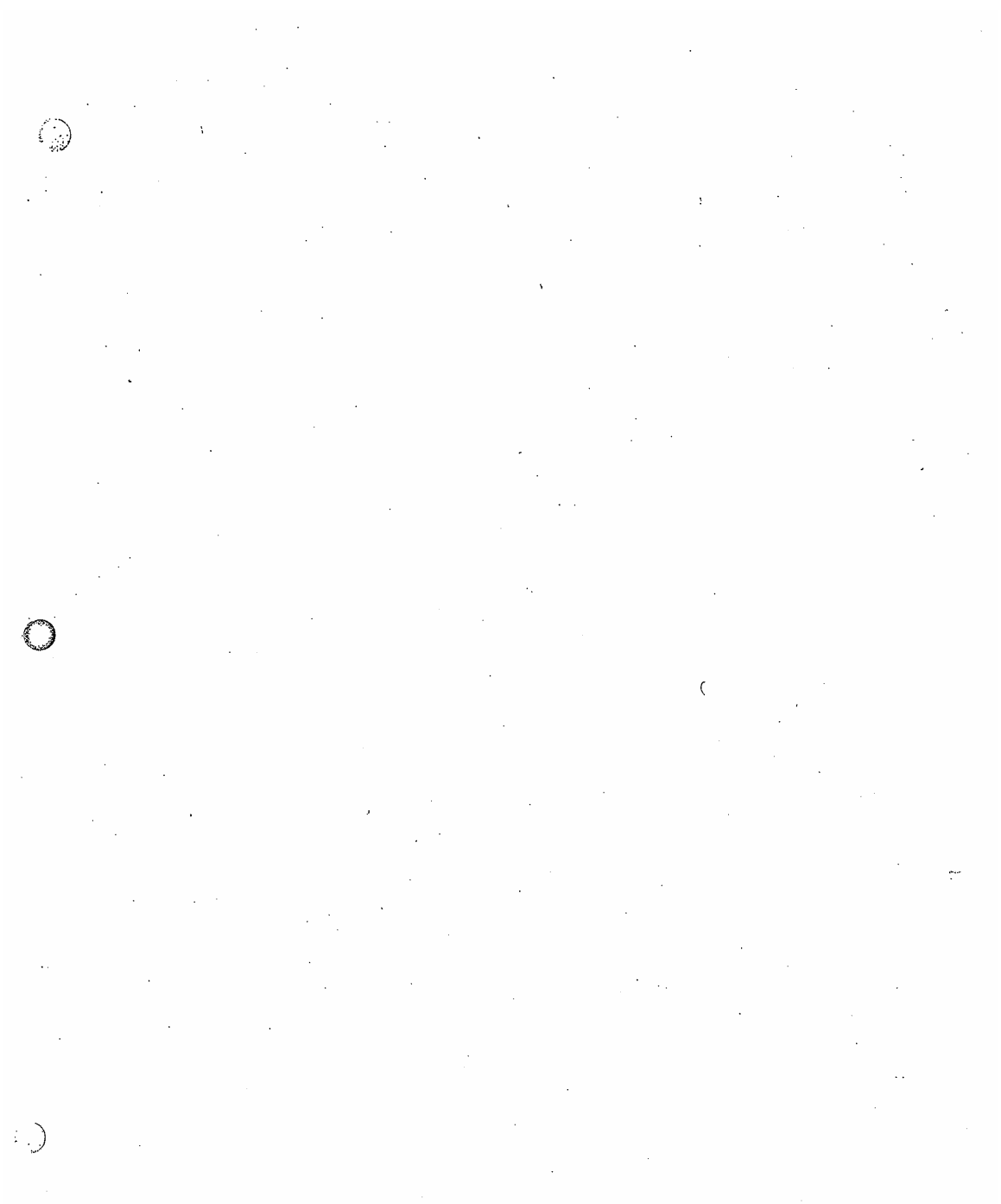
- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

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



DAG000001524

BELL/MEADOR IN JOURNAL
OF LAW AND POLITICS

DAG000001523

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.

DAG000001526