

The Imbalance of Justice

Senator Feinstein Accuses Attorney General of Playing Politics with Nation's Top Prosecutors

Eight U.S. Attorneys have been fired for no reason. Or maybe there was a reason. By this time next year, candidate Hillary Clinton may find herself the subject of an indictment.

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Given the bevy of scandal investigations engulfing Capitol Hill, it shouldn't be surprising to hear that the President wants to make a few personnel changes in the department which prosecutes such cases.

Just two days after handing down new search and seizure warrants in one bribery scandal, for instance, U.S. Attorney for Southern California Carol Lam got a phone call from one of Alberto Gonzalez's deputies. He told her to clean out her desk.

On the job since 2002, Lam directed the successful prosecution of Randy "Duke" Cunningham, the Republican congressman convicted of taking over two million dollars in bribes in exchange for political favors.

Now some legal commentators are suggesting the latest indict-



The former U.S. Attorney for Southern California, Carol Lam.

ments are in jeopardy with Lam out of the picture.

Although Cunningham went to prison on a plea deal that requires him to cooperate with prosecutors by naming names, if the White House has its way, he may get to keep his secrets after all.

Karen Hewitt was named as Lam's interim replacement. A San Diego native and a graduate of the University of California, Berkeley, Hewitt was third-in-command under Lam prior to the dismissal. It's unclear whether or not she will continue in the post or be replaced when the dust of the churning controversy dies down.

In fact, by the end of January, President Bush had replaced several prosecutors with loyalists from his inner circle, raising fears that the Justice Department would now be functioning as the G.O.P. equivalent of the Spanish Inquisition.

Equally troubling are the allegations that the U.S. Attorney's office may now be part of a dirty tricks scheme to sway voters from supporting a Democrat for President in 2008.

Although prosecutors appointed by the West Wing normally require confirmation from the Senate, somehow a G.O.P. staffer slipped new language into the Patriot Act renewal legislation at the end of 2005, effectively changing the law. Now interim appointees can serve indefinitely.

"No member has stepped forward and said they knew it was in the bill," said Scott Gerber, a spokesman for Senator Dianne Feinstein. Feinstein sits on the Senate Judiciary Committee, whose former chairman, Arlen Specter of Pennsylvania, said his chief counsel Michael O'Neill inserted the language into the bill at the request of someone at the Justice Department. O'Neill is a past law clerk for Supreme Court Justice Clarence Thomas.

Although the change was never debated or voted on, no one in Congress has challenged the legality of the provision or demanded that O'Neill be prosecuted for fraud. In fact, Specter's aide still appears to have his job, leading many to wonder if the former

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Senator Dianne Feinstein first sounded the alarm about the provision that allows the West Wing to appoint prosecutors without senate confirmation.

Feinstein angry at Justice Dept. for slipping language into bill

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chairman knew of the deception beforehand.

Feinstein has introduced legislation to have the original rules for confirmation reinstated. The Judiciary Committee approved her provision and attached it to yet another controversial bill that addresses the nation's post 9/11 security concerns.

Between Little Rock and a Hard Place

Before Lam received her pink slip, the ouster of U.S. Attorney Bud Cummins in Arkansas was already stirring up Democratic Party worries that dirty tricks are in the hopper for 2008. Cummins was replaced by J. Timothy Griffin, a protégé of Karl Rove.

Rove ran the Bush campaigns in 2000 and 2004 and is thought by many to be the President's right-hand man. The *New York Times* reported that before working for Rove, Griffin headed up "opposition research" for the Republican National Committee.

In a recent editorial, the newspaper said "It is particularly dangerous to put United States attorneys' offices in the hands of political operatives because federal prosecutors have extraordinary power to issue subpoenas and bring criminal charges..."

The editorial continued: "There could be unsavory political reasons for putting a party opera-

tive in charge of federal criminal investigations in Little Rock, which has been home to two possible presidential candidates, Hillary Clinton and former Gov. Mike Huckabee."

Hoping to diffuse such speculation, Deputy Attorney General Paul McNulty confided to reporters that Griffin's appointment had been arranged as a personal favor for Harriet Miers, then senior counsel at the White House. Miers resigned from the Administration on January 31st.

The former counsel received national attention in 2005 when the President nominated her to fill Sandra Day O'Connor's seat on the U.S. Supreme Court. When conservative religious groups objected, Miers withdrew her name and Samuel Alito was nominated and later confirmed.

In addition to Lam and Cummins, the U.S. Attorney for Northern California, Kevin Ryan, stepped down in February. Ryan refused to say if he had been forced out.

According to news reports, the former Alameda County prosecutor received a poor performance evaluation last year. At that time, disgruntled attorneys said they didn't get

enough face time with Ryan and demanded that his highest ranking subordinate, Eumi Choi, be demoted because they felt she wielded too much power.

Choi heads the criminal division and the narcotics task force, as well as the Oakland and San Jose branches.

In addition, *Business Week* has



White House counsel Harriet Miers resigned in January.

hinted that Ryan's departure may affect Silicon Valley companies being investigated on options-related transgressions.

Scott Schools, a general counsel for the Justice Department and interim U.S. Attorney for South Carolina in 2001, will take Ryan's place. He will leave his current job as an ethics advisor.

Feinstein spokesman Gerber said the senator had yet to weigh in on the prospect of having a non-

Californian with close ties to the White House directing federal prosecutions in the Bay Area. Interstate drug trafficking, deportation proceedings, bank heists and other types of crime involving federal law form the caseload of the U.S. Attorney's district offices.

Like Ryan, the eight fired prosecutors were all appointed by President Bush. At a hearing before the Senate Judiciary Committee on March 7th, several testified that Republican lawmakers leaned on them before mid-term elections to step up corruption cases involving Democrats. However, they refused to cooperate.

The prosecutors were also asked to disclose confidential information about ongoing investigations. Such actions violate ethics rules and could lead to disbar-



Senator Hillary Clinton

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ment from the legal profession.

During a hearing of the same panel in February, Senator Dianne Feinstein complained to Attorney General Alberto Gonzalez about the removal of both Lam and Ryan, neither of whose records had been in question.

Later, in a letter to Gonzalez, Feinstein stated, "We have come to believe that this was a clumsy effort to force these U.S. Attorneys out for reasons that have little or nothing to do with their performance as prosecutors. The U.S. Attorneys who testified before the House and Senate had solid records as independent prosecutors. They are good people. And they didn't deserve to be treated this way."

Although Feinstein was the first legislator to bring the matter public, elected officials in both houses have since called for Gonzalez to resign. Trying to deflect attention away from his boss, deputy Attorney General McNulty more recently told the press that it was Harrier Miers who lobbied the West Wing to replace the U.S. Attorneys in virtually every district in the country.

McNulty said that cooler heads prevailed and less than a dozen senior prosecutors were asked to leave.

Both the House and Senate Judiciary Committees have demanded that Miers and Rove appear in chambers and testify under oath about their role in the firings. ♦