



The awakening of a sleepy Congressional subcommittee

Investigating the termination of the U.S. Attorneys created a hotbed of controversy



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Since I joined Congress over four years ago, I have been privileged to serve on the House Judiciary Committee, my first choice committee assignment. When Democrats regained control of the House of Representatives in January for the first time in 12 years, one of our first tasks was to organize the 22 committees and 71 subcommittees of the House.

During the Judiciary Committee organizational meeting, members flocked to the subcommittees that deal with issues such as intellectual property and terrorism, and avoided the Subcommittee on Commercial and Administrative Law. That subcommittee has historically focused on bankruptcy and administrative law – not the typical issues television cameras and reporters are known to flock to or that typically grab the attention of our constituents. However, it has an eclectic mix of jurisdiction on issues that affect commerce and people's lives. One little known piece of jurisdiction at the time was oversight of the U.S. Attorney's Office. After the dust settled at the end of the organizational meeting, I became the first woman ever selected to serve as Chair of the Subcommittee on Commercial and Administrative Law. No one, including me, knew what was about to happen. I had a difficult time persuading colleagues of mine to fill the vacant seats on the subcommittee. But days later, when questions about the suspicious firings of federal prosecutors spread through the halls of Congress like wildfire, members of Congress were clamoring to be part of the subcommittee's nascent investigation into the matter.

Investigating the termination of U.S. Attorneys became one of my first orders of business as chair. We started the investigation in January because it ap-

peared that the decision to fire or retain some U.S. Attorneys may have been based on whether or not their offices were pursuing or not pursuing public corruption or vote fraud cases based on partisan political factors. As we delved further into the matter, we found possible wrongdoing beyond the suspect firing of nine U.S. Attorneys. Several high level Department of Justice officials appeared to have made false or misleading statements to Congress or otherwise obstructed the subcommittee's investigation, and with some participation by White House personnel. We found that the use of a political litmus test in the hiring of career department attorneys by some department personnel may have violated civil service laws. We also discovered that some White House employees may have violated the Presidential Records Act by sending official e-mail communications through Republican National Committee e-mail accounts. Finally, we learned that partisan politics had seeped into many aspects of our system of justice.

Clash between the legislative and executive branches

During the first six years of the Bush Administration, the Republican Congress failed to fulfill its constitutional role of conducting oversight of the executive branch. Since Democrats took control of Congress in January, we have made a concerted effort to return checks and balances to our system of government. In the first seven months of this Congress, the House has held 605 oversight hearings and the Senate has held 308 oversight hearings. Compared to the same time period in the last Republican Congress, the new Democratic Congress has conducted over 300 more hearings. In connection with the U.S. Attorney investigation, the Subcommittee on Commercial and Administrative Law held five oversight hearings and was the first congress-



sional subcommittee to authorize subpoenas in an investigation of the Bush Administration.

Because of the failure of any individual in the Administration to assume responsibility for developing the list of terminated U.S. Attorneys or fully explaining why they were fired, we were forced to seek information from the White House. In an effort to get that information without resorting to compulsory process, we negotiated patiently with White House Counsel Fred Fielding for several months. However, the White House stubbornly refused to move from its original unreasonable “take it or leave it” offer – that testimony be given without an oath or transcript and that testimony and documents preclude internal White House communications. Any lawyer knows that if you were going to court or conducting a deposition, you would never agree to the conditions the White House demanded.

Given the White House refusal to voluntarily cooperate with our investigation, the subcommittee issued subpoenas to White House Chief of Staff Joshua Bolten and former White House Counsel Harriet Miers for documents and testimony. In rebuffing the subpoenas, the White House asserted blanket claims of executive privilege and immunity that rely on weak legal grounds. The White House’s refusal to comply with our subpoenas triggered a constitutional standoff.

In July, the Judiciary Committee voted to recommend contempt because of Mr. Bolten’s failure to produce subpoenaed documents and Ms. Miers’ failure even to appear before the subcommittee hearing that I chaired, let alone testify or produce documents. The House has not debated contempt on the floor since the House voted 259-105 in 1982 for a contempt citation against EPA Administrator Anne Burford. I remain hopeful that the White House will return to the negotiating table before we need

to schedule a vote by the full House on the resolution to cite White House Chief of Staff Joshua Bolten and former White House Counsel Harriet Miers for contempt of Congress.

What was once a sleepy subcommittee, where no one wanted to serve, had become the center of a historic clash between the legislative and executive branches.

Partisan politics in our system of justice

One of the most important, and disturbing, findings in our investigation was that partisan politics has contaminated our system of justice. Partisanship is a cancer in the justice system that must quickly be eradicated. We learned during the Watergate scandal that once law enforcement decisions begin to be driven by politics, you have to question every law enforcement decision, and confidence in our justice system crumbles.

Since President Bush has occupied the White House, there has been an unprecedented effort to use the machinery of government for partisan gain. During former Attorney General Alberto Gonzales’s tenure, non-political Justice Department lawyers such as Assistant U.S. Attorneys and immigration judges were hired for jobs based on party affiliation and campaign contributions rather than their qualifications. Career attorneys who disagreed with policies of political appointees were purged from managerial positions. Top members of Mr. Gonzales’s staff attended pre-election White House political briefings led by Karl Rove and his aides. And it appears that at least nine U.S. Attorneys may have been fired because they refused to make prosecutorial decisions for politically motivated reasons.

Perhaps the most telling indication of how partisanship has been injected into the Department of Justice is the increased contacts about ongoing investigations between White House staff and the department. In 1993, Attorney Gen-

eral Janet Reno put in writing a policy that, with limited exceptions, authorized only four people in the White House (the president, vice president, White House counsel, and deputy White House counsel) to have initial communications regarding pending investigations and cases with only three people at the department (the attorney general, deputy attorney general, and associate attorney general). If continuing contact was required on a particular matter, the White House Counsel’s Office and the department were authorized to design, and required to monitor, a process for that to occur. In 2002, Attorney General Ashcroft authorized at least 42 people at the department to have initial communications with more than 400 people at the White House regarding pending department investigations and cases. In 2006, Attorney General Gonzales changed the policy yet again to authorize almost 900 people in the White House to have such communications with at least 42 department officials.

The justice system must be free from political meddling and improper partisan influence. The American people need to know that they will not be arrested or prosecuted simply to advance the political ambitions of others. This is why we began the investigation, and it is why we will continue investigation and oversight even though Alberto Gonzales, Karl Rove, and 11 other high-level DOJ and White House officials have resigned in the wake of the U.S. Attorneys’ controversy.

Mr. Gonzales’s resignation does not answer the many fundamental questions about the actions of the Justice Department and White House in this matter. The public deserves answers to critical questions such as who put the U.S. Attorneys on the firing list and why they were placed on the list. We must learn the full extent to which the Justice Department has been transformed into a political arm of the Bush Administration. To that end, the



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Judiciary Committee will continue to investigate the actions of the U.S. Attorneys who were not fired – the so-called “loyal Bushies.” The committee must determine whether loyal U.S. Attorneys unfairly prosecuted Democratic public officials and refused to investigate Republicans in order to save their jobs. Unless and until we are satisfied that prosecutorial decisions across the country are based on law and facts rather than on partisan considerations, the Committee’s investigation into selective prosecution will continue.

Restoring the Department of Justice after Gonzales

What started as a small inquiry into the firings of U.S. Attorneys by the Subcommittee on Commercial and Administrative Law has transformed into a major investigation that has exposed serious problems with the Department of Justice.

Although there is much to be done, the new attorney general must prioritize the following changes:

- Immediately repeal former Attorney General Gonzales’s policy on contacts between White House and department officials and return to the policy of the Clinton Administration where four people in the White House are permitted to have communications regarding pending investigations and cases with only three people at the department.

- Bring back career employees purged in the last six years and restore the collaborative working relationship between political appointees and career attorneys.

- Depoliticize the hiring process of career employees.

- Restore credibility with Congress.

If confirmed to succeed Alberto Gonzales, Attorney General Nominee Michael Mukasey will have his hands full

in repairing the damage. I hope that he will act quickly to remove the cloud of politicization over the Justice Department and help steer the Department back to its core mission: to ensure fair and impartial administration of justice for all Americans.

Congresswoman Linda Sánchez was sworn into Congress January, 2003, and is currently serving her third term in the U.S. House of Representatives. She represents the 39th Congressional District of California, which includes the communities of Artesia, Cerritos, Florence, Hawaiian Gardens, Lakewood, La Mirada, Long Beach, Lynwood, Paramount, South Gate, Watts, Whittier, and Willowbrook. Sánchez is a graduate of UC Berkeley and UCLA Law School. She was an attorney specializing in labor law prior to her public service career.

