



# 'Quite Unprecedented'

Former U.S. Attorney Mary Jo White explains why the firing of eight federal prosecutors could threaten the historic independence of federal law-enforcement officials.

By Julie Scelfo  
Newsweek  
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March 15, 2007 — Attorney General Alberto Gonzales resisted new calls for his resignation Wednesday over the growing scandal about the dismissal of eight U.S. attorneys. To understand why these firings have become such a politically charged issue, NEWSWEEK's Julie Scelfo spoke with Mary Jo White, former U.S. Attorney for the Southern District of New York, who was appointed by President Clinton and served for nearly nine years, even staying on for 10 months after President Bush took office and ordered three other New York federal prosecutors to step down. White, who earned national prominence for the successful prosecutions of numerous terrorism and white-collar cases, is now a partner at Debevoise & Plimpton in New York. [Editor's note: Scelfo's spouse worked for White from 1998-2002.] Excerpt:

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**Mary Jo White:** There are 93 U.S. attorneys that serve [geographical] judicial districts throughout the country. All are appointed by the president and subject to confirmation by the Senate and each one is chief federal law-enforcement officer of their respective districts. They're charged with enforcing the federal laws, criminal and civil, in their district.

## Does each prosecutor choose which cases to pursue?

U.S. attorneys have, and I believe rightly so, a great deal of discretion in terms of which cases to pursue and which not to pursue. They are subject to the general oversight of the Department of Justice. But within that structure, each U.S. attorney has a tremendous amount of discretion. That doesn't mean they can decide not to enforce a law because they don't like it. But basically they're the chief federal law-enforcement officer for

each district.

### How long do U.S. attorneys usually serve?

Typically, the U.S. attorneys are appointed [by the president] for one four-year term and, assuming the political party doesn't change, they are rolled over to serve out the remainder of the president's term [if he is re-elected]. Obviously, some leave for their own personal reasons at some point in time. But essentially, even though they serve at the pleasure of the president, they typically, if they wish to, serve out the full term of the president.

President Bush's defenders have been asking why there's such a fuss when even President Clinton removed all 93 U.S. attorneys in the early days of his administration.

Essentially, all U.S. attorneys, as political appointees, are expected to be replaced when the party changes. Although I think President Clinton made those changes too abruptly for an orderly transition, replacing political appointees is part of the normal political process when the party of the president changes. It is an entirely different matter when replacement of the U.S. attorneys are made during the same administration.

### So it's atypical to be replaced in the middle of a president's term?

It's quite atypical, absent some misconduct or other quite significant cause. What's happened here, in my experience and to my knowledge, is quite unprecedented. And, if it turns out to be the case that some of the U.S. attorneys may have been removed for reasons of not bringing, or not bringing fast enough, politically charged cases, or they weren't "loyal" to the president, then it becomes very, very disturbing. They should not, in my view, be removed lightly, and never for a political reason. Again I caution, though, that facts are coming out every day.

### Recently released documents show a great deal of correspondence between the White House Counsel's office and Kyle Sampson, the Attorney General's chief of staff who resigned on Tuesday. Did you find it surprising the White House was so involved in the firings?

The whole series of events has been, in my judgment, highly unusual and completely unprecedented. Having said that, every U.S. attorney is subject to removal by the president. So at some point you would expect some White House involvement if indeed you were removing a presidentially appointed U.S. attorney.



Tim Roske / AP

'What's happened here, in my experience and to my knowledge, is quite unprecedented'

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### David Iglesias, the former U.S. attorney in New Mexico, says he [received pressure from two members of Congress](#) to speed up investigations of Democrats just before last year's election.

#### In your experience, is this a common occurrence?

I was a U.S. attorney for almost nine years and that never happened. Never happened.

**What would you have done if it did?**

It would depend on what the call was. To the extent there was inquiry on anything that was not public information, I would have responded that it's not appropriate to answer those inquiries. And depending on the tenor of call, I would perhaps have reported it to the Department of Justice Office of Legislative Affairs. It would not be appropriate to engage in any discussion about an ongoing investigation with anyone, including a member of Congress.

**Is there any official protocol to prevent politicians from trying to influence prosecutors?**

Essentially, the protocol is if you get a call from someone in Congress or the White House, you refer them to the Department of Justice, the Office of Legislative Affairs, and they are actually a buffer between the U.S. attorneys and politicians. So, basically, [the] protocol is you're not to call the U.S. attorney, and that is known to members of Congress and the White House. If you have a question, you call the Office of Legislative Affairs. There can be, obviously, legitimate inquiries about certain things. But you need that filter or buffer so you don't get that kind of outside pressures on U.S. attorneys. We need to be sure that tradition is maintained.

**What's wrong with politicians calling to ask about investigations?**

U.S. attorneys are chief law-enforcement officers in their district. Even though they're political appointees, once they are appointed, they are expected to be totally apolitical in how they carry out their jobs, independent of the political process. They handle their cases, decide what cases to bring without fear or favor. Any attempt to put a political elbow on that scale is contrary to that tradition and contrary to the kind of criminal justice system we want to have.

**Do you think this is raising concern among current U.S. attorneys that under the current administration, they are subject to more outside influences?**

There's certainly been a suggestion that some of that may have occurred in at least a few of the cases with a few of these U.S. attorneys. [But since] it's been subject to the light of day ... hopefully that exposure will have a deterrent effect on anybody else thinking about making such calls. The concern I had initially with respect to the decision to force the resignation of these U.S. attorneys, is that other U.S. attorneys would then think, "Well gee, I better please the Department of Justice and not raise my hand when I think some policy doesn't make sense so I don't end up on the same chopping block as my colleagues did." Now, I think the exposure of the facts [in this case] is likely to be more of a deterrent to the Department of Justice than it is on the U.S. attorneys.

**What do you think will be the impact of these firings on law enforcement?**

There is a price to be paid in every U.S. attorney's office when you have a change in leadership. That's going to happen when a new president begins and the more orderly it can be, the better. But to gratuitously or with insufficient cause remove a US Attorney during an administration means a tremendous disruption in that office. You lose traction on cases, you lose a strong leader that you need to have to deal with particularly sensitive cases that may be subject to criticism.

**Do you feel like the attorney general's acknowledgement that "mistakes were made" is an adequate response?**

I think the fundamental mistake at least in the vast majority of cases here is that those U.S. attorneys should not have been removed, at all. We need to let all the facts come out here before making the ultimate judgment on what the remedy should be.

**On Wednesday, GOP Sen. John Sununu joined calls from Democrats for Gonzales to resign. Should he?**

I have no comment. As I mentioned before, facts are still unfolding.

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## Gonzales: 'Mistakes Were Made' But Attorney General Defends Firings of Eight U.S. Attorneys

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By Dan Eggen and Paul Kane  
Washington Post Staff Writers  
Wednesday, March 14, 2007

Attorney General Alberto R. Gonzales took responsibility yesterday for "mistakes" related to the firing of eight U.S. attorneys last year but rejected calls for his resignation from Democrats who accuse him of misleading Congress.

"I acknowledge that mistakes were made here. I accept that responsibility," Gonzales said. He said he did not know the details of the plan to fire the prosecutors, but he defended the dismissals: "I stand by the decision, and I think it was a right decision."

The remarks came after the Justice Department released e-mails and other documents showing that, despite months of administration statements to the contrary, the White House more than two years ago initiated the process that led to the dismissals, and that the decisions were heavily influenced by assessments of the prosecutors' political loyalty. President Bush and senior White House adviser Karl Rove also separately passed along complaints to Gonzales that prosecutors were not aggressively pursuing voter-fraud cases, officials said.

The revelations prompted another outcry on Capitol Hill over the firings and new demands for Gonzales's resignation from key Democrats, including Senate Majority Leader [Harry M. Reid](#) (Nev.), [Sen. Hillary Rodham Clinton](#) (N.Y.) and [Sen. Edward M. Kennedy](#) (Mass.). "It appears he's over his head in this job," Reid said.

Even Republicans who have supported the ousters sharply criticized the attorney general.

But Gonzales said he is "here not because I give up," and White House counselor Dan Bartlett said Bush has "all the confidence in the world" in Gonzales, who has served Bush for more than 12 years in Texas and Washington.

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Democrats also renewed calls for testimony from Rove and Harriet E. Miers, the former White House counsel who first suggested in February 2005 that all 93 U.S. attorneys be removed and whose office was provided with evolving lists of at least a dozen



Attorney General Alberto R. Gonzales said he knew little about how his chief of staff, who resigned Monday, was handling the dismissals. (By Preston Keres -- The Washington Post)

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prosecutors targeted for ouster. The White House signaled that it would resist the demands.

E-mails released yesterday show that White House deputy political director J. Scott Jennings communicated with Justice officials about the appointment of Tim Griffin, a former Rove aide, to be the U.S. attorney in Little Rock. Jennings used an e-mail account registered to the Republican National Committee, where Griffin had worked as an opposition researcher.

Democratic congressional aides said they will investigate whether using the private address for government business violated laws against using taxpayer resources for political work or signaled that White House officials considered the firing of U.S. attorneys to be primarily a political issue. Jennings did not return a call to his office seeking a comment.

"As a matter of course, the RNC provides server space and equipment to certain White House personnel in order to assist them with their political efforts," RNC spokeswoman Tracey Schmitt said.

Seven U.S. attorneys were fired on Dec. 7, and another was let go months earlier, with little explanation from Justice Department officials, who later told Congress that the dismissals were related to their performance in office. Several former prosecutors have since alleged intimidation, including improper telephone calls from GOP lawmakers or their aides, and have alleged threats of retaliation by a Justice Department official.

Although Bush and President Bill Clinton each dismissed nearly all U.S. attorneys upon taking office, legal experts and former prosecutors say the firing of a large number of prosecutors in the middle of a term appears to be unprecedented and threatens the independence of prosecutors.

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## Context: How U.S. Attorneys Are Hired and Fired



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March 14, 2007

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Several U.S. attorneys fired in December testified on Capitol Hill last week that their dismissals were tied to political pressure from members of Congress and Department of Justice officials.

But the Justice Department said most of the attorneys were asked to resign because of poor job performance.

David Burnham co-directs the Transactional Records Access Clearinghouse, an organization that collects and analyzes information from the federal government. He is also the author of *Above the Law: Secret Deals, Political Fixes, and Other Misadventures of the U.S. Department of Justice*.

Burnham discussed the prosecutors' dismissals with Renee Montagne. Their conversation is excerpted below:

How unusual is it for a U.S. attorney to be fired?

It's very unusual. Richard Nixon fired one when he was in office. [Jimmy] Carter fired a U.S. attorney who was making an investigation of a Democratic House member that he wanted to keep in office. Bill Clinton fired one. But it's really very rare for this to happen.

In this case it was eight attorneys.

That is close to unprecedented. ... I did a book on the Justice Department, and I just have never seen something like this.

Now, that being said, when a president comes into office, historically, all the U.S. attorneys leave. And he appoints a new set of these individuals — there are about 90 of them. And... they are sort of in charge of federal enforcement in each of these districts. And they can be very powerful and influential in deciding which cases are prosecuted and which kinds of cases are not.

What seems odd to the outside observer is that these attorneys were Bush administration appointees, and they were fired mid-term.

It's very odd. And what makes it even odder is that with the data we have, you can see that the U.S. attorney in San Diego [Carol Lam] was not following the party line. Immigration enforcement went down, weapons enforcement went down, and she's fired. The U.S. attorney in Seattle [John McKay] appears to have been following the party line and he's fired — so what the criteria were for these firings is murky.

Why are U.S. attorney posts important enough for the White House, the media and Congress to be so focused on who holds these jobs and, in this case, who has been fired from these jobs?

U.S. attorneys ... many times head the federal enforcement effort in each of the districts. The U.S. attorneys have the right to decline any recommendation for prosecution by the investigative agencies. And they do — substantial numbers of them.

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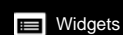
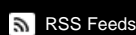
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MARGARET TALEV



# U.S. attorney's firing may be connected to CIA corruption probe

By Margaret Talev and Marisa Taylor | McClatchy Newspapers

Posted on Sunday, March 18, 2007

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WASHINGTON—Fired San Diego U.S. attorney Carol Lam notified the Justice Department that she intended to execute search warrants on a high-ranking CIA official as part of a corruption probe the day before a Justice Department official sent an e-mail that said Lam needed to be fired, U.S. Sen. Dianne Feinstein said Sunday.

Feinstein, D-Calif., said the timing of the e-mail suggested that Lam's dismissal may have been connected to the corruption probe.

Justice Department spokesman Brian Roehrkasse denied in an e-mail that there was any link.

"We have stated numerous times that no U.S. attorney was removed to retaliate against or inappropriately interfere with any public corruption investigation or prosecution," he wrote. "This remains the case and there is no evidence that indicates otherwise."

But the revelation is sure to heighten demands in Congress for a full investigation into whether something other than job performance was behind the Justice Department's dismissals late last year of eight U.S. attorneys, including Lam.

On Sunday, Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said he intends to force President Bush's top political adviser, Karl Rove, to testify and will insist that the testimony be under oath. Leahy, who appeared on ABC's "This Week," said he is "sick and tired" of the administration's changing rationale for the firings.

Justice Department officials originally told Congress that the U.S. attorneys had been dismissed for poor performance. But since it's become known that most of the attorneys received positive job evaluations.

Last week, the Justice Department released e-mails showing that loyalty to President Bush and Attorney General Alberto Gonzales was among the criteria used to judge U.S. attorneys' performance and that Rove and former White House counsel Harriet Miers were deeply involved in discussions leading up to the dismissals.

Roehrkasse said the Justice Department would provide additional e-mails to Congress on Monday. The documents were to have been surrendered last week, but Justice officials delayed the delivery, saying they needed more time to prepare them.

In an appearance on CBS' "Face the Nation," Feinstein said she'd not yet decided what motivated Lam's dismissal.

"There were clearly U.S. attorneys that were thorns in the side for one reason or another of the Justice Department," Feinstein said. "The attorney general has said he did not know what was going on ... that is very difficult for me to believe."

Feinstein said Lam notified the Justice Department on May 10, 2006, that she planned to serve search warrants on Kyle Dustin "Dusty" Foggo, who'd resigned two days earlier as the No. 3 official at the CIA.

On May 11, 2006, Kyle Sampson, then Gonzales' chief of staff, sent an e-mail to deputy White House counsel William Kelley, asking Kelley to call to discuss "the real problem we have right now with Carol Lam that leads me to conclude that we should have someone ready to be nominated on 11/18, the day her 4-year term expires."

The e-mail did not spell out what the "real problem" was, and it was unclear whether Kelley and Sampson talked later.

Until now, lawmakers have focused on two of Lam's other inquiries into Republicans as possible ways in which she may have chafed the administration.

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Lam oversaw the investigation that led to the corruption conviction of then-Rep. Randy "Duke" Cunningham, R-Calif., who pleaded guilty in late 2005 to accepting \$2.4 million in bribes. He was sentenced in March 2006 to eight years and four months in prison.

On the same day last year as the Sampson e-mail, the Los Angeles Times reported that the Cunningham probe was being expanded to look at the actions of another California Republican, then-House Appropriations Committee Chairman Jerry Lewis.

Feinstein did not say how she learned that Lam had notified the Justice Department about her plans to serve search warrants on Foggo, who on May 8 had resigned as the executive director of the CIA. FBI agents seized records from Foggo's CIA offices and his suburban Vienna, Va., home on May 12.

Who Lam notified about her plans was unknown. Ordinarily, information about search warrants in high-profile cases would be passed to the U.S. attorney executive office in Washington. At the time, that office was headed by Michael Battle. Battle, who notified the dismissed U.S. attorneys they were being replaced in December, resigned March 5.

Sampson, who resigned last week, declined comment through his lawyer. Feinstein's office also declined interview requests.

Sampson's May 11 e-mail was released as part of a congressional investigation into the firings last year of Lam and seven other U.S. attorneys, and the Bush administration's changing explanations as to what role politics or performance played.

Democrats say they will investigate whether independent prosecutors were forced out for going after Republican corruption or ignoring pressure to prosecute Democrats in order to sway elections and are expected to seek testimony from Sampson and Kelley as well as Rove and Miers. The White House is scheduled to tell Congress on Tuesday whether it will allow the testimony or invoke executive privilege.

Also this week, the House and Senate are scheduled to vote to undo a law quietly passed last year that stripped the Senate's power to reject interim U.S. attorneys the administration might pick to replace ousted prosecutors.

Meanwhile, the controversy over the firings dominated the Sunday morning political talk shows as lawmakers geared up for more developments in the week ahead.

Sen. Charles Schumer, D-N.Y., predicted on NBC's "Meet the Press" that Gonzales would be forced from his job within a week. Schumer also proposed a short list of three Republican replacements.

Sen. Arlen Specter, R-Pa., the top Republican on the panel, said Congress should consider writing legislation to require the Justice Department to show cause if the administration wants to remove one of its U.S. attorneys.

"Congress has the constitutional authority to set some parameters and guidelines," Specter said on "Fox News Sunday." "We don't really want to interfere with the president's basic right to set policy. If he wants immigration cases emphasized, his U.S. attorneys ought to do that. Whatever classifications he wants ought to be followed. But we're learning from this experience. If we find there's a way to better regulate this kind of a situation, Congress ought to act."

The three lawyers Schumer suggested Democrats might support to replace Gonzales are:

\_Michael B. Mukasey, who returned last year to the private sector after serving as chief U.S. district court judge of the southern district of New York. Mukasey, a Reagan administration nominee, presided over the terrorism trial of Sheik Omar Abdel Rahman and 11 co-defendants.

\_Larry Thompson, left the Justice Department in 2003 after serving as deputy attorney general under John Ashcroft. Thompson focused on terrorism and corporate crime, including a role in going after Enron Corp.

\_James Comey, left the Justice Department in 2005 after serving as Thompson's replacement. Comey is trusted by some Democrats because of his perceived discomfort with some of the administration's terrorism surveillance policies and because he named U.S. Attorney Patrick Fitzgerald as special prosecutor in the CIA leak case that ended with the

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conviction of Vice President Dick Cheney's former chief of staff, I. Lewis "Scooter" Libby.

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