Ex-U.S. attorneys testify before subcommittees

by Dana Wilkie

WASHINGTON - GOP lawmakers phoned them at home about corruption cases, asked inappropriate questions about sealed court documents and pressed them about investigating Democrats who won elections, according to testimony Tuesday from six former U.S. attorneys, including San Diego's Carol Lam, on their abrupt dismissals by the Bush administration.

Former New Mexico U.S. Attorney David Iglesias, said he felt "leaned on" and "sick" after Sen. Pete Domenici, R-N.M, called him at home in late October, insisted on knowing if Iglesias would launch a probe of Democrats before November's election, then abruptly hung up when Iglesias said no.

Six of eight former prosecutors dismissed in recent months told House and Senate committees Tuesday that they never had an inkling of performance problems and were stunned by their dismissals. All six appeared under subpoena before a House Judiciary subcommittee, while four appeared voluntarily before the Senate Judiciary Committee.

The Republican Bush administration has said all but one attorney was dismissed for performance-related reasons and notes that U.S. attorneys are political appointees who may be fired for any or no reason. Democrats call it political payback for the attorneys either launching probes of Republicans, or failing to pursue probes of Democrats - including Lam's successful prosecution of former Rep. Randy "Duke" Cunningham of San Diego .

Lam publicly admitted for the first time Tuesday that she was confused by her firing, was never told of failings that might warrant her dismissal and that such actions could have "a chilling effect" on U.S. attorneys who might conclude that "perhaps I should just play it safe and try not to displease anyone."

"I don't feel that I did anything in my role as U.S. attorney to either embarrass the administration or the president, or to warrant removal," said Lam, who prosecuted the now-imprisoned Cunningham on bribery charges, then handed down indictments for former CIA executive director Kyle "Dusty" Foggo and defense contractor Brent Wilkes for wire fraud and bribery. "I was troubled by it because of the potential chilling effect it has on United States attorneys."

William E. Moschella, principal associate deputy for the U.S. Attorney's office, told the House subcommittee that the administration did "not once" force the resignations of an attorney to influence public corruption cases.

"These charges are dangerous, baseless and irresponsible," Moschella said. "This administration has never removed a U.S. attorney to retaliate against them."

Moschella acknowledged that Department of Justice officials should have explained earlier why Lam and other attorneys were dismissed. In Lam's case, he said she failed to aggressively prosecute illegal firearms and alien-smuggling cases.

"Her gun prosecution numbers are at the bottom of the list," he said. "On immigration - her numbers for a border district just didn't stack up."

Lam told the lawmakers that higher ups never raised this concern with her.

"It does concern me that lack of pursuit of one of 20 or 30 priorities would be used as a reason to remove a U.S. attorney, particularly where the dialogue had not risen to that pitch," Lam said. "There had been no conversation or ultimatum."

Rep. Darrell Issa, R-San Diego, and Sen. Dianne Feinstein, D-Calif., have complained in the past about Lam's prosecution record. Feinstein now defends Lam and says the former prosecutor addressed her complaints. Issa stands by his original complaints.

Iglesias said he was in his bedroom Oct. 26 or 27 when he received an "unprecedented" home phone call from Domenici asking about indictments in a probe of an alleged Democratic kickback scheme that could have helped Republicans in the last November's elections He said Domenici asked if charges were "going to be filed before November."

"I said I didn't think so," Iglesias said. "To which (Domenici) replied, 'I'm very sorry to hear that,' and then the line went dead."

Domenici has acknowledged making the call, but insists he never pressured or threatened Iglesias. Senate ethics guidelines advise lawmakers to refrain from speaking to court officers about unresolved proceedings.

Two weeks earlier, Iglesias said, he had a similar call from Heather Wilson, R-N.M., asking about sealed indictments, which prosecutors cannot discuss. At the time, Wilson was in a tough re-election battle with New Mexico's Democratic attorney general, Patricia Madrid, whom she defeated by 862 votes.

"Red flags went up in my head," said Iglesias, adding that when he answered evasively, the congresswoman "was not happy." Wilson said she phoned because she heard a constituent allegation that Iglesias "was intentionally delaying corruption prosecutions."

Iglesias said he felt pressured by both calls to "to get these matters moving." Five to six weeks later, he said, Justice officials said they were replacing him.

Former U.S. Attorney H.E. "Bud" Cummins of Arkansas testified that he got a call Feb. 20 from Mike Elston, chief of staff to Deputy Attorney General Paul McNulty, upset that Cummins was quoted in a Washington Post article on the attorneys' dismissals.

"He indicated - that if the controversy continued to be stirred up, that more damaging information might be brought out," said Cummins, who then warned other dismissed attorneys in an e-mail that "if - any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure - (DOJ officials) would see that as - meriting some kind of unspecified form of retaliation."

McKay said he viewed Elston's remarks as "a threat."

"I took those comments to be - we could expect repercussions if we continued to speak publicly," McKay said.

McKay said he was "troubled" by a phone call from the chief of staff to Rep. Doc Hastings, R-Wash., following the closely contested gubernatorial race in his state won by Democrat Christine Gregoire. McKay said the staffer pressed him on the status of a federal probe into the election, but McKay cut him off.

"I was concerned and dismayed by the call," McKay said. Sen. Arlen Specter of Pennsylvania, one of the few Republicans who participated in the Senate hearing, acknowledged that if the allegations are correct, "there has been serious misconduct." Sen. Jeff Sessions, R-Ala., was less sympathetic, peppering Lam with low statistics about her prosecutions of illegal firearms and alien-smuggling cases.

"Wouldn't you agree that the president or Attorney General should be somewhat concerned that you weren't in sync" with their policies, he asked?

"I would expect that if the department had any concerns, they would feel free to discuss it," Lam replied.

Rep. Rick Keller, R-Fla., noted that Issa began complaining about Lam's prosecution record before news broke about Cunningham's misdeeds.

"Did Miss Lam's role in prosecuting Duke Cunningham have anything whatsoever to do with her being asked to resign?" Keller asked Moschella.

"No sir," Moschella said.

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