

Top official who defended Lam's record now defends her firing

by Dana Wilkie

WASHINGTON - During the past five years, former San Diego U.S. Attorney Carol Lam nailed 88 people for federal crimes involving firearms.

Yet for every gun-toting criminal that Lam put behind bars from 2002 to 2006, her counterpart along the southern border of Texas was nabbing almost a dozen.

Lam's detractors insist that her thin record on firearms and immigration-related prosecutions was responsible for her recent ouster as San Diego's top federal prosecutor, and a look at U.S. Justice Department statistics indicate those detractors might have a case.

On the other hand, Lam's supporters - which six months ago included the Justice Department official who now defends her firing - have argued that Lam devoted half her resources to prosecuting criminal alien cases, focusing on offenders who posed the greatest threat to the region while allowing the local district attorney to pursue gun-related crimes.

The recent firing of Lam and seven other U.S. attorneys has created a political firestorm, with Democrats claiming the firings were 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. Democrats are calling for the resignation of U.S. Attorney General Alberto Gonzales, who on Tuesday accepted the resignation of a top aide who failed to brief other senior Justice Department officials about his conversations regarding the firings.

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.

Lam publicly admitted for the first time during congressional testimony last week that she was confused by her January firing, was never told of failings that might warrant her dismissal and that such actions could have "a chilling effect" on other U.S. attorneys.

During a Senate Judiciary Committee hearing last week, Sen. Jeff Sessions, R-Ala., produced a list of prosecution statistics from Lam's office that he said demonstrated Lam's "policies were too restrictive in the kind of cases" she would pursue.

From fiscal years 2002 through 2006, Lam's office sentenced 88 people for firearms crimes, according to figures the Justice Department provided Sessions, and that track closely with figures from the U.S. Sentencing Commission, an independent agency under the federal judiciary system. The commission defines "firearms" violations as illegal possession, transportation or trafficking of firearms, or their use during a felony.

During the same period, 946 people were sentenced for the same crimes in the Southern District of Texas, 894 in the Western District of Texas, 897 in the District of Arizona, 437 in the District of New Mexico and 439 in the Southern District of Alabama, where Sessions was U.S. attorney for 12 years and which he claims had one-fifth of Lam's resources.

In fact, while firearms prosecutions accounted for nearly 12 percent of U.S. attorneys' prosecutions nationwide in 2006, they accounted for less than 1 percent of Lam's prosecutions that year.

"It doesn't take that many resources to prosecute a (firearms) case," Sessions told Lam last week. "I mean, you bring the charge and most of them plead guilty."

Lam - who came to her job in 2002 admitting that white-collar crime would be her priority - said San Diego's district attorney helped her prosecute firearms cases under a federal-state program called Project Safe Neighborhoods. She said local law enforcement agencies told her they were "very satisfied with the gun prosecutions- because it was very well handled by the district attorney."

Sessions also pointed out that from fiscal years 2002 through 2006, Lam's office prosecuted an average of 1,711 immigration cases a year, which he said hit an all-time low of 1,411 prosecutions in 2006. During that same year, 4,132 immigration cases were prosecuted in the Southern District of Texas, 2,669 in the Western District of Texas, 2,193 in the District of Arizona and 1,361 in the District of New Mexico.

The commission defines "immigration" violations as being in the country illegally, illegally trafficking or acquiring U.S. entry documents, or cross-border smuggling.

Still, the commission reports that immigration-related crimes accounted for nearly 54 percent of the sentences won by Lam's office last year. Drug-related crimes accounted for more than one-third - 37 percent - of sentences, and white-collar crimes for only 1.7 percent.

Concern about Lam's prosecution rates came to U.S. Sen. Diane Feinstein's attention last summer, when border patrol agents complained that despite their high border apprehension rates, Lam prosecuted few such cases. In a June letter to the Justice Department, Feinstein, D-Calif., asked for Lam's prosecution figures.

Feinstein received a reply in August from William E. Moschella, an assistant attorney general who wrote that his office was satisfied with Lam's performance. He explained that Lam devoted "substantial resources" to prosecuting cases involving immigration violations, alien smuggling and border corruption - focusing on criminals who posed serious threats to the community and national security.

This was the defense Lam gave Congress last week.

"The immigration prosecution philosophy of (Lam's office) 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," Moschella wrote Feinstein.

Feinstein spokesman Scott Gerber said Feinstein concluded from Moschella's reply that Lam's "priorities were fine."

Just before November's election, Bush was struggling to show skeptical conservatives in his party that he was tough on border crime and security.

Oddly, it was Moschella who last week defended Lam's abrupt dismissal. "Her gun prosecution numbers are at the bottom of the list," he told a House Judiciary subcommittee. "On immigration - her numbers for a border district just didn't stack up."

Lam said higher-ups never raised this concern with her.

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