Democrats ready to curb president's hiring, firing of attorneys

by Dana Wilkie

WASHINGTON - The Senate appears ready to curb the president's power to hire and fire U.S. attorneys such as San Diego's Carol Lam, whom Democrats claim was ousted because she aggressively pursued corruption cases involving Republicans.

Senators vowed Monday to use subpoenas, hearings and legislation to prevent what they called an "abuse of power" that led to the recent firings of Lam and seven other federal prosecutors.

"Our country is based on the principle of checks and balances," Democratic California Sen. Dianne Feinstein said as the Senate took up her bill, S214, which would undo a law that stripped the Senate's power to reject interim U.S. attorneys the administration picks to replace ousted prosecutors. "Once an individual U.S. attorney takes that oath of office, he or she must be independent, objective and must be free to pursue justice wherever the facts lead."

The Senate is expected to vote on the bill Tuesday.

The attorneys' firings have led to bipartisan calls for the resignation of U.S. Attorney General Alberto Gonzales and for Democrat threats they will subpoena high-ranking White House officials such as Bush political adviser Karl Rove.

The White House insists the attorneys were dismissed for "performance-related" reasons and that there was no link between Lam's dismissal and her probe of former Rep. Randy "Duke" Cunningham, R-Rancho Santa Fe. When asked Monday if Gonzales will serve for the rest of Bush's term, White House spokesman Tony Snow said "we hope he stays."

Democrats on Monday used Lam as their chief illustration for why Congress must overturn a provision the Bush administration slipped into the Patriot Act last year. That provision gave the attorney general power to replace fired U.S. attorneys indefinitely, without a Senate confirmation.

Feinstein's bill would let the attorney general appoint interim U.S. attorneys for up to 120 days. After that, the district court would appoint an interim U.S. attorney if the president does not send a nominee to the Senate.

"We know people can't be fired because they're Catholic or they're black or they're whistleblowers," said

Senate Judiciary Committee Chairman Patrick Leahy, D-Vt. "The power of employment is not without limit. It can be abused."

Leahy wants Rove to testify before his committee under oath about whether the firings were part of an initial plan to dismiss all 93 U.S. attorneys. Justice Department e-mails show that loyalty to Bush and Gonzales was among the criteria used to judge U.S. attorneys' performances, and that Rove and former White House counsel Harriet Miers were involved in discussions about the dismissals.

"I want a briefing where they stand before us, raise their right hand, swear to tell the truth and nothing but the truth, so help them God," Leahy said Monday.

The White House is expected to announce this week whether it will let Rove and other officials testify. Meanwhile, the Justice Department is expected to give Congress more documents providing details on who played what role in the prosecutors' dismissals.

Feinstein revealed Sunday that a Justice Department e-mail calling for Lam's firing came the day after Lam told the department she was executing search warrants on a high-ranking CIA official. The warrant was part of an investigation stemming from her prosecution of Cunningham, who is now in prison for taking more than $2.4 million in bribes in exchange for assisting defense contractors in securing federal contracts.

Feinstein said Lam notified the Justice Department on May 10, 2006, that she planned to serve search warrants on former CIA executive director Kyle "Dusty" Foggo. The following day, Gonzales' then chief of staff e-mailed a deputy White House counsel asking 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."

Lam was told of her firing Dec. 7. She stepped down in February, right before announcing federal grand jury indictments of Foggo and Poway defense contractor Brent Wilkes.

"There could be a straightforward explanation for this e-mail," Feinstein said Monday. "However, the timing looks really suspicious. If any U.S. attorney were removed because of a public corruption investigation or prosecution, this well could comprise obstruction of justice."

Sen. Arlen Specter, R-Penn., told his colleagues Monday he might draft legislation that would prevent the firing of U.S. attorneys actively pursuing public corruption cases.

"The sequence of events raises a question as to whether Ms. Lam was asked to resign because she was hot on the trail of criminal conduct," said Specter, the top Republican on the Senate Judiciary Committee. "There's a strong case to be made for limiting the authority of the president to remove (attorneys) for bad reasons. For example, the U.S. attorney could not be removed for pursing a corruption investigation."

During Monday's debate, several Republicans argued that it was a bad idea to give appointment power to district judges.

"It's something they don't want to do," said Sen. Jon Kyl, R-Ariz. "Whoever serves ... should be someone nominated by the president, not a district judge."

Sen. Jeff Sessions, R-Alabama, said it was "not so unusual" for Justice Department officials to first ensure that a prospective U.S. attorney "was loyal to the president."

"Most U.S. attorneys are recommended to the president or known to the president," said Sessions, himself a former U.S. attorney.

Carl Tobias, a University of Richmond law professor monitoring the U.S. attorneys scandal, said "it may become increasingly difficult for the White House to continue to say" that Lam's firing and her corruption prosecutions were unrelated.

"What is critical now is for the White House and the Department of Justice to explain fully the firings," Tobias said. "The general public should be concerned, as U.S. attorneys are the chief federal prosecutors in 94 federal districts, and they have much power to affect life, liberty and property."

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