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COMMENTARY

Prosecutors owe loyalty to the public

By Patrick M. Collins, an assistant U.S. attorney for the Northern District of Illinois

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When Atty. Gen. Alberto Gonzales testifies before the Senate Judiciary Committee to explain his role in the firing of eight U.S. attorneys, it is important to keep in mind that what is really at stake goes far beyond Gonzales' own fate as the country's top law official. At root, this inquiry poses a fundamental question, one that every attorney general in every presidential administration must squarely confront: To whom, or to what interests, does a U.S. attorney -- or, for that matter, any prosecutor -- owe professional loyalty?

This is a question that needs to be discussed openly throughout the hearing process, for all parties to the justice system -- be they subjects of investigations, victims, prosecutors or defense lawyers, and whether they reside in Chicago, New Mexico or Durham, N.C. -- are entitled to know exactly how the Department of Justice leadership would answer the question.

The "loyalty" question is not some abstract concept about politics and ideology. Rather, it is a question with important practical consequences that are tied to the central role of prosecutors in our justice system. Prosecutors alone have the power to present an indictment to a grand jury, an awesome power that, once executed, typically changes the course of lives forever.

Further, given that law enforcement agencies have limited resources, the way in which prosecutors and agencies such as the FBI allocate those resources goes a long way in determining which types of offenses and offenders will have to face the justice system.

Finally, an effective justice system requires the support and confidence of the community at large. If the public perceives that prosecutions are influenced

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by partisan affiliations or political agendas, it will quickly -- and appropriately -- lose confidence in its prosecutors. In recent published comments, Gonzales said, "[F]aith and confidence in our justice system are more important than any one individual."

In e-mails and documents released in recent weeks, we have learned that certain high-ranking Justice officials, when considering particular top prosecutors to terminate and others to replace them, answered the loyalty question in partisan political terms. Distressingly, these Justice officials appear to have placed a premium on installing prosecutors with established partisan political resumes.

A DOJ process that exalts partisan political loyalty over independence and fairness is a fundamentally flawed one. Political blinders are critical to a prosecutor because, without them, important decisions about how cases are investigated and prosecuted can be hijacked by improper considerations with tangible (even tragic) consequences. Naturally, this is most critical in political corruption cases, the legitimacy of which hinges

on the political independence of the prosecutive team's work.

In corruption cases, the potential for partisan shenanigans may arise in two different ways, each of which disserves the interests of justice. First, partisan prosecutors might ignore credible allegations of corruption because they fear embarrassing their political party or patron. Second, partisan prosecutors might pursue flimsy allegations for political purposes.

Here in Illinois, we recently had the unfortunate example of the secretary of state's inspector general reminding investigators that their job was to protect their political boss, not to find and resolve internal corruption.

By contrast, in the U.S. attorney's office where I have worked for 12 years as an assistant U.S. attorney, I've had the privilege of working with dozens of prosecutors and agents on myriad city, county, state and federal public corruption investigations. I am proud to say that I never saw any indication of any such shenanigans. In fact, I could not tell you the political preferences of most of my fellow prosecutors or agents. Whether they were "loyal Bushies" or "Clintonistas" or something in-between was not ascertainable by word or deed.

What I did come to learn, however, and what was obvious during our work sessions, was that agents and prosecutors simply did not care about the political affiliation of the targets of the corruption investigation. Instead, they were focused on scrupulously scrubbing the facts and the evidence, and on bringing the case if and only if the facts and evidence had been revealed.

We have heard as a defense of the summary dismissal of eight U.S. attorneys that all U.S. attorneys "serve at the pleasure of the president." And that, of course, is true. But they must never serve only to please the president. U.S. attorneys serve the people of the United States.

If we replace non-partisan public service with blind political loyalty, we will have sacrificed one of the core values of our judicial system.

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