

How 41 Pages Helped Unseat Lam

An anonymously written Border Patrol report, laced with editorial comments, pushed criticisms about the former U.S. attorney into the media spotlight.

By **ROB DAVIS** Voice Staff Writer

Thursday, March 22, 2007 | On April 6, 2006, a Florida Republican lambasted former U.S. Attorney Carol Lam during a House Judiciary Committee meeting. The rebuke earned nary a peep in the San Diego media.

Attorney General Alberto Gonzales was on Capitol Hill testifying before the group of lawmakers. While the media focused on Gonzales' lengthy testimony about a secret wiretap program, U.S. Rep. Ric Keller, R-Fla., took Lam to task.

"Here's some straight talk," he told Gonzales. "The pathetic failure of your U.S. Attorney in San Diego to prosecute alien smugglers who've been arrested 20 times is a demoralizing slap in the face to Border Patrol agents who risk their lives every day."

It was a major rebuke of San Diego's top federal prosecutor. And though it was uttered during public testimony, it didn't draw any media attention to Lam or her office. While plans to oust Lam were already being developed, the media hadn't focused her choice not to focus on smaller smuggling cases.

But when an anonymously authored 41-page Border Patrol report was released by U.S. Rep. Darrell Issa, R-Vista, the media's spotlight followed. The document made public what Justice Department officials were privately saying had concerned them: that Lam was giving less attention to human smugglers than she should.

A May 18 Associated Press story, based on that 41-page report, said a lack of border smuggler prosecutions was "demoralizing" the Border Patrol. The report, from the El Cajon substation, said agents were catching smugglers only to release them, because they weren't a priority prosecution. The report was leaked by Issa, who had been one of Lam's leading antagonists -- and would become an even more prominent critic in the coming days and months.

Issa had criticized Lam before, inquiring about border smuggling cases as early as 2004. While those inquiries received brief responses from the Justice Department, this assault was different. The media seized on the report, and the story exploded. Issa appeared on CNN to talk about Lam's performance. It caught the eye of then-Senate Majority Leader Bill Frist, R-Tenn, according to an e-mail from Frist's chief counsel to a senior Justice Department official.

That 41-page report became a vital cog in Republican effort to focus attention on Lam's prosecutorial record -- an assault that ultimately brought down the prosecutor. It focused the media spotlight on Lam's performance, put her on the defensive and brought unwanted attention to the Justice Department, according to internal e-mails.

While politicians had been questioning Lam's border record for two years and Justice Department officials had been considering whether to push out Lam, the release of the Border Patrol report appears to have catalyzed the Lam opposition. Internal Justice Department documents show that the report's release not only set off the media frenzy, but also internal discussions between Lam and her superiors in Washington as they set about damage control.

But it is oddly written and anonymously sourced. While full of statistics, charts and graphs, editorialized comments are interspersed throughout. It ruminates about the unfairness experienced by two immigrants who died when a smuggler -- caught three times previously -- crashed his vehicle, awkwardly attempting to humanize the Border Patrol's targets. "The deceased were illegal aliens; however, they did not deserve this fate," the report says.

At another point, the author becomes philosophical when asking why agents risk their lives to stop smugglers if the lawbreakers can "just walk away from the whole ordeal scot-free."

Lam defended her record in print and in statements to CNN, saying the most dangerous offenders were her highest priority. About half of her 110 attorneys were working on border cases, she said. And she attacked the report as being an altered, unofficial version of an earlier document from the Border Patrol's El Cajon substation.

In her statement to CNN, she said: "Many of the comments ... are editorial comments inserted by an unidentified

individual, and they were not approved by or ever seen by Border Patrol management."

Lam sent two urgent cables to her superiors as the media attention unfolded. A Justice Department attorney sent them to the White House. In Washington, Lam's superiors were discussing how to handle Issa's criticism.

"She has been sitting quiet rather than attempting to respond publicly by explaining the resource limitations that she maintains affect the office's ability to do more than smuggling cases," Ronald Tenpas, a Justice Department attorney, wrote to several high-ranking Justice Department officials in a May 23 e-mail released this week as part of the congressional investigation into Lam's firing. "She is willing to change course if folks think that would be beneficial."

Six days after the Associated Press story broke, Issa's office sent a letter to Lam, in which the congressman called the memo "an embarrassment to your office."

Monica Goodling, a Justice Department spokeswoman, sent the letter to Kyle Sampson, Gonzales' chief of staff who resigned in the attorney firing scandal's wake, and two other high-ranking officials.

"FYI," she wrote, "the assault continues."

Sampson and William Mercer, the No. 3 Justice official, discussed by e-mail whether to send more attorneys to San Diego. Sampson wanted to know if anyone had ever "woodshedded [Lam] re immigration enforcement."

"There are good reasons not to provide extensive resources to [San Diego,]" Mercer responded. "It will send the message that if your people are killing themselves, the additional resources will go to folks who haven't prioritized the same enforcement priorities."

Issa had the report several months before taking it public. He received it and several other related documents in the fall of 2005 from "a senior source in the Department of Homeland Security," Issa spokesman Frederick Hill said. He declined to identify the source, but said Issa didn't release the report until May because he hadn't had time to sort through it and verify the information.

"It was focusing attention on a problem that no one at the Department of Justice wanted to get into," Hill said.

The report brought the public attention. But behind the scenes, the plan to force Lam out was already in the works. As early as April 14 -- eight days after the Florida Republican rebuked Lam -- Sampson had alerted White House officials that she would be replaced. Publicly, though, the Justice Department continued to support Lam, including an August 2006 letter to Sen. Dianne Feinstein, D-Calif., that defended Lam's border record.

Democratic lawmakers have speculated that Lam was replaced because of her high-profile prosecution of Randy "Duke" Cunningham, the former congressman in prison on conspiracy and tax-evasion charges. No mention of that is made, however, in nearly 3,000 e-mails and memos the Justice Department released to Congress earlier this week.

The concerns about Lam's prosecution of smugglers are not unique to U.S. attorneys in border states. William Braniff, a former U.S. attorney in San Diego, said Border Patrol agents may become frustrated after repeatedly arresting and releasing the same smugglers. But that's hardly unusual, he said. Such decisions about where to focus prosecutorial priorities have to be made at all levels of law enforcement, he said.

"They may have some resentment there," Braniff said. "And if it's day in and day out and they see people that are clearly lawbreakers and they're not being prosecuted, they may see this as an injustice. (But) when you start dealing with limited resources, you've got to make judgments."

Rich Pierce, executive vice president of the National Border Patrol Council, the union representing agents, said all patrol sectors across the U.S.-Mexico border question the choices prosecutors make. The difference in San Diego, he said, was the publicity that Lam's guidelines received.

"There's always issues with attorney guidelines," Pierce said. "It doesn't matter where you are."

Asked if he was glad to see Lam fired, Chris Bauder, president of the National Border Patrol Council's local chapter, said: "That doesn't even make a difference. For us the problem was even before. In a way I'd say yes. But it doesn't give me hope that anyone else is going to come in and make any changes. I don't know that there's any benefit for us in that respect."

Some who are familiar with the U.S.-Mexico border say Lam's strategy was appropriate, given the nature and scale of illegal immigration. Prosecuting a coyote -- someone who smuggles immigrants for a typical \$1,500 fee -- is often difficult, Braniff said. To prove someone is a smuggler requires the illegal immigrants to testify as material witnesses against the coyote, Braniff said.

"The sheer amounts of immigration cases would make it very difficult to do them all," he said. "You have to start

coming up with criteria to limit the numbers."

And prosecuting those cases doesn't serve as a deterrent, he added.

"They're kind of fungible," he said of the coyotes. "There's always somebody who can replace them."

Wayne Cornelius, director of the Center for Comparative Immigration Studies at University of California, San Diego, said federal prosecutors' decisions likely wouldn't affect the smuggling business.

"It's unlikely that stiffer penalties or higher prosecution rates will drive 'coyotes' out of the business," Cornelius wrote in an e-mail. "It's too lucrative, and there are too many clients requiring their services."

Please contact Rob Davis directly with your thoughts, ideas, personal stories or tips. Or send a letter to the editor.

Close Window
