Bedrock principle is at the center of U.S. attorneys controversy

By Ron Hutcheson and Marisa Taylor

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WASHINGTON - Former Attorney General John Ashcroft had a standard spiel for new U.S. attorneys: "You have to leave politics at the door to do this job properly."

Maintaining that independence, without fear of repercussions, is the bedrock principle at stake in the controversy over the firings of eight U.S. attorneys. As the top law enforcement official in each of their jurisdictions, these federal prosecutors have the power to destroy reputations, careers and even lives.

They're political appointees, but they're supposed to follow the evidence wherever it leads, without fear or favor. While presidents have the power to remove them for any reason, tradition holds that prosecutors should stay on the job unless they're corrupt or incompetent.

When Democrat Bill Clinton became president, he fired nearly all of the U.S. attorneys to remove Republican holdovers. But Clinton kept his prosecution team in place for his second term. So did Ronald Reagan in his second term.

President Bush took a different approach last year, and it set off alarm bells in the legal community and in Congress.

"I think it does smell," said Frank DiMarino, a former federal prosecutor who served under six U.S. attorneys in Florida and Georgia during his 18-year Justice Department career. "There's no problem with putting somebody who has been loyal to the party into the position, but once they're in place, you have to give U.S. attorneys independence."

DiMarino, now dean of the Kaplan University's School of Criminal Justice in Chicago, said Bush's decision to fire his appointees sent the message that the prosecutors need to look over their shoulders as they carry out their duties. Some of the fired prosecutors contend that they were ousted for resisting political interference in their investigations.

"It has a ripple effect. People think, 'When will the next shoe drop? Is this a case I should be pursuing?'" DiMarino said. "A U.S. attorney is compelled to follow the evidence wherever it may lead. There should not be political considerations."

The firings also called into question the credibility of prosecutors who kept their jobs.

"If those people (who were fired) were not following policy or were not responding to political suggestions about going after Democrats, what about those who were kept?" said Joseph DiGenova, a
former U.S. attorney in the Reagan administration. "If politics gets involved in decision-making about specific cases, that's when it gets bad."

It's gotten bad before. During the Nixon administration, White House and Justice Department officials targeted the president's critics for investigation.

"This memorandum addresses the matter of how we can maximize the fact of our incumbency in dealing with persons known to be active in their opposition to our Administration. Stated a bit more bluntly - how we can use the available federal machinery to screw our political enemies," White House counsel John Dean wrote in a 1971 memo.

Dean went on to note that the "available federal machinery" included the power to prosecute.

"The prosecutor has more control over life, liberty and reputation than any other person in America," Attorney General Robert Jackson told a gathering of U.S. attorneys in 1940. "While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst."

Former prosecutors say political pressure comes with the job, but the Justice Department is supposed to help fend it off.

"You have to insulate yourself," said David Marston, a former U.S. attorney in Philadelphia. The system broke down for Marston. He was fired by President Jimmy Carter in 1977 at the urging of Rep. Joshua Eilberg, D-Pa., a corrupt congressman who was under investigation by Marston's office.

Eilberg was convicted later anyway.

DiGenova, who was U.S. attorney in Washington, D.C., said he received calls from members of Congress about specific cases "all the time." He said he usually cut the calls short and reported them to the Justice Department.

Congressional investigators collected Bush administration e-mails that included a barrage of complaints about various U.S. attorneys from elected officials, Republican activists and others.

Some of the complaints were funneled through presidential aide Karl Rove and his deputy, Scott Jennings. In one case, Jennings set up a meeting so that a Republican activist from New Mexico could take his complaints directly to the Justice Department.

"You have some responsibility to act if there are some legitimate complaints. But you've got to be very careful that you don't do something that undermines the credibility of the Justice Department," said Leon Panetta, Clinton's former chief of staff. "The Justice Department is not just another political arm of the White House."

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