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Lam's legacy

U.S. attorney went for quality prosecutions over quantity – it may have cost her her job

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By the close of 2005, amid a series of San Diego scandals, U.S. Attorney Carol Lam had quietly become one of the most powerful people in the region.

That summer, her office had secured the convictions of two City Council members on extortion, fraud and other charges in a bribery case involving a strip club.

A grand jury was wrapping up its investigation into the city's billion-dollar pension deficit debacle and would hand down indictments at the start of 2006.

And in a case that reverberated across the country, Rep. Randy “Duke” Cunningham of Rancho Santa Fe pleaded guilty to conspiracy and tax evasion charges. He admitted accepting more than \$2.4 million in bribes from defense contractors.

Lam's work was widely hailed in a region weary of investigations and allegations. It was an appealing narrative: a fearless prosecutor taking on the local establishment.

That may very well be Lam's legacy, even after the events of last week.

On Tuesday, barely 13 months since those high-flying days, Lam, 47, announced she was resigning. She leaves Feb. 15.

Democratic lawmakers speculate that the former judge, who took office in September 2002 after being appointed by President Bush, was forced out by politics. The Cunningham probe had spawned other investigations into Republican lawmakers in Washington, D.C.

A San Diego grand jury issued subpoenas to Congress last month, indicating that the investigation continues. The subpoenas would be unaffected by a change in the leadership of the U.S. Attorney's Office.



NADIA BOROWSKI SCOTT
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“Given the resources we had, I was very determined to do prosecutions more efficiently, more intelligently and obtain the maximum impact possible,” said U.S. Attorney Carol Lam, who has refused to discuss the reasons for her Feb. 15 departure.

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The precise reasons for her ouster are not known. Sources told *The San Diego Union-Tribune* that it was the result not of her high-profile white-collar investigations, but of something much more basic.

The prosecutor was not prosecuting enough cases, especially gun and border crimes.

If that is the case – and Lam has refused to discuss why she is leaving – then her fall can be traced to the unique pressures that exist for the U.S. attorney here.

“In this district, it's hard to ignore the border,” said Chief U.S. District Judge Irma Gonzalez. “You can't.”

Border crime prosecutions in the past had made San Diego the busiest U.S. Attorney's Office in the nation. Lam tried to remake the office's role along more traditional lines, where federal prosecutors go after big fish.

But that policy may have alienated key law enforcement constituencies. The union that represents Border Patrol agents was outspoken in its dissatisfaction. Lam tightened the guidelines for deciding which smuggling and immigration cases her office would undertake, meaning fewer cases went to court. Instead of going after *coyotes*, the guides who bring illegal crossers into the United States, her office targeted the leaders of smuggling organizations. It also prosecuted corrupt Border Patrol agents and border inspectors.

The result was predictable. Statistics show that prosecutions fell during Lam's tenure.

An independent research organization based at Syracuse University analyzed prosecution data and concluded that between 2001, before Lam took over, and 2005, prosecutions in San Diego declined to 3,261 from 5,266, or 38 percent. More recent statistics are not available.

Data from Lam's office reflect a nearly identical percentage decline, though the raw numbers of cases differ.

Crime and prosecution statistics do vary from year to year, depending on investigations and the arrests made.

Most people caught crossing the border illegally are deported; only those with long criminal records or who place people in danger are prosecuted in federal court.

Many federal drug investigations end up in state court, as do some violent crimes when the accused faces life imprisonment under California's three-strikes law.

“Sometimes we have concurrent jurisdiction, but the biggest bang for the buck would be here” in state court, said San Diego District Attorney Bonnie Dumanis.

A shift in focus

From the start, Lam said she would put more focus on white-collar crime cases, which can be more complex and take more time and resources.

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But even in that area, the number of cases went down. In 2001, according to the Syracuse study, there were 142 white-collar crime prosecutions. In 2005, the number was 82.

In an interview Friday, Lam said she chose to redirect the resources of her office to tackle cases that would have a larger impact. In effect, she said she emphasized quality prosecutions over sheer quantity.

“When you take on more difficult investigations, the number of prosecutions might not be as high, but you have a larger impact on crime in the community,” she said.

One corrupt Border Patrol agent could be responsible for letting hundreds of illegal immigrants into the country, Lam said. Investigating and prosecuting that agent – Lam's office had seven such cases – could reduce illegal entries into the country but be counted only as a single effort.

She said she did not ignore the border cases, but tried to reallocate the office's finite resources.

“It was not so much a shift of office resources away from the border, but a shift in the nature of border crimes we were pursuing,” Lam said. “More serious, more sophisticated and larger organizational rings.”

T.J. Bonner, head of the Border Patrol union, was not convinced by Lam's rationale.

“I understand you can only do so much with what you have,” he said. “But you need some leadership. . . . You need someone to say you need more resources if you expect us to do the job.”

Rep. Darrell Issa, a Vista Republican and frequent Lam critic, also said this week that Lam should have done more to pursue border crimes.

Reuben Cahn, who leads the Federal Defenders of San Diego Inc., which represents indigent federal defendants, saw a difference after arriving from Miami two years ago.

There he frequently dealt with cases involving violent crimes – guns, bank robberies and mid-level drug conspiracies.

“You don't see those cases here,” he said, but couldn't explain why. “Carol Lam deserves credit for setting a priority and sticking to it.”

He is afraid that whoever comes after her will ramp up routine prosecutions simply to make the numbers look good.

“It will inevitably mean that there are cases brought that shouldn't have been,” Cahn said.

Veteran defense lawyer Charles Sevilla agreed that it would be easy to increase the number of prosecutions, but he said that “it would be a colossal waste of money and resources.”

“It would make a lot more sense to be prosecuting public corruption than whether a person crossed the border illegally,” Sevilla said.

Choices criticized

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Indeed, it is those white-collar corruption prosecutions that will be most remembered about Lam's tenure. There, too, critics find fault.

"I applaud the theory of going after white-collar crime, but some of the individual decisions over who to go after have been lax," said defense attorney Michael Crowley. He represented City Council aide David Cowan, a minor figure in the San Diego City Hall strip club case who was acquitted of a single charge but was devastated by the ordeal.

In that case, council members were charged with accepting campaign contributions in exchange for eliminating rules banning touching between patrons and dancers. The convictions of former Councilman Michael Zucchet were thrown out by a federal judge after the trial. The case is now on appeal.

Crowley and others also pointed to Lam's prosecution of local political consultant Larry Remer for using college funds for a bond campaign ad. That corruption prosecution ended in a hung jury and eventually resulted in a misdemeanor plea.

"If you are saying you don't have enough resources, why are you spending them on that?" said a lawyer who spoke on the condition of anonymity.

And then there was the Alvarado Hospital case. An expert on medical fraud, Lam prosecuted officials there for allegedly accepting kickbacks over a common practice used in the industry to entice doctors to work in underserved areas.

The case was tried twice, with Lam herself prosecuting the second trial, but neither jury could reach a verdict.

In the end, the case was settled after federal regulators said they would cut off the hospital from Medicare and Medi-Cal patients, its biggest source of revenue. That led the hospital owner, Tenet Healthcare, to agree to pay a \$21 million fine and sell or close the facility. Criminal charges were dismissed.

Lam's efforts to remake the U.S. Attorney's Office may have collapsed under the weight of the diverse needs of prosecuting cases in a border district, said Laurie Levenson, a former federal prosecutor who is now a law professor at Loyola Law School in Los Angeles.

"I wonder to what extent you end up butting your head up against the agencies," she said. "You have a lot of constituencies. You can't operate that office the way you would operate San Francisco or Los Angeles. The meat and potatoes are drugs and immigration."

Lam said she was proud of all the work done in her tenure and did not have second thoughts about her approach. She noted that while case filings are down, the length of sentences in smuggling cases has increased.

"Given the resources we had, I was very determined to do prosecutions more efficiently, more intelligently and obtain the maximum impact possible," she said. "I think we've done that. So I have no regrets."

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PROSECUTIONS BY THE SAN DIEGO U.S. ATTORNEY'S OFFICE

Type of prosecution	U.S. Attorney— Gregory Vega ¹		Patrick O'Toole	Carol Lam		
	FY2000	2001	2002	2003	2004	2005
Civil rights	2	6	9	3	2	0
Environment	11	9	4	3	6	12
Government regulatory	81	99	61	62	26	26
Immigration	2,585	2,419	2,243	2,662	2,887	1,641
Narcotics	2,096	2,294	1,730	1,174	1,073	1,290
National security/terrorism	1	0	17	10	5	1
Official corruption	7	1	2	9	13	3
Organized crime	0	0	0	5	0	0
Weapons	32	14	19	17	15	8
White collar crime	170	142	99	139	68	82
Other	324	282	299	291	272	195
TOTAL²	5,309	5,266	4,483	4,375	4,367	3,261

Note: Fiscal year is from October through September of the following year.

1 - Gregory Vega was U.S. attorney until June 1, 2001. Patrick O'Toole served the rest of 2001.

2 - Total prosecutions for 2005 include three for which the government withheld the reason.

SOURCE: Transactional Records Access Clearinghouse at Syracuse University