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Removing Gonzales Will Not Remove Systemic Problems

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After the summary defenestration of Donald Rumsfeld and the slow martyrdom of Scooter Libby, the *New York Times'* call yesterday for the President to fire his Attorney General, Alberto Gonzales, no longer seems unrealistic. Yet the firing of one person, no matter how misguided or sub par their performance as the leader of a critical federal institution might have been, will not solve the deep institutional problems that are becoming increasingly evident in our national security policy.

Calls for Gonzales' exit stem from two seemingly separate scandals, the politicization of U.S. Attorneys, tasked with making independent prosecutorial decisions for federal law violations, and from the FBI's misuse of national security letters, or NSLs. The latter, as Geoffrey Stone explains [here](#) are a sort of subpoena that allows the FBI to secure documents from businesses without judicial warrants. Not only has the number of NSLs skyrocketed, their misuse has also gone underreported.

These two stories are, in fact, symptoms of a common problem. Eighty years ago, President Franklin Delano Roosevelt marshaled a group of progressive reformers to establish new federal agencies to confront the Great Depression. FDR's reformers understood the importance of professionalized, empirically-based solutions to the nation's pressing problems. Thus, in addition to tackling the nation's financial woes, they tried, with some success, to create new institutions that would provide expert, non-ideological solutions to real problems.

Now, the FBI was not always the model of disinterested professionalism. It was, after all, J. Edgar Hoover, who led the bugging of Dr. Martin Luther King, Jr., and the efforts to destroy his name and precipitate his suicide. This was just the tip of a larger iceberg of abuses. But the Bureau, and other security agencies, was eventually reined in by Congress at the end of the 1970s, as Fritz Schwarz and [I have explained](#). Many success controls and oversight mechanisms were set in place.

More so than at any other time, we have seen during this Administration a concreted effort to demolish these mechanisms for the FBI and its larger institutional home, the Department of Justice.

For starters, the machinery of justice has been politicized. The civil rights division of the department of justice, for example, has been shanghaied into endorsement of dubious redistricting in Texas and a [voter id law in Georgia](#). Anecdotally, one hears that hiring in the Justice Department is no longer done by career lawyers, as it was from the Ford to the Clinton years. Now it is the responsibility of political appointees.

At the same time that professional standards are under assault, oversight has been evaded or gutted. It is not only the use of NSLs that has not gone reported. Both Congress and the public are still in the dark about a gamut of national security measures that directly impinge on our civil liberties.

Take, for example, the NSA's warrantless surveillance program. Earlier this year, the Government announced that it had got that approved by the [FISA Court](#), a body of judges that is supposed to screen all intelligence search warrants. That sounds comforting, until you realize that the surveillance protocols endorsed by the generally conservative FISA panels may be just as sweeping and open-ended as the past secret programs. Or until you learn that the Administration has insisted that only a handful of members of Congress will be briefed in a limited form that effectively disables legislative oversight.

Another example of worrying non-disclosure concerns a 2002 law, introduced by Senator Patrick Leahy, that requires the Attorney General to disclose any times when the President decides a law is unconstitutional, and thus should be ignored. From the President's own signing statements, and from internal Justice Department memos, we know that the President invokes this power with dangerous regularity, claiming prerogatives far beyond those the Constitution gives him. And yet the Attorney General has never filed a report with Congress on the number of times the executive has declined to comply with federal law.

Combine the assault on professionalism with the refusal of oversight, and you get a dangerous vacuum: decisions about investigation and prosecution are no longer made on the basis of objective criteria. They are used to leverage partisan gain (as decisions about the Texas redistricting and the Georgia id law certainly seemed to be). Or they will be made for even narrower, selfish purposes.

The result is a set of policies that leaves us less safe as well as less free. Concrete proof of this came a couple of weeks ago in another report by the Justice Department's Inspector General (who was also responsible for the revelations about the NSLs). This report concerns the Justice Department's prosecution and reporting of terrorism cases within the United States, and makes disturbing reading. It turns out that various components of the Justice Department have "decentralized and haphazard" ways of reporting terrorism cases. In presenting their records to Congress and the American public, investigators and prosecutors have been systemically overreporting both the number of terrorism cases in the United States, and their successes in these cases.

They do this by treating any prosecution that comes from an investigation vaguely linked with "terrorism" as being a "success" in the War on Terror. For example, there has been a sequence of airport sweeps for undocumented workers, most famously one called "Operation Tarmac." Of course, these operations pulled in dozens of undocumented workers (mostly Hispanic), who were duly prosecuted: All of these prosecutions were counted as "terrorism" cases even though there was never any connection between the individuals concerned and any hint of terrorism. Yet this large investment of federal resources hasn't necessarily made the nation any safer - even as it strokes nativist sentiments.

Of course, the kind of policy makes individual prosecutors look good. And it bulks up the numbers that Justice reports to Congress at the end of each year, justifying greater appropriations. But it also gives a misleading impression of the scope of the terrorist threat in the United States, which in turn is used to underwrite new, and harsher, policies.

Until we have a return to real oversight, and a fresh commitment to professionalism with the Justice Department, we won't be able to get our counter-terrorism policies straight. We will continue to misallocate resources and misjudge the threat. This means holding hearings on how internal oversight within the Justice Department is done. It means examining the functioning of critical institutions like the Office of Legal Counsel, which has an important influence on legal policy. And it means strengthening disclosure laws - and the sanctions for non-disclosure - to ensure a meaningful conversation between the ranches of government.

Getting rid of Gonzales, in short, may be satisfying for some in Congress who have been frustrated by his stonewalling - but it will not solve these systemic problems, which demands wholesale legislative reform as answers.

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