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Politicizing National Security

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Consider these three recent scandals, two in the public eye, one less remarked:

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The removal of eight U.S. Attorneys—and their replacement by candidates unvetted by the Senate—is achieved through a provision of the March 2006 PATRIOT Act renewal that terminates the Senate's role in prosecutors' replacement. Questions loom about whether inappropriate (and perhaps unconstitutional) considerations played a role in the dismissals. The president conceded earlier this week: "[T]he Justice Department made recommendations, which the White House accepted, that eight of the 93 would no longer serve." Although this isn't quite the same as saying the president made the final call—especially in this Administration—it does raise important questions about whether partisan gamesmanship around the '06 elections had anything to do with the firings. Quite apart from that, however, how did it come about that a bill touted as essential for national security has a provision that increases the power of the president in a way that has no relevance to national security? I've explained the background to that question here , but bear in mind that there are larger questions than politicizing prosecutors at issue.

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Another provision of the same PATRIOT reauthorization concerned National Security Letters, or NSLs, which had been the subject of §505 of the 2001 PATRIOT Act. (Useful background is given here.) A recent report from the Inspector General for the Justice Department describes how NSLs have been misused, and how the FBI has systematically failed to report or account for this. A growing bipartisan chorus is calling for systemic FBI review of NSL use. But why were NSLs ever even touted as a national security "must have" in the first place? And why couldn't Congress parse the credibility of that claim?

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The final scandal is the result of the exceptional—and by that I mean rare as well as very good—work of Glenn Fine, the Justice Department's Inspector General. Last month, Fine issued a report documenting inaccurate claims about the Justice Department's reporting of terrorism prosecutions. Fine found that the Justice

Department treats a case as "terrorism"-related, even if there is "no reasonable link" to terrorist activity, so long as an investigating agent at some point makes a claim that an investigation is national-security-related. The result? A large proportion of so-called "terror cases" in fact concerns mundane document fraud arrests at airports and the like. And each year Congress has been getting a wildly inflated impression of the terrorist threat in the United States.

How do these things link together? The nexus is national security, and the putative need to act with expedition and ruthlessness. The common strand tying them together is the invocation of "national security" as a magical incantation to get Congress, and by extension the American public, to bend to the executive's every wish. Call this the "24" model of security policy: the idea being that we live in a perpetual emergency, so every request for new power from the executive branch must be granted. Right now. Without question. Dammit!

In fact, this vision rests on false predicates (see the third scandal), is of little use (see the second) and accomplishes much of narrow partisan gain (see the first).