

Wednesday, March 7, 2007

### **Are fired U.S. Attorneys in angelic positions merely due to others' wrongs?**

Partners in violating the Constitution: George Bush II and Attorney General Gonzales. (Image from State Department's website). Numerous times, various lawyers have asserted to me that prosecutors can do more for criminal defendants than can criminal defense lawyers. Such a notion assumes that enough prosecutors will stick their necks out for criminal defendants; will pour out their blood, sweat and tears for defendants; and will have the courage to leave their prosecution posts and salaries (which, for federal prosecutors, can amount to the highest pay scales of all federal attorneys), rather than follow orders that are contrary to helping criminal defendants. In other words, such a notion sounds more like a fairy tale than a reality. Prosecutors can do enough unjust damage to criminal defendants based on the very nature of their jobs (e.g., seeking convictions rather than acquittals, even though that inevitably will involve convictions of innocent people, too), the laws they deal with (e.g., the draconian mandatory minimum sentencing laws and the draconian federal law -- upheld by the Supreme Court -- that forces a huge universe of presumed-innocent people to remain caged pending trial), and the very systems in which they operate (prosecutors certainly are not paid to get a whole slew of acquittals, and federal prosecutors daily rely on convictions by using snitches who would commit perjury against their grandparents to avoid the draconian federal sentencing system). Prosecutors can do even more damage if they are heartless or sinister (too many prosecutors have these characteristics). They can do even more damage than that when they yield to unfair and unjust pressures from legislators and other powers that be. The current scandal involving the ouster of eight United States Attorneys does not automatically mean that the fired federal prosecutors (they oversee civil litigation, too) automatically are angels, even if some or all were fired for not meeting litmus tests of the Bush Administration, which rampantly urinates on the Constitution. Nor does it automatically mean that any or all of them are evil. Each of them should be assessed on their individual merits, actions, and relevant viewpoints. A thorough investigation of the firings of these eight United States Attorneys is essential. Such thoroughness is more likely with a Democratic-controlled Congress than if Bush's party were in the Congressional majority. This is not to say that all Democrats are angels, either; far from it. The longtime two-party dominance of America's political system often presents us more with a non-choice of Tweedledee and Tweedledum than a sufficient opportunity to improve civil liberties, social justice, and democratic government. In the current two-party system, government does not always improve merely by electing wrongdoing rascals out of office. Jon Katz.

Posted by Jon Katz in Criminal Defense at 06:00