

Senators Grill Prosecutor of Ex-Border Agents

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(CNSNews.com) - Looking for a word to describe a prosecutor's controversial actions that helped put two former U.S. Border Patrol agents in prison, a senior senator Tuesday settled on "overreaction."

Sen. Dianne Feinstein seemed hesitant to use a more severe description to describe U.S. Attorney Johnny Sutton's role in the affair, which caused a storm earlier this year and sparked [strong criticism](#) of the Bush administration by lawmakers from both parties. But the California Democrat did not hesitate to take issue with Sutton on a number of points during a Senate Judiciary Committee hearing she chaired. Feinstein frequently cringed and often looked perturbed at Sutton's responses.

The hearing was called to examine the prosecution and imprisonment of Ignacio Ramos and Jose Compean. The two are serving jail terms of 11 and 12 years, respectively, for shooting a Mexican drug smuggler in the buttocks and then covering up the February 2005 incident.

Other senators joined a chorus of criticism against Sutton, who brought the case after offering a deal to the Mexican, Osvaldo Aldrete-Davila. In exchange for immunity from prosecution, he returned to the United States to testify against the two agents in court.

Although few new revelations surfaced during Tuesday's hearing, Sutton and other government officials were asked to explain why the case was brought to begin with, why the sentences were so severe and why the drug dealer was never prosecuted for an alleged secondary drug offense.

The panel also focused on the conviction for discharging a firearm while committing a crime, an offense carrying a mandatory sentence of 10 years. It was one of 12 charges brought against the agents and a key factor in the length of their sentences.

Senators from both parties on the committee contended the statute is not intended for law enforcement officials who use their weapons while doing their job.

"There was no criminal intent [on the part of the agents]," argued Sen. Jeff Sessions (R-Ala.). "Indeed, the intent was to create a lawful society."

David Botsford, an attorney for Ramos, told the panel that even if Aldrete-Davila was unarmed -- as the prosecution had convinced the jury -- the agents believed they saw him pointing something shiny at them.

"If there is a good faith mistaken belief that Davila had a gun, they had the right to use their guns," Botsford said.

During his testimony, Sutton said: "The fact is that it is a crime to discharge a firearm during a crime of violence, and we will continue to bring those charges where the law and evidence warrants."

Feinstein asked him, "Did the jury know that [the gun crime charge] carried a 10-year minimum sentence?"

"No, Ma'am," Sutton replied.

Sutton, who is based in the Western District of Texas, said prosecutors in his office had made the decision, without consulting him, to add the charge and other additional ones to the original three charges brought against Ramos and Compean.

On numerous occasions during questioning, Sutton deferred to his staff. It was his staff, he said, who made the decision to offer immunity to the drug dealer -- again without consulting him.

In response to questions about why his office did not pursue criminal charges against Aldrete-Davila more aggressively, he again attributed this to "the opinion of the trial team"

Nonetheless, he said he supported his staffers' decisions. When Sen. John Cornyn (R-Texas) suggested some of Sutton's staff members be called to testify since they may have more answers, Sutton responded: "I stand by my people. This was a big case. I was very much involved."

'Cover-up'

Despite criticism from senators, Sutton seemed fairly at ease and held firm to his case, repeating earlier [statements](#) that Aldrete-Davila was unarmed, that the agents did not know for certain that he was a drug dealer when they shot him -- drugs were found in his van only after the shooting -- and that they were involved in a "conspiracy to cover this up."

"The jury concluded after hearing the testimony of the agents at the scene, the drug smuggler who was shot and the defendants themselves that the agents shot at and struck an unarmed, fleeing drug smuggler; that they deliberately failed to report the shooting as they were required to do; that they destroyed evidence to cover up their actions; and that they did those things willfully in violation of the laws they were sworn to uphold," Sutton told the panel.

Still, senators were puzzled as to why the drug dealer has not himself been charged, given evidence he smuggled a second load of drugs into the country several months after being

granted immunity in the original incident.

Questions were also raised about the veracity of the Mexican's testimony, and some senators said he had not honored a provision of the immunity agreement that forbade him from protecting or withholding information about other members of his drug cartel.

As **Cybercast News Service** [reported earlier](#), after the drug dealer was brought to the U.S. for medical treatment for the bullet wound, U.S. authorities gave him a "humanitarian pass" to cross the border freely. It was during this time, according to Drug Enforcement Administration documents, that Aldrete-Davila was allegedly involved in further drug-smuggling.

"Was it wise to give a humanitarian pass to a known drug dealer?" Cornyn of Texas asked.

Sutton responded: "You're assuming he ran another load of dope."

Feinstein interjected, raising her voice slightly. "His question was, 'Do you think it was wise to give a humanitarian pass to a known drug dealer?'"

Sutton wavered, "If he ran another load of dope, it was a mistake [to give him the pass]. If he did not run another load of dope, it wasn't."

Sutton said the alleged second offense was the subject of an [ongoing investigation](#).

'Slam dunk'

Sessions of Alabama wanted to know why Sutton had not simply prosecuted Aldrete-Davila for the first offense -- running drugs across the U.S.-Mexico border in February 2005.

"Flight is evidence of a crime," Sessions asserted. "There is a van full of dope, and he runs off. I think that's a slam dunk."

Sutton responded that if border agents hadn't destroyed evidence at the crime scene, prosecutors might have been able to do so.

"The DEA initially treated this [743 pounds of marijuana found in the van] as an abandoned load," Sutton said. "There was no physical evidence this guy was driving the van."

Feinstein also had an exchange with Luis Barker, former chief patrol agent of the El Paso Border Patrol sector, about what action agents should take if a fleeing suspect ignores shouted warnings to stop.

"They should use measures other than deadly force," Barker replied.

"No wonder we have so many drugs coming over the border," Feinstein commented.

Critics of the Ramos-Compean prosecution and imprisonment have claimed that the case had a "chilling effect" on other Border Patrol agents, but Barker disputed that.

"The facts do not support this contention since in the last two months, agents have discharged their weapons against assailants in self defense on three occasions in El Paso, resulting in injury to one suspect," he said.

But T. J. Bonner, president of the National Border Patrol Council -- the border agents' union -- told the committee that the case has had the effect of discouraging agents.

"Someone said to me you would have to be crazy to join this outfit. You eat your own," Bonner said.

Border case defended

By Jerry Seper July 18, 2007 Washington Times



'SEVERE INJUSTICE': Patty Compean's husband, Jose, is serving a 12-year sentence after he and another agent shot at a drug-smuggling suspect who was later found in Mexico and granted immunity.

The U.S. attorney whose office won convictions against two U.S. Border Patrol agents for shooting a fleeing drug-smuggling suspect in the buttocks yesterday described as "the big lie" accusations that the prosecutions were not justified.

During a rancorous Senate Judiciary Committee hearing, U.S. Attorney Johnny Sutton defiantly said agents Ignacio Ramos and Jose Alonso Compean, now serving lengthy prison terms, committed "serious crimes" in a case that was not about immigration issues or the Border Patrol but the rule of law.

"Agents Compean and Ramos crossed the line. They are not heroes," Mr. Sutton said. "They deliberately shot an unarmed man in the back without justification, destroyed evidence to cover it up and lied about it. A jury heard the facts and voted to convict.

"There is no one to blame for what has happened but themselves," he said.

But Sens. Dianne Feinstein, California Democrat, and John Cornyn, Texas Republican, questioned whether the 11- and 12-year prison sentences handed to Mr. Ramos and Mr. Compean, respectively, were justifiable and whether the decision to grant immunity to drug-smuggling suspect Osbaldo Aldrete-Davila was properly handled.

Mrs. Feinstein, who chaired the hearing, asked whether the government's priorities were "out of whack" when it made the immunity offer to "a drug trafficker," noting that Mr. Aldrete-Davila — who abandoned 743 pounds of drugs as he fled to Mexico — was "not an innocent who was caught in the wrong place at the wrong time."

"I find it hard to believe that someone trusted with \$1 million in drugs is simply an amateur drug mule," she said.

Mr. Cornyn said he had "serious concerns about judgment calls" made during the case, adding that Mr. Sutton's office allowed Mr. Aldrete-Davila to violate the terms of his immunity agreement without consequences.

He and Mrs. Feinstein questioned Mr. Sutton on why the government gave Mr. Aldrete-Davila unlimited and unescorted access to the United States as part of the immunity agreement and whether he might have transported a second load of drugs into the country during that time.

They said that Mr. Aldrete-Davila re-entered the United States on at least 10 occasions from March to November 2005 and that the documentation authorized by the immunity agreement allowed him to cross the border legally at any time without notifying anyone and being unescorted.

"I would like to hear more about the policy that allows for this kind of unsupervised passage into our country and why someone who was known to smuggle in drugs would be given such flexibility," Mrs. Feinstein said.

Mr. Sutton acknowledged that a "humanitarian visa" given to Mr. Aldrete-Davila as part of the immunity agreement may have been "a mistake" but said it is necessary for his office to have access to would-be witnesses in pending cases — some of whom live in Mexico.

U.S. Drug Enforcement Administration (DEA) documents, which remain under seal, show that Mr. Aldrete-Davila was the focus of a drug investigation into his reported stashing of 750 pounds of marijuana at a house in Clint, Texas, in November 2005 — nine months after he was shot.

The DEA's investigative reports, according to law-enforcement authorities and others who have seen the documents, said that the owner of the house, Cipriano Ortiz-Hernandez, picked Mr. Aldrete-Davila from a photo display and that the homeowner's

brother, Jose Ortiz, told agents that Mr. Aldrete-Davila brought the marijuana from Juarez, Mexico, and identified him as "the person who was shot by Border Patrol agents."

Mrs. Feinstein also questioned why the agents were charged under a federal statute setting a mandatory minimum of 10 years in prison. She said that as the law was written, it presupposes an underlying crime, adding that there was no underlying crime in the Ramos-Compean case.

She said the law needs to be clarified by Congress to prevent prosecutorial overcharging.

Ramos, 37, and Compean, 28, were sentenced in October on charges of causing serious bodily injury, assault with a deadly weapon, discharge of a firearm in relation to a crime of violence and a civil rights violation. The conviction came after Mr. Aldrete-Davila was located in Mexico by Homeland Security investigators.

In the packed audience was Patty Compean and Monica Ramos, both of whom shook their heads in disagreement when their husbands were accused of being responsible for the incident.

T.J. Bonner, president of the National Border Patrol Council, which represents all 11,000 of the agency's nonsupervisory personnel, disputed government claims that the agents were prosecuted because they shot an unarmed man, covered it up, destroyed evidence and filed false reports.

"Make no mistake about it — Osbaldo Aldrete-Davila was not simply a mule as the prosecution tried to claim who was looking to earn \$1,000 so he could care for his sick mother," he said. "The wrongdoing here was bringing 743 pounds of marijuana into the country ... and the person who did that was granted immunity by our federal government."

Presidential candidate Rep. Duncan Hunter, the California Republican who introduced a bill calling for a congressional pardon for the agents, described their prosecution as "the most severe injustice I've ever seen with respect to the treatment of U.S. Border Patrol agents or, I might add, the treatment of any uniformed officers."

Rep. Dana Rohrbacher, California Republican, said the decision to give immunity to "the drug dealer and throw the book at the Border Patrol agents was a prosecutorial travesty."

"The whole episode stinks to high heaven," he said.

Defending Mr. Sutton were Border Patrol Chief David V. Aguilar and former Border Patrol sector chief Luis Barker, who headed the office where the shooting occurred. They blamed Mr. Ramos and Mr. Compean for failing to follow Border Patrol policies and covering up the incident.

"This has been a tragedy with emotional undercurrent. But there should be no mistake. ... It begins and ends with the actions of Agents Compean and Ramos," Mr. Barker said. "Not the prosecutors. Not the judge or the jury, as has been suggested."

The sentences also have been criticized by House members, 100 of whom co-sponsor a bill by Rep. Duncan Hunter, California Republican, calling for a congressional pardon. Republican Reps. Walter B. Jones of North Carolina, Ted Poe of Texas, Dana Rohrabacher of California, Tom Tancredo of Colorado, and Joe Wilson of South Carolina have asked President Bush to pardon the agents.