Senate Judiciary Committee
Hearing on "Preserving the Rule of Law in the Fight Against Terrorism"
Tuesday October 2, 2007

Questions Submitted by Chairman Patrick Leahy

1. After the events in Attorney General Ashcroft's hospital room that you and former Deputy Attorney General Comey have described to this Committee, you were one of close to 30 people from the Justice Department prepared to resign. What exactly was the reason you were prepared to resign after those events? Why did you ultimately decide not to resign at that time?

Answer: I was prepared to resign because I believed the White House misled me about its intentions to comply with the Department of Justice's legal advice, because I believed the White House acted in disregard of DOJ's legal advice, and because the circumstances surrounding the March 2004 events caused a breakdown in trust between DOJ and the White House. I decided not to resign for two reasons. First, the Attorney General's Chief of Staff asked me not to resign until the Attorney General had an opportunity to consider doing so. Second, after the White House changed course I still planned to resign but I was advised, and I worried, that doing so might cause sensitive national security information to leak.

2. In answer to a question from Senator Specter, you said the government had "forbidden" you from discussing the legal analysis related to the TSP. Who from the Administration relayed this message to you? In your opinion, could aspects of the legal analysis be discussed in an unclassified setting without harming national security? Did the government also forbid you from discussing the legal analysis with members of this Committee in a classified setting?

Answer: Sarah Roland from the Department of Justice informed me that I could not discuss legal analysis related to the TSP. Aspects of the legal analysis might be discussable in an unclassified setting without harming national security, but I am not sure. The government did not tell me, one way or the other, whether I would be forbidden from discussing the legal analysis with members of this Committee in a classified setting.

3. You testified that initially, former Deputy Attorney General James Comey was not read into the TSP and that you had a struggle to get him access. Do you recall when Mr. Comey was finally permitted to be briefed on the program? Do you believe the delay in briefing Mr. Comey had a negative impact on the program and the quality of legal advice the Administration received?

Answer: I do not recall precisely when Mr. Comey was read in. It was sometime in the winter of 2004. I do not believe the delay had a negative impact on the program and the quality of legal advice the Administration received.

4. You stated that the Administration directed you not to testify about certain issues during our hearing. If this restriction were removed, do you believe there are other matters to which you could testify in open or closed hearing that would be useful to this Committee in carrying out its oversight and legislative responsibilities, particularly on the subject of preserving the rule of law in the fight against terrorism?

Answer: I am not sure whether what I might say would be useful to this Committee.

5. A recent New York Times article reports that secret Office of Legal Counsel opinions from 2005 addressed interrogation techniques and found that a number of specific harsh techniques, used alone or in combination, are lawful. What is your reaction to the existence of these opinions? From what you know of the opinions, do they cause you any concern? If so, why?

Answer: The *New York Times* story does not provide me enough information to draw any informed conclusions.