

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Executive Nomination of James B. Comey
to be Deputy Attorney General
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I am pleased that the Senate Judiciary Committee is considering the nomination of James Comey to be Deputy Attorney General ("DAG") of the Justice Department. The DAG is second in command at the Department of Justice and plays a key role as a top advisor to the Attorney General. I had high regard for the last person who held this position - Larry Thompson - and for those who preceded him - Eric Holder and Jamie Gorelick. Mr. Comey also has a sterling reputation as a vigorous, principled and fair prosecutor, and I look forward to learning more about him.

The Deputy Attorney General has traditionally assumed responsibility for the day-to-day operations of the Department. He or she also oversees the Criminal Division and the FBI, and acts as a liaison between Main Justice and the 94 U.S. Attorneys Offices.

Two years after terrorists brought down the World Trade Center, there are particular challenges facing the incoming DAG. The Justice Department has a critical role in combating the terrorists that threaten our safety. The Department is also in the midst of investigating the unconscionable leak of a CIA operative's identity. If confirmed, Mr. Comey's experience in prosecuting terrorists and other criminals will likely enhance the Department's ability to fulfill its mission on these important issues.

The new DAG will also play a key role in resolving the many policy controversies that have erupted under the leadership of Attorney General Ashcroft. There is a pervasive uneasiness throughout the Nation about whether the Department, in its pursuit of terrorists, has run roughshod over civil liberties.

For example, since 9/11, the Department has taken an expansive view of the material witness statute in order to detain suspects with no provable connection to terrorist activity. It has detained immigrants without charges and without counsel for weeks or months, despite a provision in the PATRIOT Act that was intended to limit such detentions to seven days. It also seeks additional surveillance powers, like administrative subpoenas, that are not subject to the critical check of judicial review.

Even as citizens express their concerns about such matters, the Attorney General has brushed them off as "hysterical" and as "fear mongers" who are merely helping the terrorists. At the same

time, the Justice Department's persistence in classifying as many cases as possible -- however minor -- as "terrorism" cases may be providing Americans with a false sense of security.

There have also been some troubling institutional changes at the Justice Department. The Attorney General's policies on plea bargaining, charging, sentencing departures and death penalty matters have centralized decision-making on these issues within Main Justice, and weakened the discretion of line prosecutors over their cases. Equally disturbing are reports that Attorney General Ashcroft seeks advice primarily from a select inner circle of political appointees, and does not regularly engage department and unit heads and other career prosecutors.

I am also deeply disturbed by the Department's dismissive attitude toward oversight and accountability. The Attorney General has failed to appear regularly before this Committee, and has refused or significantly delayed answers to oversight questions.

These are all serious concerns, but I have confidence in Mr. Comey's ability to tackle these challenges. I am pleased that we are considering such a seasoned prosecutor, and look forward to his testimony.