

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
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## Importance of Investigating the Prisoner Abuse Scandal

I wish to say only a few more words about the issues that concerned us at our most recent meetings--the need for this Committee to fulfill its duties to the Senate and the American people and investigate the facts and circumstances that led to the international prisoner abuse scandal.

Last week this Committee had the opportunity to act and did not. We came to the Committee with a proposal to begin a thoroughgoing inquiry. We were flexible and in the course of last week's discussion limited our subpoena request to a few documents, we clarified exceptions for current investigations, we invited compromise, we offered a delayed trigger on the subpoena, and we offered many other accommodations. We were rebuffed on a party-line vote. All Republican Senators voted against authorizing a subpoena to even a limited number of documents on a delayed basis.

Last night the Senate had the opportunity to act and did not. The Senate cleared its throat but did not speak. The cough came when a bipartisan Senate majority rejected the Hatch motion to table an amendment to direct the Attorney General to cooperate with this Committee and produce to us the relevant documents. I want to acknowledge that Senator McCain, the only POW serving in the Senate; Senator Hagel, a distinguished combat veteran; Senator Graham, who is not only a Member of the Armed Services Committee but an officer in the reserves; and Senators Specter and DeWine all voted in a way that appeared consistent with their wanting to get to work and get to the bottom of these matters. Unfortunately, when the subsequent vote was tallied on the amendment itself, they all switched sides and voted against the amendment, against putting the Senate on record as seeking documents from the Executive. Perhaps they were sending a message to the Bush Administration -- only they can say. In the end, all Republican Senators voted in a party-line vote against the Senate directing the Attorney General to cooperate with this Committee and furnish relevant documents to an investigation of the widespread prisoner abuses. Our efforts to investigate this matter have been delayed yet again.

I have been seeking the straight story on torture for more than a year. Two weeks ago the Attorney General refused Members' requests for information and documents and would not answer our questions. Over the past two weeks the Attorney General has failed to produce information, despite his chats with the Chairman. I noted during the Senate debate that we each had a choice, either to circle the wagons in defense of the Administration or act as a co-equal branch of our national government to obtain the needed information or to begin to act as a check on the Executive. The White House and the Republican leadership circled the wagons to block the Senate and this Committee from doing the right thing and investigating what contributed to

the misconduct that has sparked criticism around the world and a propaganda bonanza for terrorist organizations.

I do want to thank the Chairman for his efforts at cajoling the Administration into releasing a small subset of memoranda. Two days ago, with much fanfare, the White House made public a limited set of documents relating to the treatment of al Qaeda and Taliban prisoners captured in Afghanistan. The White House chose what documents to release to try to tell the story they wanted to tell.

Those documents serve to confirm what we have been reading in press accounts. They do not, however, provide a complete picture of what happened and why, who did what and when, and who knew what and when. They do not even come close. For example, this morning's Washington Post describes the tense discussions that took place between the State Department and the White House over the application of the Geneva Conventions to suspected terrorists. The Post article is based on a memo from State Department legal counsel William Taft--a memo that was not released by the White House. In fact, no State Department memos were released by the White House.

I compliment the press and the American people for not falling victim to the Administration's public relations campaign. The American people continue to seek the truth about the facts and circumstances that led to the prisoner abuse scandal. So should many of us but we have yet to engage in anything approaching effective action or oversight.

#### More Disturbing Facts Emerge About Prisoner Abuse

Since the last executive meeting of this Committee, this scandal has continued to unfold:

? After extensive investigation, The Guardian newspaper uncovered widespread evidence of violent abuse and sexual humiliation of prisoners in Bagram and other U.S. detention centers around Afghanistan.

? A Federal grand jury indicted a CIA contractor for brutally assaulting a detainee in Afghanistan in June 2003.

? Defense Secretary Rumsfeld admitted that in November 2003, he ordered a prisoner held incommunicado, off the prison rolls and out of sight of the International Committee of the Red Cross. This "ghost detainee" then got lost in the system and, despite his high intelligence value, received only a cursory initial interview while in detention. Major General Taguba later criticized the practice of holding ghost detainees as "deceptive, contrary to Army doctrine, and in violation of international law."

? The New York Times reported that military lawyers and some colonels received memos citing complaints of abuse at Abu Ghraib in November 2003 - two months before photographic evidence of abuse prompted the military to launch an investigation.

? Evidence is mounting that the majority of detainees at Guantanamo Bay are not "the worst of the worst," as the Administration has asserted, but rather low-level recruits or even innocent men swept up in the chaos of war.

That is some of what we learned last week, mostly through the press. Meantime, we have not begun to do real oversight on these issues.

### Unanswered Questions

The small subset of documents finally released by the White House under mounting public pressure offers only glimpses into the genesis of this scandal. All of these documents could and should have been provided earlier to Congress, and much more remains held back and hidden away from public view. For the Judiciary Committee, the Senate and the American people to find the whole truth, we will need much more cooperation and extensive hearings.

The limited group of select documents that the White House chose to release raise more questions than they answer. For example:

? Did the President sign any orders or directives regarding prisoners' detention and interrogation after January 2002? Did he sign any with regard to prisoners in Iraq? Why won't Judge Gonzales comment on what the President said or ordered? Why won't Attorney General Ashcroft give a complete and accurate answer to my question with regard to presidential directives?

The Attorney General refused to answer what was perhaps the single most important question I put to him at our hearing on June 8. I asked whether, in addition to the Attorney General's reference to the February 2002 presidential memorandum, has there been any other order or directive from the president with respect to interrogation of detainees, prisoners or combatants?" The Attorney General's non-answer was: "I'm unable to tell you more . . . at this time." If other presidential memoranda, orders, authorizations or directives exist, then they are being hidden from us and from the American people. The Administration will not even confirm what other orders exist.

Chairman Hatch referred last week to what he called the "reluctance" of the Attorney General to agree to provide documents and answers at the early June hearing. Maybe we were at different hearings because it was not "reluctance" that I observed. It was stonewalling. I have said that I have not seen that kind of an appearance by a high-ranking government official since the days of Watergate. I agree with Senator Feinstein: The Attorney General essentially thumbed his nose at us.

We know that certain high-level al Qaeda suspects are being held in detention in secret locations and subjected to coercive interrogation. Where are the documents to and from the CIA that describe what actions intelligence agents have taken and provide a legal justification for those actions? The press has reported that in the briefing Judge Gonzales gave the press on Tuesday--not to us mind you, but a briefing to the press to try to sell a story--he would not answer questions about the CIA and whether other orders governed its detention and interrogation practices.

Just last week, a Federal grand jury indicted a CIA contractor for brutally beating a prisoner in Afghanistan in June 2003. That prisoner died the next day. Yet the White House still refused to produce documents and information involving the CIA.

Some Administration defenders keep recycling the same discredited talking points about this being only a few "bad apples" in Iraq. The facts ferreted out by the press have exposed the fallacy in that assertion. For example, for some time there have been reports about a U.S. soldier who posed as an uncooperative detainee during a training exercise with military police at Guantanamo. That soldier suffered traumatic brain injury at the hands of a reaction force. After its initial explanations were discredited, the Army has now opened a criminal investigation into this matter, as well. That was at Guantanamo, not Abu Ghraib, and it was an American soldier who was gravely injured, not a suspected terrorist or member of the Iraqi resistance. I have many more questions regarding what the

Administration has released and held back:

? Why didn't the White House release the State Department memos that reportedly argue strongly against the DOJ and White House desire to flout the Geneva Conventions? Where are the JAG objections for the professional military attorneys that we have heard and read about? Why were these materials not produced?

? Where are the documents that led to the memoranda that were generated before January 22, 2002, and the documents generated after April 16, 2003? The latter would be documents most relevant to activities in Iraq. No documents from the Iraqi occupation period were provided at all. None.

? Now that the press has released the August 2002 Justice Department memorandum, the White House has chosen to provide a copy of that which was already posted on many public web sites. The production serves to authenticate the document, which includes many chilling arguments about unlimited power in the Presidency unchecked by treaties, laws, the Congress or the courts. That memorandum took the stunning position that the President and those acting under his authority are not bound by U.S. laws and international treaties prohibiting torture. Apparently Judge Gonzales is now disavowing the memorandum. Because we have not had the opportunity to question him and the Attorney General would not answer our questions, we do not know if the reports of the Administration's disaffection with these arguments made by Mr. Bybee and Mr. Yoo amounts to one of tone or substance. Is it like the pictures of prisoner abuse for this Administration? That is, now that the report has been made public, do they simply abhor it being public, or do they actually now reject the overreaching arguments advanced by the Department of Justice?

? Does anyone seriously doubt that the Justice Department memo of August 2002, which attempts to justify the use of torture, will be Defense Exhibit Number 1 at any trial of any U.S. personnel charged in connection with this prisoner abuse scandal? John Yoo, one of the authors of the memo, said in a television interview this week that he expected defense attorneys to try to use the memo as part of their defense. You bet they will. It is not often that the Justice Department provides future defendants with a roadmap for violating U.S. law and escaping punishment.

? Did the Administration rely on the opinions of the Justice Department as the President's February 7, 2002 memorandum says they did and the Defense Department indicates that it did? If there is a change in policy, what was the policy before and what is it now?

? Apparently Judge Gonzales wants the memo rewritten. When will we see that new memo? Would anyone venture a guess when, if ever, this Administration will finally open a dialogue with the people's duly elected representatives in the Congress of the United States over what our government's policy is and should be?

? The August 2002 legal memorandum also seeks to redefine the meaning of "torture" for purposes of international law and our government's policies and practices.

? If the Administration now views the Justice Department positions as "irrelevant," what is the Administration's policy and on what does that policy rest? What exactly is the definition of "torture" that the President uses when he says he rejects torture? Are this Administration's high-sounding declarations merely self-serving conclusions based on sophistry and their own internal, secret redefinitions?

? There also remain the questions about why Secretary Rumsfeld issued and later rescinded tough interrogation techniques? And how did these interrogation techniques come to be used in Iraq, where the Administration maintains that it has followed the Geneva Conventions?

? Why did Secretary Rumsfeld exclude Iraq detainees in his April 2003 memo on approved techniques? Why is the White House withholding relevant documents issued after U.S. military occupation of Abu Ghraib? What tone and direction did the White House with respect to that combat zone and its prisoners, who we know were abused in places like at Abu Ghraib?

? Where is the remaining material requested by members of the Senate Judiciary Committee in our limited partial request last week of 23 documents? When is the Chairman going to work with us in a bipartisan way get all the materials we need?

### The American People Need Answers

This Committee found time this week to hold yet another hearing on gay marriage - our fourth in 10 months -- but we cannot find the time to consider this Administration's policies on torture, which appear to have set the stage for the abuse of prisoners in U.S. custody.

Last night Senator Hatch said many things. I choose to ignore the ad hominem attacks, and note that he agreed with me that water flows downhill, and so does government policy. Somewhere in the upper reaches of this Administration, a process was set in motion that seeped forward and led to this scandal. To put this scandal behind us, first we need to understand what happened. And we cannot get to the bottom of this until there is a clear picture of what happened at the top.

Under Chairman Hatch's leadership, this Committee issued more than 50 subpoenas to Administration officials during President Clinton's second term in office. I believe that the only subpoena this Committee has authorized during President Bush's entire presidential term was that requested by Senator Specter to allow witnesses to participate in a field hearing he wished to

hold but who insisted on a friendly subpoena on advice of counsel. We have not issued a single subpoena to the Bush Administration even though it has consistently rebuffed our requests for information and documents.

Before Republican Senators begin to wax eloquently about the sanctity of the Executive Branch and its powers, I remind them of the numerous hearings they held and other Republicans held in 1999 and on into 2001 regarding the presidential pardon and clemency powers granted to the Executive exclusively in the Constitution. They demanded not only documents and correspondence with high government officials but testimony in open session of the actions and deliberations of the pardon attorney and the former Deputy Attorney General of the United States.

Along with other Democrats, I criticized the Clinton Administration in those days, and also when I disagreed with what the President had done. I sense that there are, likewise, Republican Senators, some may even be on this Committee, who know that we should be doing more and know that we need to join together to get to the bottom of these matters. Perhaps they will decide to break the circle of partisan wagons that are being used to shield the Administration from effective oversight, and join us in our nation's interest.

When are we going to stop sitting on our hands and quit acting like a wholly-owned subsidiary of the Executive Branch. We have the legal right, the constitutional obligation, and the moral authority to ask questions and demand answers today.

We need to do our job and keep at it until we get the facts, honesty and answers.