

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 8, 2004

A number of us remain concerned about the abuse of foreign prisoners, and about the guidance provided by the President's lawyers with regard to torture. Much has happened since June 17, 2004, when the Judiciary Committee defeated, on a party-line vote, a subpoena resolution for documents relating to the interrogation and treatment of detainees. Yet because of continued stonewalling by the Administration, we remain largely in the dark. No action has yet been taken by this Committee.

In the June 17 Committee markup, several Senators said that we should give the Administration more time to respond to inquiries, although some of us had been asking for information for more than a year. Questions were submitted to the Attorney General on June 15 following his appearance before the Committee a week earlier when he refused to provide information and demanded a subpoena. We were encouraged to withhold in offering a subpoena and to give him until the end of the month to respond. And then, the Attorney General -- through an aide, on July 1 -- again thumbed his nose at his obligations to this oversight Committee, refusing to provide a comprehensive set of answers to questions submitted by the nine Democratic members of this Committee, refusing to provide almost all of the documents that were requested, and, again, refusing even to provide an index of the documents being withheld.

The Department of Justice admitted in the July 1 letter that it had "given specific advice concerning specific interrogation practices," but would not disclose such advice to Members of this Committee, who are duly elected representatives of the people of the United States, as well as members of the committee of oversight for the Department of Justice. USA Today reported on June 28, 2004, that the Justice Department issued a memo in August 2002 that "specifically authorized the CIA to use 'waterboarding,'" an interrogation technique that is designed to make a prisoner believe he is suffocating. This memo is reportedly classified and has not been released. According to USA Today: "Initially, the Office of Legal Counsel was assigned the task of approving specific interrogation techniques, but high-ranking Justice Department officials intercepted the CIA request, and the matter was handled by top officials in the deputy attorney general's office and Justice's criminal division." So while former Administration officials grant press interviews and write opinion articles denying wrongdoing; while the White House and Justice Department hold closed briefings for the media to disavow the reasoning of this previously relied upon memoranda and to characterize what happened; Senators of the United States are denied basic information and access to the facts. I would hope that the significance of such unilateralism and arrogance shown to the Congress and to its oversight committees will register with each and every member of this Committee.

I have long said that somewhere in the upper reaches of this Administration a process was set in motion that rolled forward until it produced this scandal. To put this scandal behind us, first we need to understand what happened. We cannot get to the bottom of this until there is a clear

picture of what happened at the top. It is the responsibility of this Committee to investigate these documents, from genesis to final approval, within the Department. The memos must be subject to public scrutiny, and we will continue to demand their release.

There is ample evidence that American officials, both military and CIA, have used extremely harsh interrogation techniques overseas, and that many prisoners have died in our custody. Administration officials admit that 37 foreign prisoners have died in captivity, and several of these cases are under investigation, some as homicides. On June 17, David Passaro, a CIA contractor, was indicted for assault for beating an Afghan detainee with a large flashlight. The prisoner, who had surrendered at the gates of a U.S. military base in Afghanistan, died in custody on June 21, 2003, just days before I received a letter from the Bush Administration saying that our Government was in full compliance with the Torture Convention.

Some individuals who committed abusive acts are being punished, as they must be. But what of those who gave the orders, set the tone or looked the other way? What of the White House and Pentagon lawyers who tried to justify the use of torture in their legal arguments? The White House has now disavowed the analysis contained in the August 1, 2002, memo signed by Jay Bybee, then head of the Office of Legal Counsel. That memo, which was sent to the White House Counsel, argued that for acts to rise to the level of torture, they must go on for months or even years, or be so severe as to generate the type of pain that would result from organ failure or even death. The White House and DOJ now call that memo "irrelevant" and "unnecessary" and say that DOJ will spend weeks rewriting its analysis.

As we all know, on June 22, 2004, the White House released a few hundreds of pages of documents -- a self-serving and highly selective subset of materials. The documents that were released raised more questions than they answered. Now, more than two weeks later, none of those issues have been resolved.

For example, the White House released a January 2002 memo signed by President Bush calling for the humane treatment of detainees. Did the President sign any orders or directives after January 2002? Did he sign any with regard to prisoners in Iraq?

Why did Secretary Rumsfeld issue and later rescind 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?

Where is the remaining 95 percent of material requested by members of the Senate Judiciary Committee? Why is the White House withholding relevant documents produced after April 2003?

I was gratified that the Senate on June 23 passed an amendment that I offered to the Defense Authorization Bill that will clarify U.S. policy with regard to the treatment of prisoners and increase transparency. But the stonewalling continues: The Pentagon opposes this amendment. I am hopeful that we will prevail in keeping this provision in the bill. Five Republican Senators supported the amendment against an attempt to table it. Three of those are members of this Committee, Senators Specter, DeWine, and Graham. They were joined by Senators McCain and Hagel. I thank each of them. I also want to commend the Senate for adopting, also as part of the

Defense Authorization Bill, the Durbin amendment against torture, and I want to acknowledge an important step taken in the House on the same day. The House Appropriations Committee added language to the 2005 Justice Department spending bill that would prohibit any department official or contractor from providing legal advice that could support or justify use of torture. As it completed its term, the Supreme Court issued its decisions in highly significant cases involving the legal status of so-called "enemy combatants." The Court reaffirmed the judiciary's role as a check and a balance, as the Constitution intends, on power grabs by the Executive Branch. The Court ruled that the Bush Administration's assertion that the President can hold suspects incommunicado, indefinitely and without charge, is as arrogant as are its legal arguments that the President can authorize torture. No President is above the law or the Constitution. The Court properly rejected the Administration's plea to 'just trust us' and repudiated its assertion of unchecked power.

This Committee continues to fall short in its oversight responsibilities. President Bush has said he wants the whole truth, but he and his administration instead have circled the wagons to forestall adequate oversight. The President must order all relevant agencies to release the memos from which these policies were devised. There needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. Only when these actions are taken will we begin to heal the damage that has been done.

We need to get to the bottom of this scandal if we are to play our proper role in improving security for all Americans, both here at home and around the world.