

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing Before the Senate Judiciary Committee
"Part II - Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"
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We have learned over the last few months of actions by this Administration that threaten to undermine the effectiveness and professionalism of U.S. Attorneys offices around the country. Not since the Saturday Night Massacre, when President Nixon forced the firing of the Watergate prosecutor Archibald Cox, have we witnessed anything of this magnitude. The calls to a number of U.S. Attorneys across the country last December, by which they were forced to resign, were extraordinary. What is more disconcerting is that, unlike during Watergate, there was no Elliot Richardson or William Ruckelshaus seeking to defend the independence of federal prosecutors. Instead, the Attorney General, the Deputy Attorney General, the Executive Office of U.S. Attorneys and the White House all collaborated in these actions.

United States Attorneys around the country are the chief federal law enforcement officers in their States. They are the face of federal law enforcement and have enormous responsibility for implementing anti-terrorism efforts, bringing important and often difficult cases, and taking the lead to fight public corruption. It is vital that those holding these critical positions be free from any inappropriate influence. Their importance is reflected in the fact that these appointments have traditionally, and are currently, subject to Senate confirmation.

Sadly, what we have heard from the Administration has been a series of shifting explanations and excuses. This lack of accountability or acknowledgement of the seriousness of this matter makes it all the more troubling.

The Attorney General's initial response at our January 18th hearing when we asked about these matters was to brush aside any suggestion that politics and interference with ongoing corruption investigations were factors in the mass firings. Now we know that these factors did play a role in these matters.

The question now arises, where is the accountability? For six years accountability has been lacking in this Administration. Loyalty to the President is rewarded over all else. That lack of accountability, and lack of the checks and balances that foster it, must end. We do not need

another commendation for the "heckuva job" done by those who have failed in their essential duties to the American people.

Defense Secretary Gates finally pointed the way last week. Those in charge of the scandalous conditions at Walter Reed Medical Center are gone, as is the Secretary of the Army in charge. Where is the accountability for the scandalous actions by the Justice Department? That is the question this Committee is ultimately asking and to which the American people are entitled to an answer. The women and men replaced and whose reputations were stained by those seeking to justify these firings as "performance related" were appointees of President Bush. Several had significant achievements in office and glowing performance reviews. While effective prosecutors, were they simply too independent for this Administration? What were the real motivations for their firings? Who within the Administration were the moving forces and who were involved?

This Administration has been creating these vacancies by removing U.S. Attorneys as it chooses on a timeline it dictates. It cannot now claim that there simply was not the time to work with home state Senators to identify replacement. Why were home state Senators not consulted in advance? I would note that every one of the U.S. Attorneys who was asked to resign was someone chosen by this Administration, nominated by this President, approved by the home state Senators and confirmed by the Senate. This is thus entirely a problem of the Administration's imagination and choosing.

We can fix the statutory excess that opened the door to these untoward actions. During the Patriot Act Reauthorization last year, appropriate curbs on the authority of the Attorney General to appoint interim United States Attorneys to fill a vacancy temporarily were removed. The change to the law removed the 120-day limit for such appointments and removed the district court's role in making any subsequent interim appoints. This change in law, accomplished over my objection, allowed the Attorney General for the first time to make so-called interim appointments that could last indefinitely.

This Committee has reported a bill to the Senate to reverse that mistake. Senator Feinstein, Senator Specter, Senator Schumer and I have all cosponsored the bill to restore the statutory checks. Regrettably, Republican objections have prevented Senate consideration of S.214 and prevented its consideration as an amendment to S.4. I urge all Senators to join with us to correct the statutory authority. Yet fixing the law will not undo the damage done to the American people's confidence in federal law enforcement.

I thank Senator Schumer for chairing this hearing, the second one this Committee has had on this matter in the past month. I thank the witnesses for their willingness to come here today and help us get to the truth.

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