Statement of

# The Honorable Patrick Leahy

United States Senator
Vermont
April 12, 2007

Statement of Senator Patrick Leahy
Chairman, Committee on the Judiciary
Executive Business Meeting
April 12, 2007

Today, the Committee proceeds to consider authorizations for subpoenas in connection with our investigations into the mass firings of U.S. Attorneys around the country. The Committee is seeking a more thorough production of relevant documents from the Department of Justice, documents from the White House and testimony of William Moschella, who is currently at the Department of Justice, and Scott Jennings, who remains a deputy of Karl Rove at the White House.

We continue to seek cooperation from the Administration as we try to get to the bottom of an apparent abuse of power that has allowed politics to corrupt federal law enforcement. There remain several obstacles to the ability of the investigating Committees to learn the truth about what occurred with these firings and why. The selectivity and incompleteness of the highly redacted set of documents we have received so far from the Department of Justice present one set of obstacles. The refusal of the White House to provide relevant documents and access to White House staff who played a role in these firings and replacements are others. The announcement by the White House last night that they and the Republican National Committee have lost an undisclosed number of relevant e-mails that political operatives were using on RNC accounts presents yet another obstacle. I am beginning to wonder whether the White House has any interest in the American people learning the truth about these matters.

By authorizing subpoenas for documents and for two more individuals shown to be involved through testimony and documents obtained in the course of the investigation, the Committee maintains its flexibility so that we can do a thorough investigation not only into the firing of the U.S. attorneys, but also into the politicization of the entire process for hiring and firing them.

Next week we are scheduled to hold another oversight hearing with Attorney General Gonzales. Since his last testimony before the Committee, we have heard sworn testimony from former United States Attorneys forced from office and from D. Kyle Sampson, until last month the Attorney General's chief of staff. That testimony sharply contradicted the accounts of the plan to replace U.S. Attorneys testified to by the Attorney General on January 18, 2007 and by Deputy Attorney General McNulty on February 6, 2007, as well as the denials of involvement from the White House and from the Attorney General's March 13, 2007 press conference.

A growing number of Senators, both Republican and Democratic, have called for the Attorney General's resignation. Likewise Members of the House of Representatives and other current and former public officials, both Republican and Democratic, have called for his resignation. The President determines the standard of conduct, candor, competence and effectiveness for his Administration. President Bush and his spokespeople continue to tell the American people that the Attorney General enjoys his confidence and support, so the Attorney General must represent the standards this President expects.

I want the American people to have a Justice Department and United States Attorneys offices that enforce the law without regard to political influence and partisanship. I want the American people to have confidence in federal law enforcement and I want our federal law enforcement officers to have the independence they need to be effective and merit the trust of the American people.

What we have heard from the Administration has been a series of shifting explanations and excuses and a lack of accountability or acknowledgement of the seriousness of this matter. The answers to our questions from the Attorney General and the Deputy Attorney General at their hearings earlier this year, as well as statements from White House spokespeople and other Justice Department officials have been contradicted by the testimony of the former U. S. Attorneys and the limited emails and other documents we have obtained from the Department of Justice. Despite the initial denials of White House involvement, it is now apparent that White House officials were involved in the planning and execution of the firings, the consideration of replacements, and the subsequent misleading explanations from Justice officials.

Our investigation is an important one and we should not limit its scope or prejudge its outcome. We need to follow the facts and get to the truth.

We have still received no response from White House Counsel Fred Fielding to three letters we have sent him since his unacceptable "take it or leave it" offer of March 20. That proposal would unacceptably constrain our ability to investigate and deny the American people what they want and deserve, namely the public testimony of the White House staff who were involved in this affair.

On March 22, 10 Members of this Committee responded to Mr. Fielding's March 20 letter and invited the White House to agree to provide the investigating Committees of the Congress, both House and Senate, with access to witnesses, information and relevant documents. On March 28, House Judiciary Chairman Conyers and I sent a letter to Mr. Fielding asking him to reconsider his "all or nothing" approach with respect to documents. He had identified documents that the White House was willing to provide, and we urged him to provide those documents to us without delay so as to narrow our dispute and further the investigation.

Last Thursday, I sent Mr. Fielding another letter, asking him to provide us the materials and information about "reviews by the White House staff" that have led the President to conclude publicly that there was no wrongdoing and nothing inappropriate. The White House cannot have it both ways. If they wanted to remain silent, they should have. They have not. Instead, they proclaim their conclusion that based on their internal reviews nothing bad happened but then withhold from Congress the information, facts, documents and witnesses we need to make

evaluations of the matter.
There has been no response to these three letters. To date, we have received no documents from the White House and no testimony of any White House personnel. The Washington Post column earlier this week was correct to note: "Fielding couched his March 20 offer in take-it-or-leave-it terms -- and then promptly left."
The President acknowledged at his press conference on March 20 that Congress is examining these questions and "the role the White House played in the resignations of these U.S. attorneys." He said that he recognized the importance of our "understanding how and why this decision was made." He indicated that the White House would be making the relevant White House staff available and providing relevant documents. Despite his indicating that we would be provided with information from the White House, that has not happened.

Despite this lack of cooperation, the President and White House surrogates assert publicly that there was no wrongdoing. With all due respect to President Bush, we need to know who was involved in conducting "the reviews by the White House staff," what did they examine, who did they interview, and what documents did they review in coming to the conclusion that no one did anything "improper." What other investigations and reviews has the Administration undertaken into this matter? Who was involved in conducting those investigations and reviews, what did they examine, who did they interview, and what documents did they review in coming to the conclusion that there is no evidence of wrongdoing? What evidence of wrongdoing has the Administration rejected as "not credible" in the course of its investigations and reviews into these matters?

The dismissed U.S. attorneys have testified under oath and said in public that they believe political influence was applied. They have given chapter and verse and specific examples. If they are right, that mixing of partisan political goals into federal law enforcement is highly improper. What has led the Administration to discount that testimony?

What has led it to discount the March 29 testimony of D. Kyle Sampson, former Chief of Staff to the Attorney General, that the Attorney General and White House officials including Karl Rove and former White House Counsel Harriet Miers were deeply involved in the decision to fire and replace certain U.S. Attorneys, who, according to internal evaluations and performance reviews, had been doing their jobs well? The testimony of Mr. Sampson, corroborated by documents released by the Department, demonstrated that, contrary to the Attorney General's statements, Attorney General Gonzales had talked to Mr. Sampson about the plan to fire prosecutors many times dating back at least two years, beginning after the 2004 election when he was still the White House counsel.

What has led it to discount Mr. Sampson's testimony that Karl Rove complained to the Attorney General about U.S. Attorneys not being aggressive enough against "voter fraud" in three jurisdictions and that those three names were added to the list of U.S. Attorneys targeted for removal? Documents and the testimony of Mr. Sampson have shown that Mr. Iglesias was held in high regard and even mentioned for possible promotion to the highest levels of the Department in 2004 and 2005, until late in 2006. At that time, Administration officials received calls from New Mexico Republican lawmakers upset that Mr. Iglesias would not hurry an

investigation in order to indict Democrats before the 2006 elections. Then Mr. Rove apparently spoke to the Attorney General and David Iglesias was added to the list for replacement.

What has led the Administration to discount Mr. Sampson's testimony that he had suggested to the White House that Patrick Fitzgerald be fired and replaced in the middle of the investigation and prosecution in connection with the leaking of Valerie Plame's identity as an undercover CIA agent? This investigation led to the conviction of I. Lewis Libby, the former Chief of Staff to the Vice President, for perjury, lying and obstruction of justice.

What has led the Administration to discount documents showing that discussions began at the highest levels of the Justice Department about the "real problem with Carol Lam," former U.S. Attorney for the Southern District of California, immediately following notice of the expansion of the public corruption probe Ms. Lam was leading into the activities of Republican Rep. Randy ("Duke") Cunningham and other Republican officials? What about documents and testimony showing that John McKay, former U.S. Attorney for the Western District of Washington, was highly praised by Mr. Sampson and others in the Administration and supported by them for a judgeship as late as the summer of 2006, but was included in the list of people to fire later in 2006? Documents and Mr. McKay's testimony suggest that Republicans were upset with Mr. McKay for his decision not to intervene in connection with the close 2004 gubernatorial election in Washington.

What about the testimony of Deputy Attorney General Paul McNulty that former Eastern District of Arkansas U.S. Attorney H.E. "Bud" Cummins, III was removed to make room for Tim Griffin, a former operative for Karl Rove? Or the documents that demonstrate this was done over the objection of home state Senators and with an intent to circumvent Senate confirmation?

Those who seek to justify the firings in order to more vigorously investigate "voter fraud" have yet to counter the recent testimony of FBI Director Mueller to the Senate Judiciary Committee that he was not aware of any voter fraud cases that should have been brought but were not, nor had any FBI agents or officials brought such complaints to his attention.

This investigation stems from this Committee's jurisdiction and responsibilities to the Senate and the American people. Under the Senate's Organizing Resolution and Standing Rules, the Judiciary Committee has the authority to conduct oversight and investigations related to the Department of Justice and U.S. attorneys' offices. We have the authority to examine whether inaccurate or incomplete testimony was provided to the Committee, to consider legislation within our jurisdiction, and to protect our role in evaluating nominations pursuant to the Senate's constitutional responsibility to provide advice and consent. Indeed, it was in light of this jurisdiction, the confirmation power vested in the Senate, and the jurisdiction of this Committee over the review of U.S. attorney nominations, our Ranking Member observed early on that we have "primary" responsibility to investigate this matter.

I hope that Republicans and Democrats on the Committee will support these authorizations so that the Committee can maintain the flexibility to obtain access to the documents and witnesses it needs to continue with this important investigation and get answers to important questions.

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Statement of Senator Patrick Leahy,
Chairman, Committee on the Judiciary,
On "Federal Agency Data Mining Reporting Act of 2007"
April 12, 2007

Today, the Committee is considering the Federal Agency Data Mining Reporting Act. This important privacy legislation helps restore key checks and balances in our government, by requiring that federal agencies report to Congress on their data mining programs and activities. The Committee has held over this bill for six consecutive weeks and I hope that the Committee will favorably report this bill today.

I thank Senator Feingold for his leadership on this issue. I am proud to be an original cosponsor of this bipartisan legislation.

During the recent hearing that this Committee held on government data mining programs, we learned that the Federal Government's use of data mining technology has exploded in recent years. According to a May 2004 report by the General Accountability Office, there are at least 199 different government data mining programs operating or planned throughout the Federal Government.

But, sadly, the Congress and the public know very little about most of these data mining programs, making them ripe for abuse.

Recently, the Washington Post reported that the Department of Homeland Security may have violated federal privacy laws while testing the ADVISE data mining program - a data mining program would mine vast amounts of sensitive personal information about ordinary Americans, such as flight and hotel reservations.

According to a new report by the Government Accountability Office, the privacy violation at DHS is just one of three privacy violations that the GAO found in separate government data mining programs.
The troubling situation with the ADVISE data mining program demonstrates that, too often, government data mining programs lack adequate safeguards to protect the privacy rights and civil liberties of ordinary Americans.

The Transportation Security Administration ("TSA") has also recently admitted that its own controversial "Secure Flight" data mining program violated federal privacy laws, because TSA failed to notify U.S. air travelers of the fact that their personal data was being collected for government use.

Without proper safeguards, government data mining programs are prone to produce inaccurate results and are ripe for abuse.

This legislation takes an important first step to address these concerns by requiring federal agencies to tell Congress how they are using data mining technology and what steps they are taking to protect privacy and civil liberties.

In addition, this bill does not prohibit the use of data mining technology. But, rather, the bill provides meaningful oversight to ensure that data mining technology is being used appropriately and effectively.

This is bipartisan legislation that every member of this Committee should support. In fact, in 2005, the full Senate included these same data mining reporting requirements in the appropriations bill for the Department of Homeland Security.

Because this bill advances an important objective of keeping government data bases from being misused, I support this bill and I urge all members of the Committee to support this important privacy legislation.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On Consideration of the Leahy-Cornyn OPEN Government Act

April 12, 2007

I am pleased that the Committee will consider the Openness Promotes Effectiveness in our National Government Act" (the "OPEN Government Act"), S. 849 today. This bipartisan bill contains commonsense reforms to update and strengthen the Freedom of Information Act ("FOIA") for all Americans.

I thank Senator Cornyn for his strong leadership as the chief cosponsor of this bill. I also thank the Committee's Ranking Member, Senator Specter, and Senator Feingold for cosponsoring this legislation.

Last year, this Committee favorably reported an essentially identical bill. Sadly, the full Senate did not consider this legislation before it adjourned last year. But, I hope that the Senate will do its part to reinvigorate FOIA this year, by promptly passing this bill.

During the Committee's hearing on this legislation, we learned that the Freedom of Information Act remains an indispensable tool in shedding light on bad policies and government abuses. But, today, FOIA also faces challenges like never before.

According to a report by the National Security Archive, an independent non-governmental research institute, the oldest outstanding FOIA requests date back to 1989 -- before the collapse of the Soviet Union.

Yesterday, the Washington Post reported that the FBI recently said that it will need six years - until 2013 -- to respond to a FOIA request seeking information about the Bureau's Information Data Warehouse database.

And, more than a year after the President's directive to government agencies to improve their FOIA services, Americans who seek information under FOIA remain less likely to obtain it than during any other time in FOIA's 40-year history

The OPEN Government Act takes several important steps to reverse this trend and to restore openness to our government. Among other things, our bill:

? Restores meaningful deadlines for agency action under FOIA;
? Imposes real consequences on federal agencies for missing statutory deadlines;
? Clarifies that FOIA applies to agency records held by outside private contractors;
? Establishes a FOIA hotline service for all federal agencies; and
? Creates a FOIA Ombudsman as an alternative to costly litigation.

Senator Cornyn and I drafted this legislation after a long and thoughtful process of consultation with individuals and organizations that rely on FOIA to obtain information.

This legislation is endorsed by more than 25 different organizations representing all facets of the political spectrum, including the news media, librarians, and public interest groups. I submit letters of support for this bill that I recently received from the Sunshine in Government Initiative, the League of Women Voters and the American Library Association for the record.

Senator Cornyn and I know that open government is not a Democratic issue or a Republican issue. It is an American issue. In that spirit, I urge all Members of the Committee to join us in supporting this important open government legislation.

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