

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
Subcommittee Hearing on "Oversight of the Federal Death Penalty"
Wednesday, June 27, 2007

I would like to thank Senator Feingold for his leadership on the issue of the death penalty and for this important contribution to the Judiciary Committee's work this year to restore oversight to the Department of Justice - oversight that is long overdue. I have long shared Senator Feingold's concerns about the federal death penalty, and I am pleased to join him in working to ensure that decisions about capital punishment are made carefully and are subject to real oversight from Congress.

More than seven years ago, I came to the Senate floor to call attention to a national crisis in the administration of capital punishment. I noted that since the reinstatement of capital punishment in the 1970s, 85 people had been found innocent and released from death row. And I urged Senators on both sides of the aisle, both those who supported the death penalty and those who opposed it, to join in seeking ways to minimize the risk that innocent persons will be put to death.

At that time, I introduced the Innocence Protection Act of 2000, and I worked with many others for years until its passage as part of the Justice For All Act of 2004. That legislation made key strides in ensuring that capital defendants had access to DNA testing and to effective counsel, which greatly reduces the chance of innocent people being sentenced to death. That was an important achievement.

Since that time, though, as in so many other areas, the Bush Administration has proceeded on its own path and in secrecy. They have sought to increase the use of the federal death penalty nationwide, even in states that do not want it; they have consistently failed to allocate funding for Innocence Protection Act; and most disturbingly, they have apparently insisted on requesting the death penalty in cases lacking strong evidence over the strenuous objections of dedicated United States Attorneys.

I was struck by the testimony today of former U.S. Attorney Paul Charlton, who reports that he vigorously opposed seeking the death penalty in one case with no forensic evidence, but that his opposition was dismissed without any opportunity for him to discuss the matter with the Attorney General. Even more troubling, as Deputy Attorney General McNulty's chief of staff

Michael Elston told Mr. Charlton at the time, Mr. McNulty and Attorney General Gonzales "had spent a significant amount of time on this issue ..., perhaps as much as 5 or 10 minutes."

It is beyond obvious to say that 5 or 10 minutes is not sufficient to make a careful decision about whether to seek to execute a person in a difficult case. But I worry that the Attorney General and the Deputy Attorney General may also have taken no more than 5 or 10 minutes in deciding to accept the recommendation from the White House or elsewhere that Mr. Charlton be fired in spite of his courageous and diligent service.

I also appreciate the testimony of Roberto Sanchez Ramos, the Secretary of Justice for Puerto Rico, for sharing his concerns about the imposition of the death penalty by the federal government on jurisdictions like Puerto Rico that have chosen not to have the death penalty in their state systems. I am sympathetic because Vermont, like Puerto Rico, is a non-death penalty state that nonetheless has seen this Justice Department seek the death penalty in that jurisdiction.

Through all of this, the leadership of the Department of Justice has kept its decision-making on these life or death issues quiet, out of the light of day. It is time for us to shine some light on these issues, and this hearing is an important start.

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