

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 24, 2007

STATEMENT OF CHAIRMAN PATRICK LEAHY,
SENATE JUDICIARY COMMITTEE,
HEARING ON OVERSIGHT OF THE DEPARTMENT OF JUSTICE
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Three months ago, when Attorney General Gonzales last appeared before this Committee, I said that the Department of Justice was experiencing a crisis of leadership perhaps unrivaled during its history. Unfortunately, that crisis has not abated. Until there is independence, transparency and accountability, it will continue. The Attorney General has lost the confidence of the Congress and the American people. Through oversight we hope to restore balance and accountability to the Executive Branch. The Department of Justice must be restored to be worthy of its name. It should not be reduced to another political arm of the White House. The trust and confidence of the American people in federal law enforcement must be restored.

With the Department shrouded in scandal, the Deputy Attorney General has announced his resignation. The nominee to become Associate Attorney General requested that his nomination be withdrawn rather than testify under oath at a confirmation hearing. The Attorney General's chief of staff, the Deputy Attorney General's chief of staff, the Department's White House liaison and the White House Political Director have all resigned, as have others. I would joke that the last one out the door should turn out the lights, but the Department of Justice is too important for that -- we need to shine more light there, not less.

The investigation into the firing for partisan purposes of United States Attorneys, who had been appointed by this President, along with an ever-growing series of controversies and scandals have revealed an Administration driven by a vision of an all-powerful Executive over our constitutional system of checks and balances, that values loyalty over judgment, secrecy over openness, and ideology over competence.

The accumulated and essentially uncontroverted evidence is that political considerations factored into the unprecedented firing of at least nine United States Attorneys last year. Testimony and documents show that the list was compiled based on input from the highest political ranks in the White House, that senior officials were apparently focused on the political impact of federal prosecutions, on whether federal prosecutors were doing enough to bring partisan voter fraud and corruption cases, and that the reasons given for these firings were contrived as part of a cover up.

What the White House stonewalling is preventing is conclusive evidence of who made the decisions to fire these federal prosecutors. We know from the testimony that it was not the President. Everyone who has testified has said that he was not involved. None of the senior officials at the Department of Justice could testify how people were added to the list or the real reasons that people were included among the federal prosecutors to be replaced. Indeed, the evidence we have been able to collect points to Karl Rove and the political operatives at the White House. The stonewalling by the White House raises the question: What is it that the White House is so desperate to hide?

The White House has asserted blanket claims of executive privilege, despite officials' contentions that the President was not involved. They refuse to provide a factual basis for their blanket claims, have instructed former White House officials not to testify about what they know, and then instructed Harriet Miers to refuse even to appear as required by a House Judiciary Committee subpoena. Now, anonymous officials are claiming that the statutory mechanism to test White House assertions of Executive privilege no longer governs. In essence this White House asserts that its claim

of privilege is the final word, that Congress may not review it, and that no court can review it. Here, again, this White House claims to be above the law.

My oath, unlike those who have apparently sworn their allegiance to this President, is to the United States Constitution. I believe in checks and balances and in the rule of law.

Despite the stonewalling and obstruction, we have learned that Todd Graves, U.S. Attorney in the Western District of Missouri was fired after he expressed reservations about a lawsuit that would have stripped many African-American voters from the rolls in Missouri. When the Attorney General replaced Mr. Graves with Bradley Schlozman, the person pushing the lawsuit, that case was filed and ultimately thrown out of court. Once in place in Missouri though, Mr. Schlozman also brought indictments on the eve of a closely contested election, despite the Justice Department policy not to do so. This is what happens when a responsible prosecutor is replaced by a "loyal Bushie" for partisan, political purposes.

Mr. Schlozman also bragged about hiring ideological soulmates. Monica Goodling likewise admitted "crossing the line" when she used a political litmus test for career prosecutors and immigration judges. Rather than keep federal law enforcement above politics, this Administration is more intent on placing its actions above the law.

The Attorney General admitted recently in a video for Justice employees that injecting politics into the Department's hiring is unacceptable. But is he committed to corrective action and routing out the partisanship in federal law enforcement? His lack of independence and tendency to act as if he were the President's lawyer rather than the Attorney General of the United States makes that doubtful. From the infamous torture memo, to Mr. Gonzales' attempt to prevail on a hospitalized Attorney General Ashcroft to certify an illegal eavesdropping program, to the recent opinion seeking to justify Harriet Miers' contemptuous refusal to appear before the House Judiciary Committee, the Justice Department has been reduced to the role of enabler for this Administration. What we need instead is genuine accountability and real independence.

We learned earlier this year of systematic misuse and abuse of National Security Letters, a powerful tool for the Government to obtain personal information without the approval of a court or prosecutor. The Attorney General has said he had no inkling of these or other problems with vastly expanded investigative powers. Now we know otherwise. Recent documents obtained through Freedom of Information Act lawsuits and reported in The Washington Post indicate that the Attorney General was receiving reports in 2005 and 2006 of violations in connection with the PATRIOT Act and abuses of National Security Letters. Yet, when the Attorney General testified under oath before the Senate Select Committee on Intelligence in April 2005, he said that "[t]he track record established over the past three years has demonstrated the effectiveness of the safeguards of civil liberties put in place when the Act was passed." Earlier this month, in responses to written questions I sent to the Attorney General about when he first learned of problems with National Security Letters, he once again failed to mention these reports of problems.

Only with the openness and honesty that brings true accountability will the Department begin to move forward and correct the problems of the last few years. Instead, we have leadership at the Department of Justice whose expressions of concern and admissions that mistakes were made only follow public revelations and amount to regrets that their excesses were uncovered.

In the wake of growing reports of abuses of National Security Letters, the Attorney General announced a new internal program. This supposed self-examination, with no involvement by the courts, no report to Congress, and no other outside check, essentially translates to "trust us." With a history of civil liberties abuses and cover-ups, this Administration has squandered our trust. Earlier internal reviews, like the Intelligence Oversight Board and the Privacy and Civil Liberties Oversight Board have been ineffective and inactive, failing to take action on the violations reported to them. Only with a real check from outside of the Executive branch can we have any confidence that abuses will be curbed and balance restored.

A tragic dimension of the ongoing crisis of leadership at the Justice Department is the undermining of good people and the crucial work that it does. Thousands of honest, hard-working prosecutors, agents, and other civil servants labor every day to detect and prevent crime, uncover corruption, promote equality and justice, and keep us safe from terrorism. Sadly, prosecutions will now be questioned as politically-motivated and evidence will be suspected of

having been obtained in violation of laws and civil liberties. Once the government shows a disregard for the independence of the justice system and the rule of law, it is very hard to restore the people's faith. This Committee will do its best to try to restore independence, accountability, and commitment to the rule of law to the operations of the Justice Department.

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