

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 18, 2007

Closing Remarks Of Sen. Patrick Leahy,
Chairman, Senate Judiciary Committee,
At The Conclusion Of Attorney General Nominee Michael Mukasey's Testimony
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I hope that these hearings turn out to be a step on the road to restoring the Department of Justice. It needs it desperately.

I have talked to you privately about the fact that I hope that you put back a Department of Justice that can be in good hands for whoever your successor might be, as the 82nd attorney general.

That might be in a year. It might be in several years. I have no way of knowing. I have no way of knowing whether we're going to have a president of my party or a president of your party. But I think we can both agree, no matter what party you belong to, you need a strong, independent attorney general and Department of Justice.

Now, I think we face the most serious threat to the effectiveness and professionalism of the United States Department of Justice since Watergate and the Saturday Night Massacre.

After Richard Nixon became the only American President to resign from office, President Ford appointed Edward Levi and former Judge Harold Tyler, someone both you and I admire, to begin the process of restoring the Department of Justice. It's too important an institution in our country to remain dysfunctional.

I might say, I hope that a Judge Mukasey, like Judge Harold Tyler with whom you worked, will begin to restore the department's integrity. You've testified that the Department must stand for the rule of law. I would also add to its mandate that: it must stand for justice.

Nothing's more fundamental to our constitutional democracy than the precept that nobody's above the law, neither you nor I nor a president. I believe this Administration has undercut that precept time and time again. The President's commutation - I realize he has a power to do this, but a commutation of the sentence given to Scooter Libby, the former chief of staff to the Vice President, who was convicted after a fair jury trial of lying to the FBI and to a grand jury, and of obstructing justice. We see them promoting immunity over accountability, certainly secrecy over congressional oversight, and unilateral power over the checks and balances that have defined this Nation. Actually, I might say those checks and balances not only define the Nation, they've protected your liberties and mine for over two centuries.

And I don't believe that the President is above the law, even though many in the Administration seem to feel he is. And a view that may override the laws he chooses is an extreme abuse of executive power as I've witnessed. I think it's dead wrong. But I think it's extremely dangerous to our democracy. The cost to American liberty, our standing in the world, and to the security of our soldiers and citizens can be staggering if we allow the president to be above the law; even more staggering than the trillion dollar cost of the war in Iraq. And I think when the Administration compounds its lawlessness by cloaking its policies and miscalculations under a veil of secrecy, that leaves the Congress and the American people in the dark about what it's doing.

I've not known any administration, Republican or Democratic who hasn't been helped in the long run by having a real searching oversight, and having to admit, publicly, mistakes. Now, you and I have had some talk. We've had private meetings, and we've had open meetings here. I've been here for virtually all your testimony and listened to it. I do worry that there has been a retreat today from the clearer statements on the rule of law and the President not being above the law made yesterday. That's why I'll follow up with some very specific letters. If you have questions about what I have, just call me, and we'll sit down and go over them.

I don't want to see you appearing to posit a system where a president's overbroad and invalid claims of executive privilege can't be tested. So we'll continue to meet on that. I know that Senator Specter and others will want to.

The Attorney General has to uphold the Constitution and the law. He can't bend the law to fit whoever the president is. And I'll say that no matter who the president might be. We can't define torture down in secret and in fundamental conflict with American values and law. I agree with what you said in your opening statement, which I thought was very good. You spoke of "protecting civil liberties and people's confidence that those liberties are protected is part of protecting national security." I agree with that and also add they're a fundamental American strength and American value: one of the things I'm sure that appealed to your father when he came to this country. It certainly did to my grandparents and my great grandparents when they came to this country.

So the hearing's going to be the start of a new chapter. American laws and our values are no longer undercut in secret. The question in this hearing is not whether you'll be confirmed. The real test is going to be what kind of Attorney General you'll be. That's a test, but it's also a legacy you want to be able to leave this office, as we all do, in ours, with your head high.

The oversight process, and an Attorney General's cooperation with that process, can forge a working partnership. To paraphrase Ronald Reagan, a confirmation in part is an act of trust. Oversight helps us verify. And this committee and both parties are ready and willing to work with you. I think we've already begun.

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