Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
December 6, 2007

Opening Statement of Chairman Patrick Leahy
Senate Judiciary Committee
Executive Business Meeting
December 6, 2007

I welcome everyone back to our first business meeting after the Thanksgiving holiday. This week we have held three more important hearings before the Committee and have noticed three more hearings for next week. I hope during the week before Christmas to have the Committee hold hearings on a number of nominations to fill some of the many vacancies at the Department of Justice.

As I noted in a statement earlier this week, we are seeking to move ahead expeditiously to restore the leadership in Justice Department, but when the White House makes announcements and then does not follow through or cooperate with us, that makes progress impossible. It took three weeks from the White House announcement of a Deputy Attorney General nomination before we finally received it last evening. I immediately noticed a hearing and we will do our best in the time remaining to us this session to make progress on the nomination of Judge Filip.

We have the opportunity to make some progress today by considering the nomination of the Assistant Attorney General for the Environment and Natural Resources Division at the Department of Justice. I thank Senator Whitehouse for chairing the hearing on that nomination. We also have before us three U.S. Attorney nominations. Two are to replace U.S. Attorneys purged one year ago as part of the U.S. Attorney scandal. All three have the support of their home state Senators. I am seeking to expedite their consideration and hope that no one will exercise their rights to hold those matters over until next week. In the wake of the wave of unprecedented firings of U.S. Attorneys engineered by political operatives at the White House, more than a quarter of the U.S. Attorney offices around the country are having to function without a Senate-confirmed, Presidentially-appointed U.S. Attorney. I have urged the President to work with us and with home state Senators to correct this and am trying to have us do our part.

Last week, while the Senate was still in recess, I took the next step in our investigation by confronting the White House's continued stonewalling of our investigations into the scandals that have plagued the Justice Department. These scandals have led to the resignations of Attorney General Gonzales, the Deputy Attorney General, the Associate Attorney General, the chiefs of staff of the Attorney General and Deputy Attorney General, the White House Liaison and so many others, including Karl Rove and his political deputies at the White House. Last week I ruled that the White House's blanket privilege and immunity claims are not legally valid to excuse current and former White House employees from appearing, testifying and producing documents related to this investigation. I directed them to comply immediately with the Committees' subpoenas. They have not done so and so now we must take the next steps to enforce the Committee's subpoenas. I ask that my Ruling be included in the Committee record.

Today, we have on our agenda resolutions finding White House Chief of Staff Joshua Bolten and former Deputy Chief of Staff Karl Rove in contempt of Congress for refusing to comply with subpoenas issued in the U.S. Attorney investigation by this Committee. This is not a step I have wanted to take--in fact, I have tried for many months to find ways to work with the White House and avoid a confrontation.

The President has not accepted responsibility for the firings or given any indication that he was involved in White House efforts to politicize federal law enforcement. Instead, the White House line is that "mistakes were made" but that we, the Congress, are to blame for the Gonzales resignation. Apparently no one, least of all the President, is responsible, yet somehow executive privilege supposedly applies to cloak all White House activities and communication in regards to these firings affecting the independence and integrity of federal law enforcement from oversight.

The White House counsel asserts that executive privilege covers all documents and information in the possession of the White House. They have gone further and claimed absolute immunity even to have to appear and respond to this Committee's subpoenas for Mr. Rove and Mr. Bolten. And they contend that their blanket claim of privilege cannot be tested but must be accepted by the Congress as the last word. Their views of the unitary and all powerful Executive know no bounds.

Before issuing subpoenas to the White House and its current and former employees, I sent nearly a dozen letters seeking voluntary cooperation with the Committee's investigation. Since issuing subpoenas, I have continued to seek an accommodation. I followed Senator Specter's suggestion and requested a meeting with the President to work out our differences. I was flatly rebuffed. Despite mounting evidence of significant involvement by White House political officials, the White House has not produced a single document and has not allowed even one White House employee or former employee involved in these matters to be interviewed or to testify about the firings.

The White House's response to the Committee's subpoenas has been to assert blanket claims of executive privilege and novel claims of absolute immunity to block current and former officials from complying. Based on these claims, neither Mr. Rove nor Mr. Bolten even appeared before the Committee. The effects of the White House's assertions of privilege and immunity have been unmistakable--amounting to the withholding of critical evidence related to the Committee's investigation. The Committee needs this information in order to perform its legislative and oversight functions, to protect its role in providing advice and consent on nominations, to explore the veracity of testimony, and to determine whether there has been any corruption or impropriety in the administration of existing laws.

The position taken by this White House in refusing to turn over documents or allow White House officials and former officials to testify is a dramatic break from the practices of every administration since World War II in responding to congressional oversight. In that time, presidential advisers have testified before congressional committees 74 times, either voluntarily or compelled by subpoenas.

We have found evidence of the involvement of White House political officials in pressuring prosecutors to bring partisan cases and seeking retribution against those who refuse to bend to their political will. One example is New Mexico U.S. Attorney David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported "voter fraud" enforcement cases in Mr. Iglesias' jurisdiction. During his sworn testimony, the last Attorney General himself contrasted these politically-motivated firings with the replacement of other United States Attorneys for "legitimate cause."

Executive privilege should not be invoked to prevent investigations into wrongdoing, and certainly should not prevail. These resolutions are an effort to provide a fuller account and accountability. We should act to protect Congress' ability to conduct oversight and the right of the American people to learn the whole truth about these firings.

I have also placed on the agenda Senator Specter's bill to use the legal concept of substitution as an alternative to retroactive immunity in connection with the warrantless wiretapping of Americans contrary to law from 2001. I commend his effort and look forward to that discussion.

Also on our agenda are three legislative items concerning the judiciary and three involving children. I trust we will work through the judiciary matters today and hope that we can also report the reauthorization of the National Center for Missing and Exploited Children.

After we hear from Senator Specter, I intend to call on Senator Kennedy for an announcement and then we will proceed to the business at hand. I urge all Members who have not yet arrived to come and participate with us in the work of the Committee.

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Statement of Chairman Patrick Leahy
Senate Judiciary Committee
On Executive Branch Nominations
Executive Business Meeting
December 6, 2007

With only a few legislative days left to us before the Christmas holidays and the end of this session, we continue to make significant progress on filling the remaining high-level vacancies at the Justice Department.

Today, the Committee considers the nomination of Ronald Jay Tenpas to be Assistant Attorney General for the Environment and Natural Resources Division at the Justice Department. I thank Senator Whitehouse for chairing his hearing.

I have placed on the Committee's agenda three more nominations for U.S. Attorneys, including the nominations of Gregory A. Brower to the District of Nevada, Diane J. Humetewa to the District of Arizona, and Edmund A. Booth, Jr. to the Southern District of Georgia. Two of the three nominations - Ms. Humetewa and Mr. Brower - are replacements for two of the outstanding U.S. Attorneys who were fired almost a year ago as part of the ill-advised, partisan plan to fire well performing U.S. Attorneys. I thank the home-state Senators - Senators Reid, Ensign, McCain, Kyl, Chambliss, and Isakson - for their consideration of these nominations.

Over the course of this year the Judiciary Committee's investigation into the firing of United States Attorneys and into the influence of White House political operatives on federal law enforcement resulted in the resignations of the leadership of the Justice Department, including the Attorney General, the Deputy Attorney General, the Associate Attorney General, the chiefs of staff of the Attorney General and Deputy Attorney General, the White House liaison, and many others.

For months I have been talking publicly and privately as well about the need to fill the remaining vacancies with nominees who will restore the independence of federal law enforcement.

With great fanfare, in the days before the congressional Thanksgiving recess, the White House made a show of releasing the names of a score of nominees. Yet, that "announcement" was mostly bluster. So, for example, today, three weeks after those announcements, Kevin O'Connor has still not been nominated to be the Associate Attorney General, and Gregory Katsas has still not been nominated to be the Assistant Attorney General of the Civil Division at the Department of Justice. It was only last night that we finally received the nomination of Mark Filip to be the Deputy Attorney General--three weeks after that announcement was made. I immediately noticed a hearing for Judge Filip.

Indeed, it was not until this week that we received the questionnaires for the President's nominations for the important Civil Rights Division and the Tax Division at the Department of Justice, more than two weeks after those nominations were announced.

If we can report the nominations of Ronald J. Tenpas and the three U.S. Attorneys on our agenda, the Committee will have reported 20 executive nominations this year. To make further progress, the Committee will seek to hold further hearings the week before Christmas.

The White House has made an abysmal effort to send nominees to the Senate to replace the fired U.S. Attorneys and to fill vacancies in those districts and many others. There are now 23 districts with acting or interim U.S. Attorneys instead of Senate-confirmed U.S. Attorneys. That is over a quarter of all districts. Yet the White House has nominated only seven people for these 23 spots. Of course, some of these could have been filled a year ago had the White House worked with the Senate.

In the course of the Committee's investigation into the unprecedented mass firing of U.S. Attorneys by the President who appointed them, we uncovered an effort by officials at the White House and the Justice Department to exploit an

obscure provision enacted during the Patriot Act reauthorization to do an end-run around the Senate's constitutional duty to confirm U.S. Attorneys. The result was the firing of well-performing U.S. Attorneys for not bending to the political will of political operatives at the White House.

When it comes to the United States Department of Justice and to the U.S. Attorneys in our home states, Senators have a say and a stake in ensuring fairness and independence in order to insulate the federal law enforcement function from untoward political influence. That is why the law and the practice has always been that these appointments require Senate confirmation. The advice and consent check on the appointment power for U.S. Attorneys is a critical function of the Senate.

I had hoped when the Senate voted overwhelmingly to close the loophole created by the Patriot Act, passing S.214, the "Preserving United States Attorneys Independence Act of 2007," by a vote of 97-0, it would send a clear message to the Administration to make nominations that could receive Senate support and begin to restore an important check on the partisan influence in law enforcement.

Yet, even as we closed one loophole, the Administration has been exploiting others to continue to avoid coming to the Senate. Under the guidance of an erroneous opinion of the Justice Department's Office of Legal Counsel, the Administration has been employing the Vacancies Act authority to use acting U.S. Attorneys and the power to appoint interim U.S. Attorneys sequentially. They have used this misguided approach to put somebody in place for 330 days without the advice and consent of the Senate. This approach runs afoul of congressional intent and the law.

As always, we will continue to make progress when we can, and I will continue to urge the White House to send the Senate consensus, qualified nominees.