

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
ON EXECUTIVE NOMINATIONS CONFIRMATION HEARING
JANUARY 22, 2008

We begin the second session of the 110th Congress, by continuing the critical work of restoring professionalism and independence to the Department of Justice. With today's hearing, our first in the new year, we continue to work to fill the high-level vacancies at the Justice Department after a crisis of leadership under the former Attorney General left those ranks decimated.

I thank Senator Whitehouse for agreeing to chair this hearing today on two important nominations to the Department in which he served as U.S. Attorney for Rhode Island. If Kevin O'Connor is confirmed to be Associate Attorney General, the number three position at the Justice Department, he would oversee 13 Justice Department components. We will also hear from Gregory G. Katsas, the nominee to be Assistant Attorney General of the Civil Division at the Justice Department, the Division that represents the interests of the Federal Government and its agencies in important civil matters.

This hearing comes at a critical time for our Nation. Last session, this Administration continued to promote immunity over accountability, secrecy over responsiveness to congressional oversight, and unilateral power over the checks and balances that have defined this Nation and protected Americans' rights and freedom for more than two centuries. Our efforts on this Committee made a difference and began the process of restoring the Department of Justice and rebuilding the American people's faith in it.

Last year, many high-ranking Department officials - including the former Attorney General, Deputy Attorney General, Associate Attorney General, and many others, along with several high ranking White House political operatives - resigned during the Committee's investigation into the firing of well-performing U.S. Attorneys for partisan, political purposes and our exposure of the influence of White House political operatives on federal law enforcement.

Shrouded in scandal, the Department experienced a crisis of leadership reminiscent of the worst days of Watergate, one that has taken a heavy toll on the tradition of independence that has long guided the Justice Department and provided it with a safe harbor from political interference. It shook the confidence of the American people and Congress. We need to restore the Department to a law enforcement institution that will uphold the rule of law free from fear or favor.

In the course of the Committee's investigation into the unprecedented mass firings of U.S. Attorneys, we also uncovered an effort by officials at the White House and 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 will of political operatives at the White House. Indeed, Mr. O'Connor served as Chief of Staff to Attorney General Gonzales at a time when we were investigating the firings and the Department and Administration provided us with shifting stories for why they occurred. We will be interested to hear about Mr. O'Connor's involvement and what insights he has gained from that time.

I had hoped that when the Senate voted overwhelmingly to close the loophole created by the Patriot Act when we passed 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 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 guise 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.

We also learned startling new revelations about the extent to which some will go to avoid accountability, undermine oversight, and stonewall the truth. Just last month, we learned that the CIA destroyed videotapes of detainee interrogations. And two weeks later, in a regrettably familiar pattern, we learned that the involvement of senior Administration officials seems to have been much more significant than it appeared from their initial denials. These revelations are leading to additional investigations by the Justice Department, Congress, and the courts.

In light of this Administration's troubling record on thwarting checks and balances, the need for oversight continues. Next week our Committee will hold our first oversight hearing of the new session and our first with new Attorney General Michael B. Mukasey. We still have outstanding oversight requests and letters. I look forward to exploring these issues, and many more, with the Attorney General.

Mr. Katsas has been nominated to head the Civil Division, which has had a crucial role in protecting national security and defending the government in civil cases related to the war on terror - including defending challenges to the Patriot Act and defending the Administration's detainment and interrogation policies.

Several press reports detail the CIA's use of its own Gulfstream V and Boeing 737 jets to secretly transfer detainees to countries around the world, where it is likely that they will be tortured. The Justice Department defended this CIA policy before the Fourth Circuit in *El Masri v. Tenet*, a case where a Canadian citizen with no terrorist ties was abducted by our government, taken to a secret overseas prison, and detained for over a year.

The Administration made an historic mistake by suspending the writ of habeas corpus - not just for those confined at Guantanamo Bay but for millions of legal residents in the United States. The Justice Department defends the Military Commissions Act, which eliminated that hallowed right which guarantees an opportunity to go to court and challenge an abuse of power by Government.

For our government to condone torture is unacceptable to our ideals and a threat to our national security. Guantanamo Bay has caused us immeasurable damage to our reputation as a defender of democracy and a beacon of human rights around the world. We will want to know how Mr. Katsas's appointment will restore the independence of the Department of Justice and strengthen the rule of law.

With today's hearing on two executive nominees, we continue the tremendous progress we made at the end of last year in considering and confirming executive nominees. By the time we adjourned the first session of this Congress, the Committee had favorably reported 20 executive nominations and the Senate had already confirmed 22 executive nominations, including the confirmations of nine U.S. Attorneys, four U.S. Marshals, and nine other important positions.

Our Committee held hearings last session on nine executive nominations, including a two-day hearing on the nomination of Michael B. Mukasey to be Attorney General of the United States. Indeed, in the last week of the first session we held two confirmation hearings in order to expedite this President's executive nominations, including a hearing on five nominations for high-ranking Executive Branch positions and a hearing on Mark Filip to be Deputy Attorney General of the United States.

I worked to make further progress in connection with the nominations of Joseph P. Russoniello to be U.S. Attorney for the Northern District of California, Cynthia Dyer to be Director of the Violence Against Women Office, Nathan J. Hochman to be Assistant Attorney General of the Tax Division, and Scott M. Burns to be Deputy Director of National Drug Control Policy, Executive Office of the President.

Of course, we could have been in a position to make even more progress had the White House worked with us to send us timely nomination to fill the remaining vacancies with nominees who will restore the independence of federal law enforcement. For months I have been talking publicly about the need to name U.S. Attorneys around the country, since more than a quarter of those positions are not-Senate confirmed appointments.

We will continue to make progress when we can, and I continue to urge the White House to work with the Senate to fill these vacancies.

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