

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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STATEMENT OF CHAIRMAN PATRICK LEAHY
SENATE JUDICIARY COMMITTEE
OVERSIGHT HEARING WITH ATTORNEY GENERAL MUKASEY
JANUARY 30, 2008

Today, we welcome Michael Mukasey back before us for our first oversight hearing with the new Attorney General. And today we continue our work to restore the Department of Justice to its vital role of ensuring the fair and impartial administration of justice.

I first came to the Senate 33 years ago, when the Nation and the Department of Justice were reeling from Watergate and the trust of the American people in their government had been shaken. The damage done over the last seven years to our constitutional democracy and our civil liberties rivals the worst of those dark days. This President's administration has repeatedly ignored the checks and balances wisely placed on executive power by the Founders, who were concerned that they not replace the tyranny of George III with an American king.

Among the most disturbing aspects of these years has been the complicity of the Justice Department, which has provided cover for the worst of these practices. Its secret legal memoranda have sought to define torture down to meaninglessness, sought to excuse warrantless spying on Americans contrary to our laws and made what Jack Goldsmith, a conservative former head of the Office of Legal Counsel, has rightly called a "legal mess" of it all. This President and this administration have, through signing statements and self-centeredness, decided that they are above the law and can unilaterally decide what parts of what laws they will follow. The costs have been enormous, to our core American ideals, the rule of law, and the principle that in America, no one - not even a President - is above the law.

A little more than a year ago, Attorney General Gonzales sat in the chair now occupied by Attorney General Mukasey as we began our oversight efforts for the 110th Congress. Over the next nine months, our efforts revealed a Department of Justice gone awry. The leadership crisis came more and more into view as Senator Specter and I led a bipartisan group of concerned Senators to consider the United States Attorney firing scandal, a confrontation over the legality of the administration's warrantless wiretapping program, the untoward political influence of the White House at the Department of Justice, and the secret legal memos excusing all manner of excess.

This crisis of leadership has taken a heavy toll on the tradition of independence that has long guided the Justice Department and provided it with safe harbor from political interference. It

shook the confidence of the American people. Through bipartisan efforts among those from both sides of the aisle who care about federal law enforcement and the Department of Justice, we joined together to press for accountability that resulted in a change in leadership at the Department.

Today we continue the restoration of the Department through our oversight. I trust that today, Attorney General Mukasey will answer our questions and speak not as merely the legal representative of this President, but as the Attorney General for all Americans. I hope that he avoids the practice all too common in this administration and the old leadership at the Department of cloaking misguided policies under a veil of secrecy, leaving Congress, the courts, and the American people in the dark.

As we begin the final year of the Bush-Cheney administration, we continue to face more questions and shifting answers on issues ranging from the destruction of White House emails required by law to be preserved; to questions about the CIA's destruction of videotapes of detainee interrogations not shared with the 9/11 Commission, Congress or the courts; and more demands for immunity and unaccountability among those in the administration. This White House continues to stonewall the legitimate needs for information articulated by this Committee and others in the Congress, and to contemptuously refuse to appear when summoned by congressional subpoena.

The Bush-Cheney administration also created the unnecessary impasse we face today over the Foreign Intelligence Surveillance Act by breaking agreements it reached last summer with Congressional leaders in order to make cheap political points and ram through the deeply flawed Protect America Act. Instead of following through on its commitments and passing a bill that leaders in Congress and the administration agreed would protect both America's interests and the civil rights and liberties of individual Americans, this administration chose to renege on those agreements to grab sweeping new powers to spy on Americans without the necessary checks, balances, or accountability.

Today we will get some indication whether the new Attorney General will help us restore checks and balances to our government and recapture American ideals. We will learn whether we have begun a new chapter at the Department or whether we are just finishing the last one.

It is not enough to say that waterboarding is not currently authorized. Torture and illegality have no place in America. We should not delay beginning the process of restoring America's role in the struggle for liberty and human dignity. Tragically, this administration has so twisted America's role, law and values that our own State Department, our military officers and, apparently, America's top law enforcement officer, are now instructed by the White House not to say that waterboarding is torture and illegal. Never mind that waterboarding has been recognized as torture for the last 500 years. Never mind that President Teddy Roosevelt properly prosecuted Americans soldiers for this more than 100 years ago. Never mind that we prosecuted Japanese soldiers for waterboarding Americans during World War II. Never mind that this is the practice of repressive regimes around the world. That is not America.

This session I have joined with Senators Kennedy and Specter to cosponsor legislation to reign in this administration's abuse of the "state secrets" defense. I expect that will likewise be raised at this hearing along with torture, rendition, executive privilege and other key matters.

This Committee has a special stewardship role to protect our most cherished rights and liberties as Americans and to make sure that our fundamental freedoms are preserved for future generations. No one is more eager than I to see Attorney General Mukasey succeed in restoring strong leadership and independence to the Department of Justice. I hope that today we take a step forward to work together to repair the damage inflicted on our Constitution and civil liberties during the last seven years.

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Closing Statement of Chairman Patrick Leahy
Senate Judiciary Committee
Department of Justice Oversight Hearing with Attorney General Mukasey
January 30, 2008

I had hoped today would provide more clarity on so many critical issues. Instead, we heard references to legal opinions, justifications, and facts that remain hidden from Congress and the American people.

It is a hallmark of our democracy that we say publicly what the laws are and what conduct they prohibit. We have seen what happens when hidden decisions rendered in secret memos are withheld from the people's elected representatives and from the American people. It erodes our civil liberties and undermines our values as a nation of laws.

As I said when opening this hearing, it is not enough just to say that waterboarding is not currently authorized. The Attorney General of the United States should be able to declare that it is wrong, it is illegal, and it is beyond the pale. It has been for over a century.

Earlier today, I put in the record a letter I received from Major General John Fugh, Rear Admiral Don Guter, Rear Admiral John Hutson and Brigadier General David Brahms. They write with absolute clarity: "Waterboarding is inhumane, it is torture, and it is illegal." They also quote the sitting Judge Advocates General of the military services from our Committee's hearing last year in which they unanimously and unambiguously agreed that waterboarding is inhumane, illegal and a violation of law.

By not declaring that waterboarding is off limits, this administration undercuts the moral authority of the United States. Repressive regimes around the world are saying that whether they waterboard or torture will depend on the circumstances as they see them and whether they think they need to. This endangers American citizens and military personnel around the world and lowers the standards of human rights everywhere.

If an American were waterboarded anywhere in the world, no Senator and no other American would have to know the "circumstances" and purported justifications for it before condemning it. Tragically, this Administration has so twisted America's role, law and values that our own Attorney General cannot say that waterboarding of an American is illegal. That is how far from our moorings we have strayed.

Oversight helps make government work better, and hearings like this are accountability moments. The answers we have heard today leave the American people considerably short of what they deserve and what they should expect from the government that acts in their name.

This Committee wants to help you repair the damage that has been done to the Justice Department. I look forward to working closely with Attorney General Mukasey, and I hope that together we can find ways to restore strong leadership and independence to the Department of Justice.

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