

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

July 9, 2008

STATEMENT OF CHAIRMAN PATRICK LEAHY

CHAIRMAN, SENATE JUDICIARY COMMITTEE

ON DEPARTMENT OF JUSTICE OVERSIGHT

JULY 9, 2008

Today we welcome Michael Mukasey back to the Committee for his second appearance as Attorney General. Mr. Mukasey has been on the job for eight months since succeeding Alberto Gonzales. He is now more than halfway through his term as Attorney General. His tenure will be judged by how much he has done to restore the Department of Justice, an agency whose mission and objectives were severely undercut by scandals under the Bush administration. Mr. Mukasey will also be judged by what the Department has done - and not done - to reaffirm the checks and balances that are the fulcrum for our democracy, and a key to protecting the rights and liberties of all Americans.

When this Committee began its oversight efforts at the start of this Congress, we exposed a crisis of leadership and partisan political influence that had taken a heavy toll on the tradition of independence that has long guided the United States Department of Justice. Senators on this Committee from both sides of the aisle joined together to press for accountability. What followed was a change in leadership at the Department, with the resignations of Attorney General Gonzales, the Deputy Attorney General, the Associate Attorney General, their chiefs of staff, the White House liaison, and the resignations of Karl Rove, his political deputies, the White House Counsel, and others.

We have seen what happens when the rule of law plays second fiddle to a President's agenda and the partisan desires of political operatives. It is a disaster for the American people.

Both the President and the nation are best served by a Justice Department that provides sound advice and takes responsible action, not one that develops legalistic loopholes and ideological litmus tests to serve the ends of a particular administration.

The recent report from the Department's Inspector General confirms what our oversight efforts have uncovered about the politicizing of hiring practices at the Department. It confirms our findings and our fears that the same Bush Justice Department officials involved with the firing of United States Attorneys were injecting partisanship into the hiring of young attorneys. I expect further reports from the Inspector General will shed additional light on the extent to which the Bush administration has allowed politics to affect - and infect - the Department's priorities, from law enforcement to the operation of the Civil Rights Division to the Department's hiring practices.

The Department of Justice is not the President's legal defense team any more than the Attorney General is his lawyer. The Attorney General is not the White House counsel and should not act as one. The Department of Justice is a law enforcement agency, not a partisan political operation. These are the truths that have been overridden in the last seven years.

This hearing is Attorney General Mukasey's opportunity to show us what he has done on each of these fronts. What he has done to restore the independence of the Department of Justice? What he has done to push back against the overreaching from the Bush-Cheney White House, including its claims to unfettered power at the expense of the principles of judicial review and congressional oversight?

On issue after issue, from the warrantless wiretapping of American citizens, to the descent into torture thinly veiled by the use of the Orwellian-term "enhanced interrogation techniques;" from undercutting laws meant to protect clean air and clean water, to the untoward political influence of the White House at the nation's top law enforcement agency; from the destruction of CIA tapes showing detainee interrogations, to grandiose claims of immunity and executive privilege from congressional oversight - this administration makes the Watergate era look like child's play.

The conservative Supreme Court's recent decision in *Boumediene v. Bush* reaffirmed our core American values and serves as a stinging rebuke to the Bush administration's excesses. The Court's opinion not only rejected the administration's detention practices as unconstitutional, it also reminded us of the dangers posed to the Constitution by a runaway executive: "Security subsists, too, in fidelity to freedom's first principles. Chief among those are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers." Justice Kennedy wisely counsels that we do not have a system in which this or any administration "may switch the Constitution on and off at will." He writes: "The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law."

These principles of checks and balances and of the rule of law are what this administration, and a complicit Justice Department, have ignored--that our fundamental adherence to our Constitution and

the rule of law is a strength. No one--not even a President--is above the law. The Justice Department owes its loyalty to the law.

How different would these last seven and a half years have looked if the Justice Department had served as a bulwark against the administration's overreaching? Instead, the Department of Justice provided "cover" for some of the administration's worst excesses. One of the most disturbing aspects of these years has been the Department's secret legal memoranda that have sought to define torture down to meaninglessness, sought to excuse warrantless spying on Americans contrary to our laws; and sought to justify absolute immunity of White House employees from congressional subpoenas without reference to a single legal precedent.

Attorney General Mukasey repeatedly assured us during his confirmation hearing that he would take a fresh look at these secret legal memos. He committed to this Committee that he would review them and withdraw or modify those that were unjustified or unwise. Even Attorney General Gonzales did that - he withdrew the August 2001 Bybee memo justifying torture when it came to light just before his own confirmation hearing in 2005.

We look forward finally to obtaining these memos-- to obtaining even the index of these memoranda-- that we have been denied over the years. Today we look forward to learning which aspects of what memos that have formed the legal framework for the Bush administration's policies have been modified or withdrawn by Attorney General Mukasey.

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. The path taken during the last seven and a half years has been one that has disregarded basic rights, turned us from a nation devoted to the rule of law to one ruled by secret pronouncements of the executive.

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CLOSING STATEMENT OF CHAIRMAN PATRICK LEAHY

CHAIRMAN, SENATE JUDICIARY COMMITTEE

ON DEPARTMENT OF JUSTICE OVERSIGHT

JULY 9, 2008

I thank you, Mr. Attorney General, for appearing before the Committee today. I am grateful that, at least for today, we did not see a repeat of the anonymous Republican objections that blocked us from holding and completing many important hearings before the July Fourth recess.

We might have made more progress today had we received timely responses from you to questions we sent following our last hearing in January. We received the Department's responses only late last week, and responses to letters we sent months ago started pouring in on the eve of this hearing. I wish it did not take scheduling a hearing to start to get answers from you and the Department.

In your testimony, Mr. Attorney General, you focused on the upcoming election and on the transition to the next administration and next Attorney General. That is good. But with so little time left for this administration and in your tenure at the Department, I wish you were more focused on restoring the Department's role as protector of the rule of law. Instead, you seem content to serve as a caretaker for the regime of excessive executive power established by the Bush Administration.

On issues central to the rule of law and American ideals such as the legality of waterboarding and controversial secret memos justifying all manner of excesses, Mr. Attorney General, time and time again, you have avoided answering the Committee's questions and fulfilling commitments because, in your view, the issue is not "currently before" you. You have done so again today, finding it not "necessary" to review the controversial and flawed legal opinions written by John Yoo and others at OLC, turning a blind eye to the excesses they have allowed and may continue to allow if they are not withdrawn.

When this Committee last spoke to you on January 30, Senator Durbin asked if you had a chance to read various opinions from OLC. You said, and I quote, "I think those opinions would be considered principally in light of whether they relate to things that are current or not. But I will review them." That was a commitment to review them. Today, you have said you have not - and will not.

The job of the Attorney General is not to make decisions on individual cases or controversies like a judge, but to set policy for the Justice Department and the Nation. You have been given an opportunity to start setting things right at the Department after nearly eight years of erosion of our most basic civil rights and civil liberties and restore the rule of law to its place of prominence in American life. I urge you to make the most of your opportunity in your remaining time in office and will work with you to be successful.

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