

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 18, 2008

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CHAIRMAN, SENATE JUDICIARY COMMITTEE

OPENING STATEMENT

EXECUTIVE BUSINESS MEETING

SEPTEMBER 18, 2008

The first item on our agenda today is an authorization for subpoenas relating to the Office of Legal Counsel (OLC) at the Department of Justice. The Office's work has largely been kept secret from this oversight Committee, despite our efforts in the last several years. We learn more about its binding legal interpretations from press accounts and from books like Jack Goldsmith's *The Terror Presidency*, Jane Mayer's *The Dark Side*, Charlie Savage's *Takeover: The Return of the Imperial Presidency* and the *Subversion of American Democracy* and, I suspect, will from Barton Gellman's new book *Angler: The Cheney Vice Presidency*, than we have from this administration and its succession of Attorneys General.

For the last eight years, this administration has been having the Office of Legal Counsel write secret laws by creating interpretations of the laws Congress has passed, interpretations that are viewed as binding on the Executive Branch. In this democracy, laws are supposed to be written by Congress and are not secret. This Committee is responsible not only for oversight of OLC, but also for writing laws on many of the subjects on which OLC has opined. There is no justification for keeping OLC legal interpretations secret from this Committee.

This abuse is greater than that represented by this President's signing statements, which Republicans have joined in criticizing from time to time. I trust that we will be able to consider and adopt the authorization today and move forward in a bipartisan way. We have been consulting with Senator Specter's office for weeks about this effort, so it should come as no surprise that it was included on the agenda circulated last week.

When we make progress on the authorization, I believe that we will be able to proceed through the rest of the agenda fairly quickly. But I intend to complete action on it before turning to other items. I want to emphasize that this is an authorization. I have used such authorizations sparingly as Chairman, and done my best to resolve matters short of subpoenas, contempt resolutions and legal actions. That has not been possible with this administration, and this Committee has found Karl Rove and Josh Bolten, on behalf of the administration, in contempt for their refusals to honor our requests in connection with our investigation of the U.S. Attorney scandal.

The responsibility of OLC is to provide principled and neutral assessments of the law to guide the Executive Branch. In this administration, OLC has been misused to provide legal justifications for misguided policies. A good example is the so-called Bybee memo on torture that was withdrawn by the Justice Department when it came to light, and this Committee conducted oversight on it. Secrecy continues to prevent the review by this Committee that would provide a check and some quality control on how the administration is interpreting the law. That obsessive secrecy even prevents us from knowing the subjects on which OLC has written opinions.

Along with other Senators on this Committee I have sought information about these OLC opinions for five years. I have done so on dozens of occasions. We have been repeatedly rebuffed. When, after years of effort, we were allowed limited access to some of these materials, they were heavily redacted. Amazingly, the administration refuses my simple request to provide a list or index of the opinions of OLC--not the full and unredacted opinions, but just a list of them. That type of list is standard in disputes over claims of privilege but when it comes to the Senate Judiciary Committee this administration will not even provide that.

I have placed this authorization on our agenda after making one last effort to obtain that list of OLC opinions, something I have been seeking repeatedly for five years. The response to the letter I sent with Senator Specter saying they will get back to us is simply insufficient. The administration is stringing us and the House Judiciary Committee out on our subpoenas for testimony and documents related to the U.S. Attorney firing scandal. With the help of conservative judges on the D.C. Circuit, they may succeed in that. But after five years of being ignored with respect to the abuses at OLC, I believe it is time for this Committee to act and authorize subpoenas so that we can better perform our important oversight and legislative responsibilities. I ask for the Committee's support and favorable action on the subpoena authorization without further delay.

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