

Statement of

# **The Honorable Jeff Sessions**

United States Senator  
Alabama  
June 17, 2009

"Attorney General Holder, I'm glad that you are here today to address the Committee as we fulfill our role of oversight of the Department of Justice. The Department of Justice plays a critical role in protecting the rule of law and preserving national security. And it must do so free from political pressures.

"Mr. Holder, I publicly supported your nomination to be Attorney General. In fact, I was in the minority of my own political party. But I did so because I believed that your previous experience within the Department would serve to elevate the Department and its mission above politics and bad policy, and on your promises during the confirmation process.

"So it is difficult for me to tell you this: I'm disappointed.

"During your confirmation hearings, you promised to adhere to the Constitution and to put the rule of law over political considerations. You said you had learned from the past and that you would not return to a pre-9/11 criminal mindset in protecting the American people from terrorist attack. You told Senator Lindsey Graham that you agreed with him that "every person who commits to going to war against America, or any other peaceful nation, should be held off the battlefield as long as they're dangerous." I do not believe your actions have matched your promises.

"Since your confirmation, you have done many of the things you pledged not to do during your hearing. Time and again I find myself reading about how political appointees - including you - have overruled career department attorneys to appease some far left group.

"One such instance came when you rejected the Office of Legal Counsel on its legal conclusion that Congress's recent legislation on D.C. voting was unconstitutional. During your confirmation hearing, you emphasized that your review of OLC opinions would not be a political process. So when OLC prepared an opinion for you that said that Congress's legislation was unconstitutional - I would expect you to listen to their reasoned, legal opinions. You did not. Instead, you ignored them and sought a second opinion from the Solicitor General's office - an office that is not tasked with giving that kind of legal advice.

"You again allowed left wing political pressure to override common sense when you allowed DOJ to release OLC legal opinions regarding interrogation, even though high-profile members of the intelligence community warned you it would be unwise to do so. Former Attorney General Michael Mukasey and CIA Director Michael Hayden wrote a joint Wall Street Journal op-ed stating the release of the memos would be "unnecessary as a legal matter" and "unsound as a

matter of policy." They predicted that the effect of the memos' release "will be to invite the kind of institutional timidity and fear of recrimination that weakened intelligence gathering in the past, and that we came sorely to regret on Sept. 11, 2001." The lawful and wise thing to do would have been to keep our secrets secret. Yet you did not. Instead, you have now given a crucial piece of information to our enemies.

"Just in the last three weeks, I received word again that you had put politics above the rule of law. On May 29, The Washington Times reported that DOJ voluntarily dismissed a case against three Black Panther Party members for voter intimidation outside a polling place in Pennsylvania. In that case, three Black Panthers wore military-style uniforms, were armed with a nightstick, and used racial slurs to scare would-be voters at the polling location. Bartle Bull, a longtime civil rights activist, called the conduct "an outrageous affront to American democracy and the rights of voters to participate in an election without fear." DOJ had been working on the case for months and had already secured a default judgment on April 20, 2009.

"Inexplicably, according to the Washington Times, Justice Department political appointees overruled career attorneys and ended the civil complaint, dismissing two of the men from the lawsuit with no penalty and winning an order against the third man that simply prohibits him from bringing a weapon to a polling place in future elections - something that is already prohibited. Instead of supporting the career attorneys who fought to protect the civil rights of voters in Pennsylvania, DOJ political appointees wiped out their good work. This flies in the face of your statement at your confirmation hearing about career attorneys at DOJ that you would "listen to them, respect them, and make them proud of the vital goals we will pursue together." It also defies your statement during your confirmation hearing that "[t]he Justice Department must also defend the civil rights of every American

"Another concern that this Committee raised with you during your confirmation hearing was whether you would operate under pre-9/11, criminal law mindset when fighting terrorists. You assured the Committee that you learned from the past, and that you would do your best to aggressively continue the War on Terror. In fact, you listed as your first priority for Attorney General that you would "work to strengthen the activities of the federal government and protect the American people from terrorism."

"Yet, instead of taking the lead in protecting the American people, you have enacted poor policies and stayed silent on important issues.

"One primary example of this pre-9/11 mindset is a recent report that the Obama Administration is requiring that enemy combatants in Afghanistan be given Miranda warnings. Last week, Michigan Congressman Mike Rogers revealed the Obama administration has begun administering Miranda rights to enemy combatants detained in Afghanistan.

"Just this March, in a "60 Minutes" interview, the President mocked giving Miranda warnings to enemy combatants. He said, "[n]ow, do these folks deserve Miranda warnings? Do they deserve to be treated like a shoplifter down the block? Of course not." What has changed in three months?

"The administration's new Miranda approach to battlefield detainees will invariably hamper intelligence gathering in the War on Terror, even if the new approach is a well-intended safeguard to preserve the option of federal court criminal prosecution. Under the Obama "Global Justice Initiative" approach, even captured high-level al Qaeda operatives may be advised that they may remain silent and seek counsel. According to Congressman Rogers, this has already begun to have an adverse effect. The International Red Cross has begun advising detainees "Take the option. You want a lawyer." The Weekly Standard reported "in at least one instance, a high-level detainee has taken that advice and requested a lawyer."

"Likewise, the American people remain in limbo as they have waited for your word on whether detainees held at Guantanamo would be transferred into the United States. The solutions that you have suggested have been dangerous. In March, you said that some of the detainees could be released into the United States. A few days later, Director of National Intelligence Dennis Blair expanded on your statement to say that released detainees would receive "some sort of public assistance for them to start a new life." The American people deserve to know what your plan is - and to have that plan be consistent with our legitimate national security concerns.

"You have failed to weigh in on sensitive -- I would say dangerous - legislation such as State Secrets and Media Shield law. And you have also stood silent on bills that must be passed this year, such as the reauthorization of the Patriot Act. You must take the lead on this. Instead of damaging rhetoric - like calling America a "nation of cowards," or promising assistance in foreign investigations of Bush officials, you should work to promote legislation to protect our Nation against attack.

"So Mr. Holder, I am disappointed and I am worried. I am worried because these are all serious matters. When OLC attorneys told you something was unconstitutional, you overruled them. When security officials came to you and said that we should keep our interrogation methods confidential, you said "no." When the civil rights of Americans were trampled on by members of the Black Panthers, you let the offenders get away. And as the American people look to you to lead in the war against terrorism, you have remained largely silent. You've even granted the release of dangerous detainees, including Jose Padilla's alleged accomplice and another detainee who reportedly killed an American diplomat.

"There are several decisions that you've made that are to be commended.

"Your department has defended our Nation's secrets at least three times in the federal courts by invoking the state secrets privilege. In standing up for our Nation's secrets, you have faced a lot of criticism from the left - including from your own party - so I commend your actions.

"Second, I am encouraged that you listened to members of Congress and members of the intelligence community to oppose the release of interrogation photos. The release of these photos is not necessary, and it will place American soldiers at greater risk.

"And even though I am disappointed by your long delay in answering my questions about the Uighurs, I am encouraged by your decision not to release Uighurs into the United States, despite earlier comments that you would do so.

"As I said at the time of your confirmation, I respect you, I support you, and I want you to succeed as Attorney General. And I want to do everything I can to help you do your job well. But many of your actions and decisions have left me baffled. You are the Nation's chief law enforcement officer, and you have a duty to protect us with every lawful authority.

"I hope to use this hearing to examine some of your decisions, to allow you a chance to defend and explain them, and to look forward and to gain some insight into your future plans for the Department of Justice."