

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Chairman Patrick Leahy (D-Vt.),
Hearing On The Office of Professional Responsibility Investigation
Into the Office of Legal Counsel Memoranda
Senate Committee On The Judiciary
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It has now been more than a year since I first proposed the establishment of an independent, nonpartisan Commission to engage in a comprehensive inquiry to determine how the United States Government came to authorize torture. Over one year ago, I called for a bipartisan effort to create a nonpartisan commission to conduct a needed comprehensive review. I proposed to take these matters out of politics and find out exactly what happened so we can understand what went wrong and make sure it does not happen again. My regret is that no Republican came forward in that spirit to join in that effort. I said from the outset that without a bipartisan commitment to a fair, independent and comprehensive review it would not happen. That is a shame.

Since that time we have seen more and more evidence of what went wrong during the last administration. We have witnessed the release of more Office of Legal Counsel (OLC) memoranda documenting the authorization of brutal practices, an Inspectors General report that calls into question the guidance given by the Department of Justice, a CIA Inspector General report that reveals even those lax standards were violated during interrogations and last week, finally, the release of the results of the Office of Professional Responsibility (OPR) inquiry into the legal advice given by those at the Office of Legal Counsel. All of these narrower reports point to why we need a comprehensive review. None of them can answer the question of how the last administration veered so far off course and away from American values.

The OPR investigation was limited to determining whether or not legal profession rules were violated. That is the business of bar associations. It is, in my view, the wrong focus. That office within the Justice Department does not have the power or authority to conduct the broader investigation that is still needed. These legal memoranda were only a part of the problem. They were intended to provide a "golden shield" to commit torture and get away with it.

As is now evident, even though the OPR investigation has consumed years, it is not complete. The investigators were denied access to key witnesses and documents. Did they interview David Addington, counsel to Vice President Cheney? No. According to Alberto Gonzales and Jack Goldsmith, he was a key figure. Mr. Gonzales called him an "active player" in the drafting of these memoranda. Did they have the full record of John Yoo's communications with the White House? No. In fact, my first question to the Justice Department witness today will be, "Where are Mr. Yoo's emails, which are required by law to be maintained?"

The fundamental question here is not whether these were shoddy legal memos. They were. The administration famously withdrew the Bybee memo written by Mr. Yoo in advance of the confirmation hearing on the nomination of Alberto Gonzales to be Attorney General. Dean Koh called that memo "perhaps the most clearly legally erroneous opinion I have ever read." Jack Goldsmith called the memos "deeply flawed." David Margolis, the senior Justice Department attorney who provided the final review of the OPR report, did not endorse those memos. The legal work of Yoo, Bybee and Steven Bradbury, the acting head of OLC who reaffirmed the CIA interrogation program, was flawed. It failed to cite significant case law and twisted the plain meaning of statutes.

These legal memoranda were designed to achieve an end. That is not what the Office of Legal Counsel should do, nor had done in other administrations. These Bush administration lawyers lost their way.

In my view President Bush was disserved. These lawyers told the administration what Vice President Cheney wanted to hear. Without question, our government institutions, the Justice Department and, in particular, the Office of Legal Counsel, were undermined. The rule of law was disrespected. Most importantly, the American people were harmed and put at greater security risk. The torture of individuals was not just a violation of our laws and treaties; it handed al Qaeda a propaganda tool to gain new recruits, and it made us less safe.

Just last weekend, General Petraeus said that "the use of the interrogation methods in the Army Field Manual" work, and that when we have "taken expedient measures, they have turned around and bitten us in the backside." He is right. Colin Powell was right. Alberto Mora was right. The many JAG officers who fought these encroachments were right.

Focusing on whether these lawyers failed to meet legal ethics standards misses the fundamental point. The real concern is that lawyers who were supposed to be giving independent advice regarding the rule of law and what it prohibits were instead focused on excusing what the Bush-Cheney administration wanted to do. The OLC is charged to provide, both in times of war and peace, "candid, independent and principled advice -- even when that advice may be inconsistent with the desires of policymakers." These lawyers abandoned their independent responsibilities to become apologists.

The role of the White House in the politicization of the OLC and in ensuring that these opinions delivered the legal immunity they were looking for has yet to be fully explored. My sense is that such a review would reveal the same untoward and corrupting influence we found when we investigated the purging of United States Attorneys for political purposes.

As disturbing as the findings and evidence from this limited investigation are, they are not the final arbiter. We need a true accounting and a comprehensive review. The dark cloud that Patrick Fitzgerald talked about hanging over the Bush-Cheney administration at the end of the Libby trial is still there. The politicization of the rule of law function at the Justice Department is another example of the last administration's corruption of the government. For the country to fully recover from this era we need to know what went wrong so that it does not happen again. Unfortunately, the Obama administration's attempts to repair this office and ensure that its lawyers are providing the government with principled advice have been hamstrung by Senate Republicans who continue to delay appointment of the President's nominee to head the OLC. I have been conducting oversight of these issues for years, because I was deeply concerned this country was treating people in our custody in a way that went against our laws and our values. That is why I did not hesitate to issue subpoenas for these memoranda when the last administration refused to cooperate, and the release of those memos revealed how they were

justifying torture. I will continue that aggressive oversight. I am determined to ensure that no future administration, of either political party, can ever justify torture.

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