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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 17, 2007

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Gonzales:

When you last testified before the Senate Judiciary Committee on April 19, 2007, you often responded to questions from Senators on both sides of the aisle that you could “not recall.” By some counts, you failed to answer more than 100 questions, by other counts more than 70, and the most conservative count had you failing to provide answers well over 60 times. As a result, the Committee’s efforts to conduct oversight were hampered. Senator Specter and I wrote to you after that hearing to ask you promptly to supplement your testimony on April 19 with answers to those questions for which you responded that you could not recall or did not know. In your cursory response, you did not supplement any of your answers.

I would like to avoid a repeat of that performance. In order to assist you in your preparation, I send you the following questions in advance of your July 24 appearance before the Senate Judiciary Committee.

1. On April 19, you testified to the Senate Judiciary Committee that you had not spoken with anyone involved in the firings about that process because you did not want to interfere with the investigation. Again, on May 10, you testified to the House Judiciary Committee that you had not spoken with anyone involved in order to protect the integrity of the investigation. Then on May 23, Monica Goodling testified under oath before the House Judiciary Committee that she had an “uncomfortable” conversation with you during which you outlined your recollection of what happened and asked her for her reaction to your version. Is Ms. Goodling’s testimony accurate, and if so, how do you account for your previous, uncorrected testimony to this Committee?

2. On April 19 you testified before this Committee that your former Chief of Staff Kyle Sampson was responsible for putting together the list of U.S. Attorneys to be fired. But on May 15, the day after Deputy Attorney General Paul McNulty announced his intention to resign, you said that the firings were largely Mr. McNulty's responsibility. Mr. McNulty has said that he had very limited involvement in the decision of which U.S. Attorneys to fire. Please describe all of your interactions with Mr. McNulty related to the replacement of the nine U.S. Attorneys and your understanding of his role in deciding which U.S. Attorneys would be fired. Why has your description of who made the decisions, and who was most involved in the decision-making process, changed over time?

3. While Bradley Schlozman was Acting Attorney General for the Civil Rights Division at the Justice Department, he approved pre-clearance of a voter photo identification provision from the state of Georgia that has become the focus of extensive criticism about the management of the Department's voting section. He authorized a National Voter Registration Act suit against the State of Missouri, over the reservations of Todd Graves, then U.S. Attorney for the Western District of Missouri, who argued that the case lacked merit. This case was later thrown out of court. Mr. Schlozman admitted before this Committee that he had bragged about hiring Republicans to the Civil Rights Division, and he reportedly advised candidates with Republican political affiliations to remove them from their resumes before applying to the division.
 - a. Were you aware of these issues when Mr. Schlozman was appointed interim United States Attorney in the Western District of Missouri? How did they affect your decision?
 - b. After Mr. Schlozman was appointed interim U.S. Attorney in Missouri, he brought indictments against people affiliated with ACORN, a group that supported Democratic candidates and that registered voters, on the eve of a closely contested midterm election in Missouri, despite the contrary policy expressed in the Justice Department's guidebook on "Federal Prosecution of Election Offenses." Were you aware of this pre-election indictment decision? What was your role in the decision?

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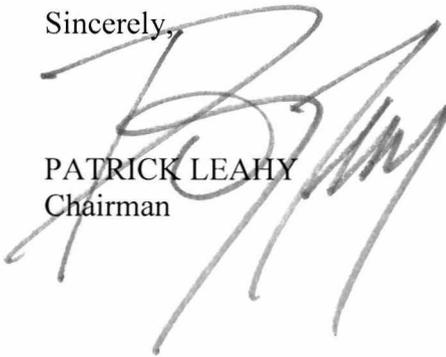
4. Recent documents obtained through Freedom of Information Act lawsuits and reported in the Washington Post indicate that you received reports in 2005 and 2006 of violations in connection with the PATRIOT Act and abuses of National Security Letters (NSLs). These violations apparently included unauthorized surveillance, illegal searches, and improper collection of data. These reports were significant enough to prompt reports to the Intelligence Oversight Board. Yet, when you testified under oath before the Senate Select Committee on Intelligence in April 2005, you sought to create the impression that Americans' civil liberties and privacy were being effectively safeguarded and respected, saying "[t]he track record established over the past 3 years has demonstrated the effectiveness of the safeguards of civil liberties put in place when the Act was passed." Earlier this month, in responses to written questions I sent you on behalf of the Senate Judiciary Committee about when you first learned of problems with NSLs, you, again, did not mention these earlier reports of problems. Would you like to revise or correct your misleading April 2005 testimony to the Senate Select Committee on Intelligence, or your July 6, 2007 response to this Committee's written questions related to these issues?
5. According to news reports and briefings provided by the FBI, the FBI has been conducting an internal audit of its use of National Security Letters that has confirmed the findings of the March 2007 Inspector General report that there was "widespread and serious misuse of the FBI's national security letter authorities." Is it your view that there has been widespread and serious misuse of the National Security Letter authority?
6. When you were asked on February 6, 2006 if any senior Justice Department officials, including your former deputy, James Comey, expressed concerns about the Bush Administration's warrantless electronic surveillance program, you testified: "I do not believe that these DOJ officials . . . had concerns about this program." Mr. Comey subsequently testified on May 15, 2007 that on March 9, 2004, he informed you, as White House counsel, and others including the Vice President, that the Justice Department had concluded that the Administration's warrantless electronic surveillance program did not have a legal basis. He testified that you and former White House Chief of Staff Andrew Card tried to circumvent him, in his role as Acting Attorney General, by rushing to the hospital bedside of ailing former Attorney General John Ashcroft to try to persuade him to certify the program. Please provide a full explanation for the legal authorization for the President's warrantless electronic surveillance program in March and April 2004.

7. Last year, the Iraq Study Group found that the Iraqi police "cannot control crime, and they routinely engage in sectarian violence, including unnecessary detention, torture, and targeted execution of Sunni Arabs civilians." They also found evidence of serious police corruption. They called for the Department of Justice to take the lead role in training the Iraqi police force. In January of this year, you reported to the Judiciary Committee that the Department was overseeing hundreds of police trainers in Iraq and Jordan. Last week, the President reported that the Iraqi police had failed, yet again, to meet the Administration's own benchmarks for progress. On the same day as this report, U.S. troops engaged in a gun battle with Iraqi police on the streets of Baghdad, where six Iraqi policemen and seven Shiite gunman were killed defending an Iraqi police lieutenant. On July 13, USA Today reported that a previously undisclosed investigation by the army shows that Iraqi police were directly complicit in a complex insurgent attack on a government compound in Karbala in January that killed U.S. soldiers. What have you, as Attorney General, done to improve the Department's programs for training Iraqi police over the last six months, what steps have you taken to combat improper political and sectarian influences within the Iraqi police, and what grade would you give yourself for this effort?
8. This Committee recently became aware of a memorandum dated July 10, 2007, and signed by Steven G. Bradbury as "Principal Deputy Assistant Attorney General" for the Office of Legal Counsel. It contends that Harriet Miers, who is a former White House Counsel, is "immune from compelled congressional testimony." Pursuant to what legal authority did Mr. Bradbury issue this memorandum, and how is Mr. Bradbury's issuance of this memorandum consistent with the Vacancies Act? At the end of the last Congress, Mr. Bradbury's nomination to serve as the Assistant Attorney General for the Office of Legal Counsel was returned to the President.
9. The Department's July 9, 2007, report on its data mining activities raises many questions about the impact of these programs on American's privacy and civil liberties. In the Judiciary Committee's hearing earlier this year on privacy and civil liberties implications of government data mining programs, several witnesses concluded that data mining programs are not effective tools for combating terrorism. Has the Justice Department conducted audits or studies demonstrating that its data mining programs, such as the STAR program, are effective tools for identifying potential terrorists?

10. In 2003, Congress unanimously passed the Hometown Heroes law to extend federal survivor benefits to the families of firefighters, police officers, and emergency workers who die of heart attack or stroke in the line of duty. The legislation was intended to create a presumption that the heart attack or stroke was caused by work in the line of duty, unless there was clear evidence to the contrary. However, more than three and a half years after Hometown Heroes became law, the Justice Department has approved only six claims and denied 48 claims out of nearly 260 applications. Many families have been waiting for a decision from the department on their claims since the bill became law in December 2003. Why has the Justice Department taken so long to decide Hometown Heroes claims? Why is there only a three percent acceptance rate for Hometown Heroes claims?
11. Given the Administration's resistance to congressional oversight, its misleading and self-serving statements, its having denied security clearances to Office of Professional Responsibility investigators reviewing actions taken in connection with the President's warrantless electronic surveillance program, and the ineffectiveness of other internal review mechanism, such as the Privacy and Civil Liberties Oversight Board and the Intelligence Oversight Board, why should Congress or the American people have any confidence in your recent announcement implementing "a significant new national security oversight and compliance effort"?
12. Other Inspectors General can investigate misconduct throughout their agencies. Apparently, the Department of Justice Inspector General suffers under a limitation that restricts his ability to investigation misconduct by you, the Deputy Attorney General, and other senior Department lawyers. Will you agree to the removal of this limitation on the Department of Justice Inspector General so that the Inspector General may investigate misconduct by you, other senior Department of Justice officials, lawyers, and law enforcement agents?

I remind you that any testimony you wish to submit is due at least 48 hours before the hearing. I look forward to your testifying on July 24.

Sincerely,



PATRICK LEAHY
Chairman



Thank you