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POLITICIZED HIRING AT THE DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

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POLITICIZED HIRING AT THE DEPARTMENT OF JUSTICE

WEDNESDAY, JULY 30, 2008

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Biden, Schumer, Cardin, Whitehouse, Specter, and Coburn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. Today, the Committee welcomes Glenn Fine, the Inspector General of the Department of Justice, to discuss the findings of his office's investigation into the hiring of attorneys for key career positions throughout the Department.

The report the Inspector General released this week, along with a previous report released last month, shines much needed light on hiring decisions at the Department. For years, those decisions have been shrouded in a shadow cast by the Bush White House. The reports confirm what I and others have suspected all along—that senior officials within the Department of Justice used illegal political and ideological loyalty tests in making hiring decisions for career positions that, by law and the Department's own rules—law and the Department's own rules—are supposed to be nonpartisan. They broke the law. They did so as political partisans and cronies. And I am convinced that the U.S. Attorney firings and the cover-up and the widespread illegal hiring practices within the Justice Department that have been revealed represent the most serious threat to the effectiveness, the professionalism, and the independence of the Department since Watergate.

We learned through the course of our investigation of the firings of the U.S. Attorneys that only "loyal Bushies" would ultimately keep their jobs, to use their words. We had people being asked not how you can serve your country or how you can serve the Department of Justice, but how do you serve George W. Bush. You are there to serve the country, not any individual President, Republican or Democratic.

Last month we saw that political functionaries under Mr. Ashcroft and Mr. Gonzales corrupted the honors program for the best and the brightest coming out of law schools—the honors pro-

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gram being something where we looked to recruit career people in the Department of Justice by picking only the very, very best, irrespective of their political background. But here they turned it into something that no matter how talented you are, you could only apply if you were a demonstrably loyal conservative Republican. Now we see in the reports of the Inspector General that our worst fears are also realized in the Department's hiring and assignment practices for nonpartisan attorney positions, those of immigration judges and prosecutors. Why would you be seeking a partisan immigration judge or prosecutor? The law is the law. It does not make any difference which party you belong to. We actually have laws against doing such a thing, and those laws were broken.

As a former prosecutor, I would hope that the Department of Justice would take its responsibilities seriously now and hold people accountable. Only then will the Department have moved forward to help ensure that this never happens again. Something should be done now. We do not know who the next President is going to be, but no matter who it is, we should establish the criteria so this never happens again.

But I have yet to see any such response from the current leadership of the Department, and one of my questions to Mr. Fine today is whether the Inspector General has made referrals to the prosecuting arms of the Department for further investigations and possible prosecutions.

The Inspector General's reports confirm that senior officials who report to the office holders at the highest levels at the Justice Department and who also interacted with the White House sacrificed the independence of law enforcement and the rule of law in allegiance to this current administration. The key question should be whether the applicant is qualified for the job. However—and I have referred to this already—according to the report, the key question from Monica Goodling, the Department's White House Liaison, and others, was: "What is it about George Bush that makes you want to serve him?" It would be a lot better as, "What is it about the cause of justice that makes you want to serve the cause of justice?"

Federal prosecutors and immigration judges take an oath of office, but that oath is to the Constitution, not to an individual person. They are to serve justice and the American people. This administration has had it wrong from the outset, and all of us, but especially our institutions of Government, have been the victims.

There are chilling examples in this week's report that show the danger of putting loyalty to a certain office holder above the duty to enforce the law. The report documents one incident where "[A]n experienced career terrorism prosecutor was rejected by Goodling for a detail to [the] Executive Office of U.S. Attorneys (EOUSA) to work on counterterrorism issues because of his wife's political affiliations." So we lose a very, very experienced person because his wife dared to have a political affiliation of her own. And so the Executive Office of U.S. Attorneys "had to select a much more junior attorney who lacked any experience in counterterrorism issues and who [those] officials believed was not qualified for the position." It is almost as if we have hit the replay button on the tragic aftermath of Katrina, where cronyism was valued over competence.

According to the report, the system put in place by the chief of staff of then-Attorney General Alberto Gonzales for selecting immigration judges, appointments that by law are non-political, was the most "systemic use of political or ideological affiliations in screening candidates for career positions [that] occurred." The Department's practice not only subverted the law and placed political loyalty above fairness, it caused serious delays in filling immigration judge positions just as the workload and importance of those judges was increasing. The report reveals that the "principal source" for politically vetted candidates considered for these important positions was the White House—demonstrating the extent of the political reach of the White House into the Department's career ranks, an unprecedented activity.

There can be no remaining question that this administration encouraged politics to infect the Department and law enforcement. The question, of course, that I have is: What will Attorney General Mukasey and the President do about it to provide accountability?

In our oversight hearing earlier this month, Attorney General Mukasey essentially dismissed the findings of last month's report as the actions of just a few bad apples. This reminds me of the administration's ongoing attempt to place the blame for the actions at Abu Ghraib solely on the shoulders of a few soldiers there rather than see those excesses as a consequence of the policies and practices put into place by the President, the Department of Justice, and the Pentagon.

This week's report, like the one that preceded it, makes clear that the problems of injecting politics into the hiring decisions of the Department are rooted deeper than just the actions of a handful of individuals.

Even with blanket claims of privilege and immunity from the White House in their effort to try to cover up the truth, we continue to learn about the unprecedented and improper reach of politics into the Department's professional ranks. There is only so much they can do to cover up. The truth does come out. And by infusing politics into the hiring of career Assistant U.S. Attorney positions, senior career attorney positions, Main Justice detailees, young career attorneys, and immigration judges, this administration and its operatives have done serious damage to the rule of law. The American people look forward to a serious response from the current leadership of the Department of Justice.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, Mr. Fine, I thank you for your work on these very important matters. The independence of an Inspector General is demonstrated by the work you have done here and the last appearance before this Committee on detainees and underscores the importance of Inspectors General in so many of the departments to bring an independent look at the issue, to call it as it is and let the chips fall where they may. And there is no doubt that when we

are dealing with positions like immigration judges or the Court of Immigration Appeals, political considerations ought not to be a factor.

The investigation so far has dealt with people who are not at the top of the ladder in the Department of Justice, and it raises a question in my mind as to whether others were involved. You have Monica Goodling and you have Kyle Sampson and you have John Nowacki, all of whom occupied important positions, but not the key positions.

When you were before this Committee a few weeks ago on the issue of detainees, I expressed my concern about the thoroughness of your investigation on questioning the Director of the FBI, Robert Mueller, from the point of view of the FBI disagreeing with the CIA interrogation tactics, which was a good sign of independence. But what further did Director Mueller do to try to stop it? What effort did he make to take it even to the President? And I believe that it is very important that the investigations go to the very top if that is where the facts lead, and that is a subject which I will want to hear you on when the time comes for questions and answers.

The issue arises as to whether there is potential for criminal prosecution. And when this story broke in the media, of course, the media wants to know instantly with the telephone calls do you favor criminal prosecutions. Well, my response was I would like to know what the facts are first. That is not a very satisfactory answer. It does not make the early editions.

I have read conflicting reports on whether violations of the civil service laws give rise to a criminal prosecution. Apparently, they do not. That is something we would have to check. Or there is a question of false statements. And I note some Members of Congress have already condemned some of these individuals on those grounds. We have to take a very close look at what the facts are to see what is going on.

I am glad to see Attorney General Mukasey acting to change these practices. I would like to see, frankly, a very forceful statement out of the Department of Justice as to what they intend to do and what they think about it in some detail. They have the prosecution responsibility. You do not. I would like to see the Department of Justice speak emphatically on this subject. So there is a great deal we have to look at here.

One aspect of the report which I think is highly significant are the compliments which went to Acting Attorney General Peter Keisler. Keisler is quoted as saying, "You should have known that there's a lot of people who believe that these selections are either irrational or so irrational that they are motivated by politics, and that is a problem, as you know." So here is a top Assistant Attorney General who was Acting Attorney General speaking out against his party. Kind of a healthy thing in Washington when that is done on occasion. It is not done often enough where the facts warrant it.

And then the report came to this conclusion: "Acting Attorney General Keisler spoke with Mercer and advised him that the review process had been problematic and that many people in the Civil Division believed it had been politicized. Keisler told Mercer

that at the appropriate time he would like to have a meeting with senior Department officials to discuss the next year's hiring process to ensure that the problems they encountered in 2006 would not be repeated."

Well, I read that because the nomination of Peter Keisler is pending before this Committee, and he has waited a long time. And the question is qualification. And when you have this kind of independence exhibited by Mr. Keisler and recognized by the Inspector General in what is otherwise a very lurid situation, I think that is something special. It reminds me of an instant long ago when there was a prosecuting attorney in New Jersey named Brendan Byrne. Senator Biden will remember this. Senator Leahy will remember this. So sometimes they comment about the aging Senators. Of course, it is not true, but it is good to have a little corporate memory.

But Brendan Byrne's name was picked up on an FBI tape, and the mob was talking about Brendan Byrne. And they say, "The problem with Byrne is he is honest," which was something rare for somebody in North Jersey at that time. They say business got so bad, the Mafia had to write off several judges in North Jersey. I was DA at the time, Brendan Byrne was the district attorney. Biden had already gotten to the Senate at the age of 19 or some such age.

[Laughter.]

Senator SPECTER. But that established Brendan Byrne's reputation. Leahy and I—

Chairman LEAHY. If you would yield, I served on the board of the National DA Association with Brendan Byrne.

Senator SPECTER. Well, you and I are not old timers, Patrick, but we have some corporate—Joe Biden was a public defender. He didn't get to be a prosecuting attorney. But I mention Brendan Byrne because his reputation was established. They named a big basketball arena after Brendan Byrne. And Keisler is almost in Byrne's category, maybe enough to attract the attention of the Chairman of the Judiciary Committee.

Well, I have talked at some length. Regrettably, I cannot stay for this entire proceeding because we are on the floor with the reporter shield bill, which is my bill, and it is coming up for a vote, and I am to speak on it shortly. But I will be following your testimony very closely on this very important subject, Mr. Fine.

Thank you.

Chairman LEAHY. Thank you, and we will start with Glenn Fine. I know that Senator Biden wanted to say why he has to leave.

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, thank you, first, for holding the hearing—

Chairman LEAHY. It is not that we do not love you that they are all leaving, but go ahead.

Senator BIDEN. Well, this thing about corporate memory, I have observed that corporate memory, that assumes you have a wealth of experience and memories that go back. The problem is the older

you get, the harder it is to recall them. But, Mr. Chairman, thank you for the hearing.

Mr. Fine, I just wanted to explain that after your testimony I will be leaving. I chair another Committee, and the Prime Minister of Pakistan is our witness—not our witness, our guest. And so that is why I will be leaving.

I would associate myself with the remarks of both my colleagues. Facts do matter. It is important. And the one central thing, if I do not get a chance to ask you questions—and maybe I can submit a few in writing—for me, in my experience with seven Presidents, it is not often that someone at Goodling and Sampson's level are able to have this kind of latitude without someone above them instructing them. And I would very much like to know where this goes, if it goes anywhere, as the Senator from Pennsylvania indicated.

I thank you.

Chairman LEAHY. Thank you very much, and we will find out.

I would note that Glenn Fine was confirmed by the U.S. Senate as the Inspector General for the Department of Justice on December 15, 2000. He has worked with the Department of Justice Office of the Inspector General, OIG, since January 1995. Initially, he was Special Counsel to the Inspector General. Before joining the OIG, Mr. Fine was an attorney specializing in labor and employment law at a law firm in Washington. Prior to that, he served as an Assistant U.S. Attorney in the Washington, D.C., U.S. Attorney's Office. He graduated magna cum laude from Harvard College in 1979 with an A.B. degree in economics. And so people will not think he was solely studying, he was co-captain of the varsity basketball team and was drafted by the San Antonio Spurs of the NBA. I see a smile. I think there are probably days he wishes—Mr. Fine was a Rhodes Scholar. He earned his B.A. and his M.A. degrees from Oxford and received his law degree magna cum laude from Harvard Law School in 1985.

Mr. Fine, please go ahead, sir.

Senator BIDEN. Underachiever.

[Laughter.]

STATEMENT OF GLENN A. FINE, INSPECTOR GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. FINE. Thank you, Mr. Chairman, Senator Specter, members of the Committee. I appreciate your invitation to testify at this hearing about two reports recently issued by the Office of the Inspector General and the Office of Professional Responsibility on allegations relating to politicized hiring at the Justice Department.

The first joint report, issued on June 24th, examined hiring practices in the Department's Honors Program and Summer Law Intern Program. The second report, issued on Monday, examined allegations that Monica Goodling and other staff in the Attorney General's office inappropriately considered political affiliations when hiring for career Department positions.

With regard to the first report, the Department's Honors Program is the exclusive means by which the Department hires recent law school graduates. These are career positions, and, therefore, Department policy and Federal civil service law prohibit discrimination on the basis of political affiliations. However, the evidence

in our investigation showed that a Screening Committee established by the Department in 2002 deselected for interviews those candidates with Democratic Party and liberal affiliations apparent on their applications at a significantly higher rate than applicants with Republican Party, conservative, or neutral affiliations. This pattern continued even when we compared a subset of academically highly qualified candidates.

From 2003 to 2005, the Screening Committees made few deselections, and these decisions could reasonably be explained on the basis of candidates' academic qualifications.

However, we found that two members of the 2006 Screening Committee—Esther Slater McDonald and Michael Elston—inappropriately considered political or ideological affiliations in deselecting many candidates.

As just one example—and many more are discussed in our report—McDonald and Elston deselected an Honors Program candidate who was first in his class at Georgetown Law School, had clerked for a judge on the U.S. District Court, and was clerking for a judge on the Second Circuit Court of Appeals. However, this candidate had also worked for a Democratic U.S. Senator and a human rights organization and was deselected.

We concluded that McDonald's and Elston's actions constituted misconduct and violated Department policy and Federal civil service law.

Our second report, issued on Monday, described the results of our investigation into actions by Monica Goodling and other staff in the Attorney General's office. We concluded that Goodling regularly considered political affiliations in screening candidates for career positions at the Department, which also was misconduct and violated Department policy and Federal civil service law.

For example, in one instance the interim U.S. Attorney in the District of Columbia sought approval from Goodling to hire an Assistant United States Attorney for a vacant position. Goodling responded that the candidate gave her pause because, judging from his resume, he appeared to be a "liberal Democrat." Goodling also said she was reluctant to approve the request because she expected that Republican congressional staff might be interested in applying for AUSA positions in Washington. Only after the U.S. Attorney objected was he allowed to hire the AUSA.

In addition, Goodling often used political affiliations to select or reject career attorney candidates for temporary details to Department offices. This was particularly damaging to the Department because it resulted in high-quality candidates for important details being rejected in favor of less qualified candidates. Perhaps the most troubling example, mentioned by Senator Leahy, an experienced career terrorism prosecutor was rejected by Goodling for a detail to work on counterterrorism issues in the Executive Office for U.S. Attorneys because of his wife's political affiliation. Instead, EOUSA officials had to select a more junior attorney who lacked experience with counterterrorism issues and who the EOUSA officials believed was not qualified for the position.

The most systematic use of improper political or ideological affiliations in screening candidates for career positions occurred in the selection of immigration judges. Under a new process implemented

by Kyle Sampson in 2004, immigration judge candidates were treated as political appointees. Goodling used a variety of techniques for determining candidates' political affiliations, such as researching their political contributions and voter registration records and using an Internet search string that contained political terms.

Not only did this process violate the civil service law and Department policy, it also caused significant delays in appointing immigration judges. These delays increased the burden on the immigration courts, which already were experiencing an increased workload and a high vacancy rate.

Both prior to and since issuance of our two reports on politicized hiring, the Department has taken steps to attempt to prevent the serious problems raised by these actions from occurring again. Attorney General Mukasey has agreed to implement all the recommendations of our reports.

Finally, I want to note that the OIG and OPR are now jointly investigating allegations related to the removal of several United States Attorneys as well as allegations that Bradley Schlozman and others used political affiliations in hiring and personnel decisions in the Department's Civil Rights Division. Because these investigations are ongoing, I should not discuss them. However, I want to assure the Committee that the OIG and OPR are working very hard on these investigations and will issue our reports as expeditiously as possible when those investigations are complete.

In conclusion, I believe that the Department must ensure that the serious problems and misconduct we found in our two reports about politicized hiring for career positions in the Department do not recur. Implementation of our recommendations and vigilance by current and future Department leaders can help prevent a recurrence of the serious misconduct and violations of Federal civil service law and Department policy that are described throughout our reports.

That concludes my prepared statement, and I would be pleased to answer any questions.

[The prepared statement of Mr. Fine appears as a submission for the record.]

Chairman Leahy. Thank you very much, Mr. Fine.

According to your report, Monica Goodling, the Department's White House Liaison and senior counsel to the Attorney General, had a number of techniques to screen hires for political and ideological loyalty, especially loyalty to the President. I remember we brought this out at a hearing whether she would ask questions of applicants such as, What is it about George W. Bush that makes you want to serve him? That seems unusual because usually people ask, What is it about the U.S. Government that makes you want to serve in the United States Government?

Kyle Sampson, then Chief of Staff to Attorney General Gonzales, put in place a system for screening and selecting immigration judges that were fellow Republican loyalists, the principal source of which was the White House positions.

Now, in the course of our investigations into these matters and the firing of U.S. Attorneys, and despite substantial evidence showing White House involvement in the firings and in the effort for a

politically motivated prosecutions, in response to congressional inquiries about these matters, the President has invoked a blanket and unsubstantiated claim of Executive privilege to avoid complying with our subpoenas, and to prevent Karl Rove and Harriet Miers from even appearing to testify here and in the House.

Now, I take it you were not allowed to interview either Mr. Rove or Ms. Miers?

Mr. FINE. We did not interview Mr. Rove or Ms. Miers in this investigation. As we discuss in the report, we were able to interview someone in the Office of Political Affairs at the Department who was involved with Goodling and Williams in selecting immigration judges. We did interview him. From the indications that we saw in both the e-mails to and from the Department and from the testimony of the Department, we did not see indications that it went higher to Mr. Rove or Ms. Miers.

There is one instance where Mr. Rove was involved, and that is, he recommended an immigration judge for a vacant position in Chicago, and it was clear that he was pushing for this candidate. This candidate eventually was selected.

Chairman LEAHY. The two reports you have issues so far conclude that a broad set of high-level Department officials were involved in illegal political and loyalty screening for hires, including the former Acting Associate Attorney General, former Chief of Staff to the Attorney General, the former White House Liaison, and senior counsel to the Attorney General, two other former White House Liaisons, the former counsel to the Associate Attorney General, the former Chief of Staff of the Deputy Attorney General, and the current Deputy Director of the Executive Office of U.S. Attorneys.

Now, these officials, include a number of key officials at the Department, including Chiefs of Staff to the Attorney General and the number two official at the Department. In fact, the complaints that were raised were ignored. At an oversight hearing last month, Attorney General Mukasey characterized the firings in your first report in this way. He said, "I found that the IG report reflected that a few people currently employed by the Department, one of whom is longer in the job that he was in, had failed to respond with sufficient alacrity to the charges"—I do not want to interrupt the conversation next to me here—"failed to respond with sufficient alacrity to charge as politicization." That is very different from saying they found a politicized Department.

I wonder if you agree with his characterization of the conclusion in your report. Was this a problem in that there were just a few bad apples who failed to respond with sufficient alacrity or a more serious and systemic problem?

Mr. FINE. I think this is a serious problem that had implications throughout the Department of Justice. The ones who committed the wrongdoing, we identify in the reports, both in our Honors Program report as well as in our report on Monica Goodling and others. It had a significant effect throughout the Department. I think one of the significant things was people not objecting, people not standing up. Senator Specter alluded to this. A few did but most did not, and I think that was one of the significant problems that we found in the report.

Another significant problem that I think is important to note is the lack of oversight of these people. These were inexperienced, junior people to some extent; they rose to high-level positions, and they were allowed to implement these actions and changes unchecked without adequate supervision, without adequate oversight, and it resulted in very serious damage to the Department of Justice. So I think it is a systemic, important issue that needs to be addressed.

Chairman LEAHY. The fact that they rose to these high positions, I mean, these were positions where normally you have a great deal of experience and institutional knowledge before you are put in these positions. Is that correct?

Mr. FINE. Sometimes they do, but I think in this case there were a significant number of ones who did not have experience for the job that they were put in. I will give you an example.

In the Honors Program, a very important program in the Department of Justice, and the screening of candidates for that is very important, many of the people who apply for this Honors Program remain with the Department for much of their career. It is a career position. It is the backbone of the Department of Justice. So they set up a Screening Committee, and in 2006, they assigned Esther Slater McDonald to be on the Screening Committee. And she had been in the Department for less than a month. She was a junior attorney. She was not even given instructions on what to look for or overseen in her actions. I think that is negligent. I think that is not appropriate, and that on these important programs, there needs to be better oversight and supervision. It did not happen.

Chairman LEAHY. That is interesting, because I know when I was recruited by the then-Attorney General when I was a law student, he made it very, very clear that politics would not be allowed in these professional positions and that the White House could not interfere with them, could not interfere with the prosecutors, could not interfere with these decisions, and that was Attorney General Robert Kennedy, who, if there was anybody who might have close ties to the White House, he would.

Your report documents many examples of the use of code words by Ms. Goodling and others as a stand-in for political loyalty or ideology to eliminate candidates. Ruth Marcus noted in the Washington Post this morning the term "good American" was understood to be a stand-in for "Republican." It was used, for example, by the then-interim U.S. Attorney Brad Schlozman to persuade Ms. Goodling to approve his choices for career prosecutor positions. Perhaps the most egregious example, it was used by Ms. Goodling and others in Internet searches designed to obtain political and ideological affiliations. Here is one example of a Lexis-Nexis search used by Jane Williams, Ms. Goodling's predecessor as liaison to the Bush White House.

[Indicates chart showing search terms.]

In a Department position like that, they would be looking for this person to have experience. If they are going to be a prosecutor, have they had experience in trying cases and making decisions? Do they have a law enforcement background? This seems to be anything but, or am I reading too much into this.

Mr. FINE. No, I do not think you are reading too much into it. The problem was screening for political considerations is not improper for political jobs. It is improper when it is used for career jobs, and that is when it was used here. And they did use code words, and you gave the example of Bradley Schlozman. He did talk about trying to get approval to hire AUSAs when he was the interim U.S. Attorney in Missouri, called them "rock solid Americans," "hugely positive legacy for this administration." He described the candidates in terms of their conservative credentials and involvement in the Bush-Cheney campaign, "hard core" in the most positive sense of the word. And Goodling gave him permission to hire "one more good American." That has nothing to do with your qualifications to be an Assistant United States Attorney.

Another example, there was an official who wanted to apply for a detail in the Office of Legal Policy. She was asked and was told that the Office of Legal Policy provides advice to the Attorney General, and he expected to receive advice consistent with his policies and beliefs. This candidate scratched his head and said, "That is not my understanding." He said it to himself. "My understanding is that it should be consistent with the law." And that is the troubling aspect of this. That is what should be considered: their qualifications, their academic qualifications, their background for career positions. And we found instances where—many instances where it was not. It is very troubling and very damaging.

Chairman LEAHY. Thank you.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Fine, did the conduct of Monica Goodling or Kyle Sampson or John Nowacki in politicizing the appointments of people like immigration judges or members of the Board of Immigration Appeals, did that constitute a violation of criminal law?

Mr. FINE. I do not believe it did, Senator Specter. I believe it violated Department policy and Federal civil service law, which is civil law, but not criminal law. It is not a criminal statute.

Senator SPECTER. Was there anything in your investigation to suggest that there is a basis for criminal prosecutions for making false officials statements?

Mr. FINE. We looked at that carefully, and in our judgment and the judgment of prosecutors, experienced prosecutors who have worked on this case for us, we did not think that there was a sufficient basis for a criminal prosecution for false statements for anyone. We also noted we do not think that Monica Goodling made false statements to Congress. But we also know that she has immunity and sort of use of any testimony or the fruits of any testimony would be prohibited.

But having said that, I will say that we do not believe that the conduct that we found in our report constituted a criminal violation. It was a violation of civil law and Department policy.

Senator SPECTER. Was former Attorney General Gonzales questioned on this matter?

Mr. FINE. Yes, he was.

Senator SPECTER. And what did he say?

Mr. FINE. He said he was not aware of what was going on. He said he did not know Goodling used political factors when assessing

candidates for career positions, did not know the search terms that Goodling used, did not know even that Goodling's portfolio included hiring for IJs, and basically said he did not have knowledge of the role the Office of the Attorney General played in identifying candidates and was not involved in the selection of these immigration judges. He said the first time he became aware of problems or complaints in the Honors Program was in April 2007 when there was an anonymous letter provided to Congress in public, and when he heard about that, he told the Deputy Attorney General to fix it. That was what he said.

Senator SPECTER. Were Goodling, Sampson, and Nowacki questioned as to former Attorney General Gonzales' participation in an of these matters?

Mr. FINE. Yes.

Senator SPECTER. Attorney General Gonzales denied—I see you turning back. Do you have a modification to that answer?

Mr. FINE. Yes. Goodling was not questioned by us. She refused to be interviewed by us. She was questioned by the House Judiciary Committee.

Senator SPECTER. During the Judiciary Committee hearings on the U.S. Analyst issue on replacement, Attorney General Gonzales at that time denied knowing anything about that, and his testimony was contradicted by a number of people. But you are saying that did not happen here.

Mr. FINE. Exactly, saying it did not happen here. We are looking at the removal of U.S. Attorneys, as I mentioned in my statement. We are looking at that very carefully and will view all the issues in that one.

Senator SPECTER. And what White House officials, if any, were questioned on this issue of politicization of appointments?

Mr. FINE. Scott Jennings, who was in the Office of Political Affairs at the White House and who had the contact with Monica Goodling and her predecessors who were the White House Liaisons with the Department of Justice and provided candidates to the Department for these positions, particularly for immigration judges.

Senator SPECTER. And why were no others at the White House questioned?

Mr. FINE. From the evidence that we had, both e-mails, discussions, we did not see that the others were involved in this process. And we questioned the person who was involved.

Senator SPECTER. What steps have been taken by the Department of Justice, to your knowledge, at the present time to avoid a recurrence of this kind of a problem?

Mr. FINE. They have taken steps both when the issue arose back in April 2007 and also in response to our report to prevent a recurrence of this. For example, they have put back in the Executive Office for U.S. Attorneys the decisions on waiver applications by interim U.S. Attorneys who want to hire AUSAs. It is not the Office of the Attorney General who decides it anymore. It is EOUSA officials, and they only decide it based on financial considerations.

In addition, immigration judges are screened by a process that is in the Executive Office for Immigration Review by the officials there, the career officials there. They are rated. They are inter-

viewed. And it is not within the political people in the Department anymore.

In response to the Honors Program, they have ensured that the Screening Committees are done by career officials. They are done at the Office of Attorney Resource Management. If there are any deselections, it is based upon academics. And if there is anything else, there has to be listed reasons why it happened.

In addition, the screening officials have to certify that they are only going to use merit-based principles, not political considerations, that they understand those principles and will use those principles. They have changed the Department of Justice human resources order to make that 100 percent clear, and they are considering training for officials involved—

Senator SPECTER. Mr. Fine, I do not have much time left, and I want to cover one other subject. Elaborate upon the activities and conduct of Mr. Peter Keisler with respect to this issue.

Mr. FINE. As you pointed out, we credited what he did in this case. He received complaints from people who worked for him in the Civil Division about deselections that were completely irrational. These were highly qualified candidates who were deselected. He went to the person involved with the Screening Committee, Mike Elston, and protested about that. He appealed it. In some cases, he was—

Senator SPECTER. He appealed it to whom?

Mr. FINE. To Elston. He appealed the decision that was made to deselect a candidate for the Civil Division who was eminently qualified.

Senator SPECTER. When you say he appealed it, whom did he appeal it to?

Mr. FINE. Michael Elston, who was the Chair of the Screening Committee. He appealed the deselection.

Senator SPECTER. And what was the result of that effort by Mr. Keisler?

Mr. FINE. I think in that case the appeal was successful, and they were allowed to interview the candidate. He also discussed holding a meeting to discuss these issues, and he raised objections to it. I believe that what Peter Keisler did was appropriate and laudatory and that he should be praised. And I wish others had dome similar things. There were some who did it—Eileen O'Connor from the Tax Division, career attorneys in the Tax Division and the Civil Division. But other did not, and I think that was part of the problem as well. Peter Keisler did and should be credited for that.

Senator SPECTER. Well, praise is fine, but how about promoted?

Mr. FINE. That is not my ability to promote. I try to provide the facts.

Senator SPECTER. You are not going to comment on his qualifications to be a circuit judge in the District of Columbia?

Mr. FINE. No. I really do not think I should do that. I can comment that every dealing I have had with Peter Keisler has been professional. I have been tremendously impressed with him. I think he is a straight shooter.

Senator SPECTER. Well, Mr. Fine, that is close enough, as the expression goes, for Government work.

[Laughter.]

Mr. FINE. Those are the facts, and I try and bring them to you, Senator.

Senator SPECTER. Well, I appreciate that, and I appreciate your candor, Mr. Fine, and I have pursued that a little more so because I have interviewed him, I have talked to him, gone over his record with a fine-toothed comb, and hope yet that before the 110th Congress ends we can break the judicial impasse and confirm people like Peter Keisler and others. And I think your report, since you are noted for objectivity and very, very factual as to what he did here, is a strong recommendation inferentially of what is shown in the facts. That is the best kind of a recommendation. Thank you, Mr. Fine.

Thank you, Mr. Chairman.

Senator CARDIN. [Presiding.] Senator Leahy and I believe Senator Specter need to be on the floor because of legislation now of this Committee that is being considered on the floor. With that, I would recognize Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman Cardin.

First of all, thank you, Mr. Fine, for the work that you have done. I appreciate it very much, but I have to say it is creepy to read your report and see what was done. I served in the Department of Justice for 4 years, and my sense was that no matter how ardent the politics of any administration, they knew there were certain things you just do not do; there were certain institutions you just do not ruin. And the Department of Justice was obviously one of them, probably the most significant one. And so the fact that this happened really shows that when it comes to politics, this is an administration that has no gag reflex. And it was brought home particularly in their description of—I mean, if there is one area where the Bush administration would like to identify itself as being involved and interested and effective, it is counterterrorism. And yet where a truly experienced, highly regarded counterterrorism prosecutor is up for a position, that person got knocked out for somebody who had essentially no qualification whatsoever but the political qualification. And I cannot help but remark on the priorities that that choice reflects.

The concern I have is that for all that was done in the past—and you have done a wonderful job of shedding some light on it—the present Attorney General's position appears to be, We will sin no more, and I believe that he has kept his word on that. The problem is that there is a residue from what was done before. As you said, it was serious; it was significant; it was systemic. And the idea that it had no effect but lingers in the Department to me is just not realistic. And I see in particular there are a number of people who were hired into the Department, who are presumably still there, hired through a civil service system that was corrupted in this case. There were immigration judges hired, I believe, as you note, several instances in which they were hired without even interviews or without even a reference to the Executive Office of Immigration Review. We count more than 20 judges appointed under this process, some there was a little bit more screening, but some it appears who have just been assigned out by the politicos.

Can you guarantee us that those people are qualified? And setting that aside, is that really the correct standard, or should there

be some consequence for folks who come through what purports to be a civil service process but is truly a bogus one, and now hold a position that grants them civil service protection that they frankly do not deserve by virtue of the discrepancies from a proper process by which they were hired?

Mr. FINE. Simply said, Senator Whitehouse, can I guarantee that all are qualified immigration judges? No, I cannot. I do know that some of them after they were hired, a few—a very few—did not survive the probationary period and are not there anymore. I also know that some, according to the Executive Office for Immigration Review, are doing well and have been good judges.

I think it is a concern. That is the harm of this process because they were not required to compete against all the other qualified candidates who did not get an opportunity to do it. The Department has changed the process and is now hiring according to what I believe is an appropriate process.

You are right, there were approximately 20 to 40 or so immigration judges identified by the process. Not all of them were selected and not all of them are still there, but it is a small number. There are about 230 or so immigration judges in total. So while that is not solace for how the process worked, it is not an overwhelming majority of the immigration judges who obtained their positions through this flawed process.

You are right, they do have civil service protections, and it would be difficult, if not impossible, to look to see ex post facto are they qualified now. I think the important thing is for the officials in the Executive Office for Immigration Review to manage the program appropriately, make sure that people are doing the right thing. And if they are not and are not able to be immigration judges, they ought to take action.

Senator WHITEHOUSE. What is the consequence—you have indicated that there is no criminal prosecution that is available. Your report points out that it was a violation of Federal law to do this. I do not read in your report that there is any referral of any kind that you suggest for any legal action. It looks like they got away with it scot free and that the so-called loyal Bushies that they stuffed into these positions would also have gotten away with it and will be there essentially indefinitely protected by civil service protections that they do not deserve?

Mr. FINE. Well, Senator Whitehouse, I do not think they got away with it. I do think, first, their actions were exposed and condemned. Two, the ones—at least one who was with the Department should be considered and I believe will be considered for appropriate disciplinary action. The ones who are no longer with the Department should never get a job with the Department or, in my view, any other Federal agency based upon the conduct listed, and I hope—and they should consider this action. And there are also potential bar issues for the attorneys who have committed misconduct.

And so I do not believe that they got away with it, and I believe that both our report and the actions of this Committee and potential ramifications belie that.

Senator WHITEHOUSE. Well, your report was certainly very important, and whatever consequences do ensue, I very much appre-

ciate that you have done it, and the thoughtful way in which it was done. I cannot resist in my last 20 seconds to just observe that you are not involved in the investigation into the Office of Legal Counsel. That is an OPR investigation. Is that correct?

Mr. FINE. Which one are you talking about? Could you amplify that?

Senator WHITEHOUSE. I am aware that there is an OPR investigation into the Office of Legal Counsel with respect to whether the opinions that were prepared by the Office of Legal Counsel, I think, at the tail end of the process not that different from what took place here, heavily politicized in which standards were knocked over in order to get the right political answer, and whether those opinions met basic standards of legal research, legal propriety, and so forth. Are you in any respect also looking into anything at the Office of Legal Counsel, or is that solely an OPR investigation?

Mr. FINE. The investigation that you describe is an Office of Professional Responsibility investigation. We do not have jurisdiction, unfortunately, over attorneys in the exercise of their legal duty. I have testified about that, and I am hopeful, I hope, that the Congress will do something about that, because I believe that the Inspector General's office ought to have unlimited jurisdiction in the Department of Justice. We are independent, we are transparent, and there is no conflict of interest. And so I think that ought to be changed.

Senator WHITEHOUSE. And you make your findings public.

Mr. FINE. Exactly. We are transparent. We transparently provide to the Congress and others the basis of our findings, and we do that to the extent possible. And so I think that is important. I believe our office ought to have jurisdiction throughout the Department of Justice.

Senator WHITEHOUSE. Well, hopefully we will have a chance to—

Senator COBURN. Mr. Chairman, I have got a markup, and we usually run this Committee by the early bird rule. I was here before Senator Whitehouse, so I would like very much to be recognized so I can go to that markup.

Senator WHITEHOUSE. Actually, nobody was here before me.

Senator COBURN. Well, you were not here when I got here.

Senator WHITEHOUSE. I was here when you got here.

Senator COBURN. You were not sitting there.

Senator WHITEHOUSE. I was sitting here when you got here. I have been here the whole time. I was here before the Chairman. I greeted the witness 10 minutes before the hearing.

Senator COBURN. Either way, may I be recognized?

Senator CARDIN. Of course.

Senator WHITEHOUSE. I yield.

Senator CARDIN. Senator Coburn.

Senator COBURN. Thank you.

Thank you for your report. Is there anything in your investigation here—what I am seeing is low-level politicization and incompetence above it. Is there anything to suggest that there was some grand scheme led by the Attorney General to politicize this in multiple ways?

Mr. FINE. Well, first I would not call it low level. These are high officials in the Department of Justice. These are the White House Liaison, the Chief of Staff—

Senator COBURN. I will change my characterization. Is there anything—what I am trying to get at, is there anything in your investigation to say that the Attorney General had plans to politicize the Justice Department?

Mr. FINE. In terms of these two reports, we did not find that the Attorney General knew about the improper political considerations.

Senator COBURN. But you would agree that there was certainly incompetence at the level of management for this to be going on with an Attorney General not being aware of it?

Mr. FINE. As I stated before, I agree that there should have been—there was inadequate supervision. They should have known what was going on here. They should have more closely supervised the junior people who were elevated to very high positions, and I think that was part of the problem.

Senator COBURN. And you feel fairly comfortable that the things that needed to be changed within the Justice Department in light of your findings have, in fact, been changed in terms of procedure, monitoring, and supervision?

Mr. FINE. We have made recommendations. The Attorney General has agreed to implement those recommendations. We will continue to monitor that. But he has agreed with the actions that we suggest should occur. It does require vigilance. It requires not simply changing a procedure, but making sure the procedures are followed, and I think that is important as well.

Senator COBURN. It requires management.

Mr. FINE. Yes, it does.

Senator COBURN. Which was the reason that the last Attorney General left because of inept management.

I have several other questions. I will submit them for the record because of the time constraints here. I appreciate the hard work and I appreciate the transparency that you bring. Inspector Generals are very important because they form the balance to stop—nobody wants politicization of these types of positions. And the fact that we have an IG and we have strengthened that, and we are going to continue to strengthen that, is very hopeful and it gives a great breath of fresh air to the American people that they can see transparently what is functioning well, as well as what is not functioning well within our Government, and I thank you.

Mr. FINE. Thank you.

Senator CARDIN. Mr. Fine, first let me thank you for your report. The Inspector General was created in order to provide an independent review of compliance with rules and laws. And as you point out, your findings are open to the public, and I think it is extremely important work, and I thank you very much for what you have done.

You have indicated that steps have been taken by the Attorney General to correct the circumstance to make sure that political considerations are not involved in these decisions. I want to go a little bit further. You made six specific recommendations. Are you confident that all six are being implemented?

Mr. FINE. The steps are being taken to implement those recommendations, yes.

Senator CARDIN. And you will be monitoring to make sure that they are, in fact, implemented?

Mr. FINE. Yes.

Senator CARDIN. Now, there are other areas in which the Department of Justice could be influenced on a political agenda where they should not in the hiring of career employees and the agenda of certain agencies that are supposed to operate without political interference. Does you report go into that at all? And has that come up in any of your discussions with the Department of Justice as to the extent of political involvement in the historic roles of the Department of Justice?

Mr. FINE. Well, I know—perhaps one of the things you are referring to is the concerns about selective prosecution and prosecutions made on political decisions.

Senator CARDIN. Correct.

Mr. FINE. And that relates to the question that Senator Whitehouse asked me earlier, and that is, that is a matter that the Office of Professional Responsibility has jurisdiction to handle, and my understanding, publicly stated, is that they are looking into those things. So that is something that we will have to await their conclusions. I believe that we ought to have jurisdiction, but we do not, so we will see what the Office of Professional Responsibility results are.

Senator CARDIN. So you are not involved in any of that because of jurisdictional issues?

Mr. FINE. Yes.

Senator CARDIN. You know, there is also the matter of the manner in which U.S. Attorneys were dismissed, the type of cases that they were involved with. Those are all areas that you are not directly involved in.

Mr. FINE. No. That issue we are involved with. We are looking at the removal of U.S. Attorneys that happened. We are doing it jointly with the Office of Professional Responsibility. We are looking at the reasons why they were removed, and we are doing a thorough investigation of that matter. And we will provide that report when it is completed.

Senator CARDIN. Could you give us an indication as to the timing of the release of that report?

Mr. FINE. I really cannot and should not. I have been the IG for 8 years, and I am often asked that question, and I am often wrong. What I can say is that we are taking this very seriously. We are moving as expeditiously as we can. When it is completed, we will release it.

Senator CARDIN. Could I just get certain assurances that we will get reports before the end of this year?

Mr. FINE. I would hope so, but, again, we are going to take the evidence wherever it leads in whatever fashion it is, and we will do as expeditious a job as we can. And so I think I really ought to leave it at that, Senator Cardin. I understand your question and your reason for wanting to know, but it is probably better for me to just simply say that.

Senator CARDIN. Could I ask your assurance that if there are delays put in your path by the Department of Justice or the administration, that would be brought to our attention?

Mr. FINE. We will not be shy about raising any concerns with problems or delays that are caused by outside entities.

Senator CARDIN. I take that as a yes.

Mr. FINE. Yes.

Senator CARDIN. I appreciate that. You have indicated that you are concerned about the jurisdiction of the Inspector General. We have also talked about the civil service system. Is there a need or recommendations for change in the civil service system's laws in order to strengthen the probability this will not happen again?

Mr. FINE. I do not think so. I think the laws are there. They need to be enforced. They need to be adhered to. They need to be understood. They need to be managed. I think the problem was not necessarily with the law. The problem was with the application of the law by the people in the Department of Justice, which is very troubling that the Department of Justice would not adhere to the law.

There is one issue that I do think the Department of Justice needs to clarify and make clear, and that is, when is it appropriate to consider political factors in detailees for positions in leadership offices. Some positions are policymaking, could be filled by political appointees. And if it is a detailee that is being considered, can you use political affiliations? There are others that are clearly not policymaking and should not in any way be considered a political position, for example, ones in the Executive Office for U.S. Attorneys that we have described. That ought to be made clear which positions and which circumstances is it appropriate to consider political affiliations in detailees for positions in the leadership offices. So that is one thing the Department ought to do. We recommended that in our report. They said they are going to do that.

Senator CARDIN. So can we count on your following up to see how they, in fact, respond in doing that? I take it that is still an open issue. It has not been—

Mr. FINE. It has not been done, but, yes, you can count on us to followup and monitor that.

Senator CARDIN. And let me just underscore the point that I think Senator Whitehouse was pursuing. You have a 33-year-old ideologue that was able to rule the day in the Department of Justice in which senior Justice Department officials either did nothing or just refused to take action knowing full well that political considerations were being used. How was that allowed to continue? What was the motivation here? Did your report reflect that? Was this a thought that the White House was directing this to occur and, therefore, leave it alone? Or was it a concern that certain people would infiltrate the Department of Justice that they did not want to see in the Department of Justice? Or was this a reward system for political loyalty? I mean, how was this allowed to continue in an agency that has such a long history of excellence and being nonpartisan and carrying out justice?

Mr. FINE. I think it was allowed to occur because people were put in very high positions without very much experience and without very much knowledge of the positions.

Senator CARDIN. Put in high positions by whom?

Mr. FINE. By people in the Department of Justice, by others. And I think that they did not understand the traditions of the Department of Justice. The tradition of the Department of Justice is that it is different, it is special. It is not partisan. And when you come to the Department of Justice, you put that behind you, particularly in career positions, and that you do not try to infuse those kinds of decisions with political considerations, particularly hiring of career people. And the people who came did not understand that, did not appreciate that, and as I stated before, were not monitored and were allowed to run uncontrolled, which was very, very troubling. And then these actions happened, and the people at the top, including Attorney General Gonzales, said he was not aware of it. Well, that is a problem. That is a very significant problem. And I think that it has created damage to the Department of Justice that I believe and hope we will get over, but it is very troubling.

Senator CARDIN. Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman, and I apologize to the witness. We have a Joint Economic Committee hearing at the same time, but I took a brief break because I wanted to be here. And I want to thank you, Mr. Fine, for staying on top of things and doing your job as IG, which I know requires a degree of independence and a degree of courage, and I think you have shown both. I have a few quick questions.

Although we have long known about the unprecedented political decisionmaking in the Justice Department, the details of this report are a new low. Over a year ago, when I held the first hearing to look into the suspicious firing of several U.S. Attorneys, none of us knew that this Committee's investigation would implicate much of the Department's senior leadership. We heard early on that Monica Goodling might be one of the bad actors. That is why I urged Senator Leahy to add her to the list of witnesses to subpoena, and now we are all rightly appalled by this account of how decisions in the Justice Department were made based on political considerations rather than individual qualifications. And here we have a great civil service. Senator Whitehouse and Senator Cardin know this well, and—I hope they are not leaving because of my speeches. No, I know we have a vote so go right ahead.

They know this well. But I just find it despicable that senior Justice Department aides broke the law, sullied the reputation of the Department and of thousands and thousands of people through Democratic and Republican administrations alike who just labored and did the right thing, and now may be getting off without punishment because they left the Department even though they resigned in disgrace and at the height of a scandal.

But these revelations are not just a blow to the Department's reputation, but they also affect our ability to keep the country safe, it seems, because as you report, Ms. Goodling would not let a former U.S. Attorney from Western New York, Mr. Battle, hire his own assistant because she believed that his preferred candidate had not proved himself to the Republican Party.

Another qualified New York candidate, a winner of the Attorney General's award for exceptional service, was rejected for a top Justice Department counterterrorism position because of his wife's Democratic political affiliation. Because of this, a vital

counterterrorism position was filled by a person at the Department with no experience.

So this is not just politics. This is our own safety. When you have less qualified people—if we had politics and equally qualified people, it would be one thing. But you have less qualified people trumping more qualified people because of their political affiliation, and that hurts every one of us in terms of safety and security and the jobs of the Justice Department.

And so most members of the Department, for instance, believe that that person in counterterrorism was undeniably unqualified, but they met Ms. Goodling's ideological test. That is beyond disgraceful, in my view.

One of the most shocking conclusions in your report is that someone like Monica Goodling who politicized the appointment of Assistant U.S. Attorneys, immigration judges, and even counterterrorism positions, may not face any real consequences for her actions simply because she already left the Department. Under current law, even though these people broke Federal civil service laws and trampled on the Department's own standards, they need only change jobs to escape real accountability. It could be that someone could leave while you are doing the investigation or even the day before you issue your report and escape any punishment whatsoever.

So let me ask you this, Mr. Fine: Should such blatant politicization and illegal activity be subject to some criminal punishment so there would be ultimately accountability? In your view, would a criminal penalty—say a misdemeanor—help prevent such behavior in the future, work as a more effective deterrent, and provide better accountability? I am sure it sticks in many people's craws that these were horrible things that were done and because simply you resign from the Department you escape any punishment.

Mr. FINE. Well, let me talk a little about the premise of the question, and then I will get to whether the law should be changed, my view on that.

I am not sure it is true to say that she escaped any accountability, any punishment. As I discussed with Senator Whitehouse earlier, people did leave the Department so they cannot be disciplined by the Department, but we have recommended that they never get a job with the Department again, hopefully never with the Federal Government again, that they consider this report if they ever do apply.

They have been exposed. Their conduct has been exposed in a transparent way for all to see. And then there may be—I am not saying there is, but there may be appropriate bar sanctions possibly for attorneys who have committed misconduct and may have violated a bar rule. And so the bar may look into that. There is no criminal punishment that we see for this conduct.

Now, should there be criminal punishment? I am not sure. To criminalize violations of civil service law might expose a lot of people to potential misdemeanors in circumstances not like that. So I would have to think more carefully about that. But my initial reaction is we have civil law and criminal law, and there ought to be that separation.

But I recognize the concern about accountability, and I believe that the comments that I made about the premise will—

Senator SCHUMER. And, you know, even aside from discretion, in other words, a minor violation without real intent, different than this, might not be prosecuted. I am sure there is a way to draft the law to make it a misdemeanor if it was repeatedly done. I mean, there are ways to set standards so not every civil service violation would be a misdemeanor, don't you think?

Mr. FINE. Yes, but when you draft it that way, I think you can sweep in conduct that you may not want to have criminalized. There are a lot of difficult issues in the civil service law. This one I do not think was a difficult issue. But you make a statute to cover the civil service law.

Senator SCHUMER. It is something I am exploring, and I would like to continue the dialog with you.

Mr. FINE. Certainly.

Senator SCHUMER. OK. One other—did we start our vote?

Senator WHITEHOUSE. [Presiding.] We have not started the vote.

Senator SCHUMER. We have not started the vote. OK, good. So this is about burrowing. As you may know already, Senator Feinstein and I wrote a letter to the Attorney General last week, and this is before your report came out. In the letter we asked the Attorney General to investigate instances of burrowing in the Department where political appointees are then given career positions and continue to assert influence during a future administration, even though that candidate may not be the most qualified.

Now, our letter was based on a report by the GAO that found the Department was engaged in improper hiring procedures, like refusing to award our war veterans consideration they deserve and are legally due. So we are acting—that is, Senator Feinstein and I—proactively to ensure that career positions in the Federal Government are filled by the best individuals available and in accordance with Federal law.

Did you find any overlap between the GAO findings and the particular instances of politicization in hiring that you have been investigating?

Mr. FINE. Well, we did not look at that issue of burrowing, but I think sort of the same principles apply and the same concerns apply; that is, if you are using any considerations other than a fair and open competition and merit-based, based upon the skills, knowledge, and ability of someone, then there can be those kinds of problems.

I do know that the GAO is opening a review of this and has done reviews in the past. So I think that is important to maintain transparency and scrutiny on that subject, and I think that is an important issue.

Senator SCHUMER. Thank you. My time has expired.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Schumer.

Just to followup on the discussion with Senator Schumer and with respect to the consequences of these violations of Federal law, first of all, can you identify what bar rules might have been broken. I did not see—this is an OIG/OPR joint report, correct?

Mr. FINE. Right.

Senator WHITEHOUSE. I did not see OPR making any referral to disciplinary counsel as a result. So I am a little confused about what disciplinary consequences lawyers might face for their role in the administrative process of hiring, and if you are confident that there might be those processes, why the OPR side of this did not make any referral to local disciplinary counsel?

Mr. FINE. My understanding is—and I had discussions with OPR about this—that OPR intends to, and we will participate in a notification of the bars of individuals who are found to have committed misconduct, for them review the conduct. Now, I do not believe OPR has done a lengthy review of this and say which exact rule, but it does intend to, and I think it is appropriate to notify the bars of the individuals who were involved. In fact, I think some of them have already been notified. I have read that individuals have provided our reports to various bars for the bar to look at.

In terms of the rules, I am not an expert in the area of potentially Rule 8.4, which talks about the administration of justice and acts going to the fitness of an attorney to practice law. I am not saying that necessarily does apply, but I think there are things that ought to be reviewed and looked at, and the experts in this area ought to do that.

Senator WHITEHOUSE. OK. And following up on my discussion with you and Senator Schumer's discussion with you about not only consequences but also, I guess, deterrent effect or motivations, if you are not enthusiastic about any criminal penalty, even at the misdemeanor level, for a deliberate violation of the civil service hiring laws, would you think that it might make sense to strip from individuals hired pursuant to a deliberately flawed process the protection of those civil service laws until they had gone through a legitimate process? It strikes me that if something like that were set up—you know, this is not done just for fun. This is not done just because somebody has an idle hour. This is done in order to achieve political ends. And the end is to put certain people with certain ideology in certain positions. And if the folks who are going about doing that were understood that by virtue of distorting and compromising the civil service hiring process, they are actually denying the folks that they would be planting in the civil service positions the benefit of civil service protection, it would seem to me that it would operate as a counterincentive to these sorts of attempts to subvert the civil service system. Would you—

Mr. FINE. I would have to think more about that. That is an interesting proposition.

Senator WHITEHOUSE. Take the prize out of the game, basically.

Mr. FINE. Yes. I am not sure I am ready to answer that question off the cuff. It is an interesting proposition. I would say that I am not sure that all of the individuals who were selected knew about the improper procedure that was used. Maybe some of them did. I am not sure all of them did.

Senator WHITEHOUSE. And to a certain extent, it would be their bad fortune to have been on the losing end of this. But from a structural point of view, it would take away the incentive, the prize, if you will, of the game for those who are manipulating or compromising the civil service process to political ends.

Mr. FINE. That is one way to do it. I would hope that the Department would do it directly and to prevent the people from actually doing this so we do not have to get to this, the fact review, but I understand your point.

Senator WHITEHOUSE. The last question that I have has to do with—you indicated on a number of occasions in this report that people gave statements to you in the course of their interviews that you described as "inaccurate," and in some cases described rather pointedly as "inaccurate," and in what looked to me to be circumstances in which it was a little hard to believe that it was an innocent mistake. And my question to you is: Are the interviews that you conduct within the ambit of 18 U.S.C. 1001, the False Statements Act? And do you have a process for evaluating whether inaccurate statements provided to you in these interviewed amount to a false statement under that Act? And what is that process for such inaccurate statements? How do you get from you just saying it is inaccurate in the report to a referral of some kind for some prosecuting official to look at whether that criminal law was violated?

Mr. FINE. Well, they are within the ambit of Section 1001; a false statement to an OIG investigator is covered by that statute. And we do analyze that. We analyze whether the evidence is sufficient to prove beyond a reasonable doubt that the statement both was inaccurate, the very specifics of the statement—and you, being a former U.S. Attorney, know the difficulty. You have to be very precise about what the question is and what the answer is, and it has to be inaccurate and false in all respects. And then we go to the intent of the person, whether it was a mistake or whether they knew it was inaccurate and we can prove that beyond a reasonable doubt.

So the same processes that an Assistant United States Attorney would use—and we do have Assistant United States Attorneys, very experienced ones, on our staff who have done this over their careers, do that analysis.

Senator WHITEHOUSE. So is it safe, then, to conclude from the report limiting itself to only describing these statements as inaccurate and not making any further referral or not discussing any further whether the statements might merit prosecution, that you did, in fact, look at that and that the conclusion that you drew was that these statements, however inaccurate, did not amount to what an Assistant U.S. Attorney preparing a charge would consider adequate to bring that charge under 18 U.S.C. 1001?

Mr. FINE. That is correct.

Senator WHITEHOUSE. OK. Very good. Well, we have this vote, and everybody has gone to vote, so I probably better do the same. I would like to, with unanimous consent, insert into the record on behalf of Chairman Leahy a number of editorials from papers around the country, including the New York Times, the San Francisco Chronicle, the Washington Post, and USA Today that have editorialized against the partisanship of the Ashcroft and Gonzales regimes and called upon the current Attorney General to take action in response to these reports and hold people accountable, and a selection of these will be put into the record.

The record will remain open for 1 week in the event anybody wishes to add to it, and if there is nothing further, again, with my grateful appreciation not only to you but also to the, I assume, very busy and hard-working staff members of the Office of Inspector General of the Department of Justice, you have done your own office and the Department, I think, considerable good with this report. And I hope you feel considerable pride in it. I think that many of us do. Thank you.

Mr. FINE. Thank you.

Senator WHITEHOUSE. The hearing is adjourned.

[Whereupon, at 11:20 a.m., the Committee was adjourned.]

Questions and answers and submissions for the record follow.}

QUESTIONS AND ANSWERS

Senator Edward M. Kennedy
Questions for the Record
Senate Judiciary Committee Hearing on "Politicized Hiring at the Department of Justice"
July 30, 2008

QUESTIONS FOR INSPECTOR GENERAL GLENN A. FINE

Under current law, the following disciplinary actions are available for violations of the Civil Service Reform Act: removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine of up to $1,000. Many of the Department of Justice employees who are implicated in the politicization of hirings have left the federal government, which would mean most of these disciplinary actions are unavailable. In your testimony, you indicated that debarment from federal employment should be pursued and that the Office of Professional Responsibility will be notifying the Bars of the attorneys involved of any possible professional misconduct.

1. Are the civil fines of up to $1,000 still available as disciplinary action against those who have left the DOJ and the federal government?

From our reading of the statute, we believe that a civil fine may be available for violations of the Civil Service Reform Act, even when an employee has left the Department. However, the Office of Special Counsel (OSC) is the entity charged with obtaining remedies for violations of the Civil Service Reform Act and determining whether a disciplinary action to impose a $1,000 fine for a violation of the Act is available.

2. Are there currently plans to pursue either debarment from federal employment and/or civil fines against those who violated civil service law through the Merit Systems Protection Board?

We have provided our reports to OSC. We understand it is considering what actions it should take in these cases.

3. Will disciplinary action be brought against those implicated by the four IG investigations of the politicization of DOJ who are still employed by the federal government? If so, what actions are being sought?

Yes, we understand that disciplinary action will be considered for any Department employee who committed misconduct and remains with the Department. For example, in the report entitled "An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 2008," we recommended

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consideration of disciplinary action for John Nowacki, who is still employed by the Department. We will make similar disciplinary recommendations if they are appropriate in our other investigations.

In your answers to oral questions during the hearing, you indicated that it is your view that the Office of the Inspector General should have increased oversight jurisdiction over DOJ, including oversight of professional duties of attorneys in the department.

4. Can you describe in detail how you envision OIG interacting with OPR? Please describe the respective roles of OIG and OPR in conducting the investigations that resulted in the two reports already released and the role that each will play in the two reports yet to be released on the U.S. Attorney firings and the Civil Rights Division. Have there been disputes over jurisdiction or procedure? Is the OIG/OPR joint investigation model one that should be considered for future investigations?

In the two investigations that have been completed, as well as in the ongoing investigations involving the removal of several U.S. Attorneys and hiring and other personnel actions in the Civil Rights Division, the OIG and the OPR are jointly conducting the investigations. We are cooperating on these investigations and, after discussing the issues involved, have jointly agreed to both the procedures used and the reports that were issued.

However, I do not believe that joint OIG/OPR investigations are a model that should be considered for future investigations. For example, OIG and OPR procedures and processes are different, and jointly conducting these types of investigations require extensive discussions that can lengthen the time needed to complete the investigation.

Moreover, for the reasons that I stated at this hearing and at other hearings, I believe that the OIG should have full jurisdiction in the Department of Justice, like all other Inspectors General in the federal government have with regard to all employees in their agencies.[1] I believe that the current limitation on the OIG's jurisdiction should be removed because it creates conflicts of interest, results in duplicative and overlapping investigations, prevents the OIG from addressing some systemic issues involving Department of Justice attorney conduct, and contravenes the rationale for establishing independent Inspectors General throughout the government. The OIG's investigations are

[1] See, e.g., Statement of Glenn A. Fine before the Senate Committee on Homeland Security and Governmental Affairs concerning "Strengthening the Unique Role of the Nation's Inspectors General," July 11, 2007.

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independent, transparent, and generally made public, and we should have jurisdiction throughout the Department of Justice.

According to your testimony, Attorney General Mukasey has agreed to implement all of the recommendations from OIG and you pledged that your office would continue to monitor the process to ensure that these recommendations are in fact implemented.

5. Will OIG issue any follow up reports to inform Congress and the public about the progress of that implementation, including identifying areas in which the recommendations are not being followed?

The OIG will continue to monitor the implementation of these recommendations, and if there are areas where we determine that the recommendations are not being followed, we will report on those issues.

In your testimony, you emphasized the lack of oversight of young and inexperienced individuals who were placed in senior positions in the Department and engaged in improper hiring practices, such as Monica Goodling, Kyle Sampson, and Bradley Scholzman. These individuals were put into positions from which they could corrupt the hiring practices of the Department. Their coordinated efforts raise the strong suspicion that they were placed in these positions by officials who knew that they would inject partisan and ideological considerations into hiring. Indeed, their hiring was the culmination of a process that began at least as early as 2002, when Attorney General Ashcroft revised the Honors hiring program to purge career attorneys from the selection process and place it in the hands of political appointees. Your reports, however do not investigate the hiring and oversight of these officials in any depth, leaving your investigation incomplete.

6. Does OIG intend to investigate the failures in supervision and in the hiring process involved in putting these officials into positions where they would then go on to violate civil service laws and DOJ rules in politicizing the Department? Are there any plans for further investigation up the chain to get to the root of the corruption of Department hiring practices?

We believe that, among other issues, there was a failure to adequately oversee and supervise the individuals that we describe in the report. In our investigation, we did not come across evidence that these individuals were placed in their positions by officials who knew they would inject partisan and ideological considerations into hiring decisions for career positions. However, a full review of the hiring and supervision of the various officials discussed in our report was beyond the scope of our investigation. As to our other work, our investigations of the removal of U.S. Attorneys and hiring and personnel practices in the Civil Rights

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Division are ongoing. Beyond those two, we do not presently have plans to initiate further investigations related to the issues raised in this question.

I understand that it is not the role of OIG to recommend specific remedies for individuals, but it is the role of OIG to recommend structural remedies for Department failures. Your reports to date have not recommended any process for uncovering individual violations and granting relief.

7. Do you have or intend to issue any recommendations on how the Department should provide relief to the large number of applicants who appear to have been denied consideration for employment because of their political beliefs?

We do not plan to issue additional recommendations to the Department regarding possible relief for applicants who may have been denied consideration for employment. However, we are monitoring the Department's actions in this regard and have provided our input to the Department on suggested remedies for the issues discussed in our reports.

Your reports have focused primarily on hiring practices and have failed to address the many other ways in which discrimination based on perceived political affiliation led to unfavorable personnel actions, including the denial of promotions, inaccurate performance evaluations, undesirable assignments, denial of awards, involuntary transfers and constructive dismissals.

8. Do you intend to address these matters? If not, why not?

We do not intend to initiate new investigations on the issues raised by this question. However, as described above, two additional investigations are ongoing in which we are investigating allegations relating to some of the issues raised in this question.

The OIG report details the decision to hire Garry Malphrus as an immigration judge in March 2005, a decision that was clearly made on the basis of his political affiliation and leanings. Mr. Malphrus' background includes serving as a Republican Counsel to the Senate Judiciary Committee and as Associate Director of the White House Domestic Policy Counsel. He is also known for his role in the so-called Brooks Brothers Riot, the Republican orchestrated protests during the 2000 Presidential Election Florida recount. In addition to his strong Republican connections, Mr. Malphrus brought no immigration law experience to the immigration court. As detailed in the OIG report, Mr. Malphrus became a key player in the further politicization of the immigration courts, actively identifying

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others who were selected for their political loyalties rather than their immigration expertise or suitability for the court. To make matters worse, in May of this year - long after the Department supposedly fixed the EOIR hiring process last year - it was announced that Mr. Malphrus was being promoted to become a member of the Board of Immigration Appeals, arguably the most influential body in immigration law because of its major role in interpreting our immigration laws and setting judicial precedent. The BIA historically has consisted of some of the top immigration lawyers in the country with decades of combined experience. Apparently, the Attorney General signed off on this appointment some time in the past two weeks, despite Mr. Malphrus' prominence in this report and his continuing lack of experience: Board members are normally required to have seven years of immigration law experience, but by my count Mr. Malphrus has only 2.5 years.

9. Were you aware of this development? In your opinion, doesn't this call into question the integrity of the new hiring process for immigration judges and Board members?

We learned of Mr. Malphrus's promotion during our investigation. According to officials in the Executive Office for Immigration Review (EOIR), Mr. Malphrus was appointed a member of the Board of Immigration Appeals (BIA) as a result of the new process for appointing BIA members described in our report. That process restored EOIR's role in BIA hiring and included the participation of career attorneys in the selection process. According to a senior career EOIR official involved in the selection process, political affiliations were not used in the process that resulted in Mr. Malphrus's appointment to the BIA.

It is my understanding that there are currently more than twenty immigration judge positions that remain vacant. As the OIG report details, delays in hiring immigration judges have had a serious detrimental effect on the ability of the immigration court system to keep current with its caseload. A court system beleaguered by delays undermines our ability to enforce U.S. immigration laws, to deport individuals who have no reason to be here, and to provide relief to those who do.

10. In your opinion, has the reaction to political hirings continued to cause problems in the hiring process and perpetuated delays in hiring?

We believe that the problems described in our report – hiring of immigration judges was controlled by officials in the Attorney General's Office who based their decisions on political affiliations – caused significant delays in hiring judges. According to what career EOIR officials have described to us, the current process of placing authority to hire judges back in EOIR is now working well. EOIR officials also

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explained that current delays in filling vacancies are not caused by the hiring process, but primarily result from delays in completing candidate background investigations.

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Follow-up Questions of Senator Tom Coburn, M.D.
Hearing: "Politicized Hiring at the Department of Justice"
United States Senate Committee on the Judiciary
July 30, 2008

1. In your June 24, 2008 Report on political factors influencing Honors Program and Summer Legal Intern Program hiring, you describe how then-Assistant Attorney General Peter Keisler stood up against the apparent use of political or ideological factors in hiring decisions. Your report, for instance, states that Peter Keisler confronted another employee who was making these hiring decisions and even complained up the ladder to that person's supervisor. Your Report quoted Peter Keisler in expressing his opposition to these screening decisions as stating: "[Y]ou should know that there's a lot of people who believe that these deselections are either irrational or so irrational that they are motivated by politics, and that's a problem as you know."

a. Is it true that Mr. Keisler's intervention actually preserved an Honors Program position for someone who was "deselected" based on her perceived ideology?

Yes.

b. Wouldn't this kind of leadership – had it been followed across the Department – have prevented the hiring problems you have been investigating?

I believe that Mr. Keisler's actions with regard to the Honors Program hiring were appropriate, and that if others acted as he did the problems we described in our report would have been mitigated.

c. Mr. Keisler served as Acting Attorney General from September through November 2007. Did any of the violations you note in your most recent reports on hiring problems occur under his stewardship of the Department?

Not to our knowledge.

2. In his most recent responses to questions from this Committee, Attorney General Mukasey described Peter Keisler as "a lawyer of extraordinary intellect and judgment and, equally important, as an uncommonly honorable and decent person."

a. Based on your investigation and dealings with Mr. Keisler, do you have any reason to disagree with the Attorney General?

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I believe that Mr. Keisler is a dedicated public servant and a person of strong intellect and ethics. As I stated at the hearing, I have been tremendously impressed with him during all of our interactions.

b. Do you consider Mr. Keisler able to exhibit impartiality on the bench?

It is not my role to comment on a person's nomination to be a judge. However, in my dealings with Mr. Keisler I have found him to be a fair and impartial person, and I have the utmost respect for him and his abilities.

3. On January 25, 2008, the Attorney General reportedly told the press he witnessed no signs of turmoil when he assumed the reins at the Department. He took over from Acting Attorney General Peter Keisler.

a. Based on your investigation report and Mr. Keisler's actions in opposing political litmus tests, do you believe Mr. Keisler deserves credit for quieting turmoil within the Department?

I was impressed with Mr. Keisler's leadership in the short time he served as Acting Attorney General, and I have always found him to be fair and reasonable in his decisions.

4. Mr. Keisler is currently nominated for a seat on the U.S. Court of Appeals for the District of Columbia Circuit. Nominees to the Courts of Appeals are often scrutinized for political leanings to see if they will be fair and impartial as a future judge.

a. Do you have any reason to doubt that Mr. Keisler would be just as fair as a judge as he was in judging the Honors Program and Summer Intern hiring at the Department?

I have no reason to doubt that Mr. Keisler would be fair in any endeavor.

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SUBMISSIONS FOR THE RECORD

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice,
before the
Senate Committee on the Judiciary
concerning
Politicized Hiring at the Department of Justice

July 30, 2008

Mr. Chairman, Senator Specter, and Members of the Committee on the Judiciary:

I appreciate the opportunity to testify at this hearing on politicized hiring at the Department of Justice (Department).

The Office of the Inspector General (OIG) and the Department's Office of Professional Responsibility (OPR) recently issued two reports on our joint investigations of allegations relating to politicized hiring at the Department. The first report, issued on June 24, 2008, examined hiring practices in the Department's Honors Program and Summer Law Intern Program (SLIP). In that report, we determined that Screening Committees used by the Department to screen applications for the Honors and Summer Law Internship Programs inappropriately used political or ideological affiliations to "deselect" candidates in 2006 and in 2002.

This week, on July 28, we issued a second joint report that examined the actions of Monica Goodling, the Department's former White House Liaison, and other staff in the Attorney General's office regarding allegations that they inappropriately used political or ideological affiliations in the hiring process for career Department positions. Our investigation found that Goodling, Kyle Sampson (the former Chief of Staff to the Attorney General), and other staff in the Office of the Attorney General improperly considered political or ideological affiliations in screening candidates for certain career positions at the Department, in violation of federal law and Department policy.

The OIG and OPR are also jointly investigating allegations related to the removal of several United States Attorneys in late 2006, as well as allegations that former Civil Rights Division Acting Assistant Attorney General Bradley Schlozman and others used political or ideological affiliations in hiring and personnel decisions in the Department's Civil Rights Division. Because those investigations are ongoing, I should not comment on them at this time. However, I want to assure the Committee that the OIG and OPR are working

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very hard on these investigations and will issue our reports as expeditiously as possible when these investigations are complete.

In my testimony today I will summarize the major findings and recommendations from the first two OIG/OPR reports. My statement is organized in three parts. In the first part, I summarize our findings on Honors Program and Summer Law Intern Program hiring. The second part describes the results of the report on allegations of politicized hiring practices by Monica Goodling and others in the Attorney General's office. In the final part, I discuss corrective actions taken by the Department, both before our two reports were issued and also in response to the recommendations contained in the reports.

I. HONORS PROGRAM/SUMMER LAW INTERN PROGRAM REPORT

The report issued on June 24, 2008, provided the results of our investigation of allegations of politicized hiring in the Department's Honors Program and Summer Law Intern Program from 2002 to 2006.

The Attorney General's Honors Program is a highly competitive hiring program for entry-level Department attorneys, and the SLIP is a highly competitive Department program for paid summer internships for law students. The Honors Program is the exclusive means by which the Department hires recent law school graduates and judicial law clerks who do not have prior legal experience. Many of these hires remain with the Department for significant periods of time, some for much of their careers. The Department's litigating divisions and several other Department components participate in the Honors Program hiring process, which is overseen by the Department's Office of Attorney Recruitment and Management.

It is not improper to consider political affiliations when hiring for political positions in the Department. However, positions in the Honors Program and SLIP are career, rather than political, positions. Both Department policy and federal law prohibit discrimination in hiring for career positions on the basis of political affiliations and require the Department to use merit-based hiring practices that identify qualified applicants through fair and open competition.

Prior to 2002, career employees within each Department component decided which applicants to interview and select for both the Honors Program and SLIP. However, under a new system implemented by the Attorney General in 2002, a Screening Committee generally comprised of politically appointed employees from the Department's leadership offices had to approve all Honors Program and SLIP candidates for interviews by the components. In addition, the political appointees in each Department component were encouraged to become move involved in the hiring process to select these candidates.

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As part of our investigation of whether political and ideological affiliations were improperly considered in the hiring process for the Honors Program and SLIP, the OIG and OPR interviewed more than 70 individuals who participated in the Honors Program hiring process. We also reviewed thousands of pages of e-mails and other documents related to the Honors Program and SLIP hiring process from 2002 through 2006. In addition, we examined the applications of candidates who had been approved or deselected by the Screening Committees each of those years to determine whether candidates with apparent political or ideological affiliations on their applications were treated differently.

The evidence showed that the Screening Committees in 2002 and 2006 improperly deselected candidates for interviews based on political and ideological affiliations. The data analysis we conducted for 2002 demonstrated that candidates with Democratic Party and liberal affiliations apparent on their applications were deselected at a significantly higher rate than applicants with Republican Party, conservative, or neutral affiliations. This pattern continued when we compared a subset of academically highly qualified candidates who met each of the following criteria: attendance at a top 20 law school, ranked in the top 20 percent of their class, membership on the law review, and a judicial clerkship. In sum, while we were unable to prove that any specific members of the 2002 Screening Committee intentionally made deselections based on prohibited factors, and each member denied doing so, the data indicated that the Committee considered political or ideological affiliations when deselecting candidates.

During the next 3 years, from 2003 to 2005, the Screening Committees made few deselections, and we concluded that these few deselection decisions could reasonably be explained on the basis of candidates' low class rank, low grades, and attendance at a lower-tier law school.

However, we found that in 2006 the Screening Committee inappropriately used political and ideological affiliations to deselect a significant number of candidates. We determined that a significantly higher percentage of the deselected Honors Program and SLIP candidates had liberal affiliations as compared to candidates with conservative affiliations. This pattern was also apparent when we compared applicants with Democratic Party affiliations versus Republican Party affiliations for both Honors Program and SLIP candidates. The pattern was also apparent when we examined a subset of candidates who were highly qualified academically.

In addition, the documentary evidence and our witness interviews support the conclusion that two members of the 2006 Screening Committee, Esther Slater McDonald, then Counsel to the Associate Attorney General, and Michael Elston, then Chief of Staff to the Deputy Attorney General, considered

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political or ideological affiliations in deselecting candidates, in violation of Department policy and federal law.

For example, the evidence showed that McDonald wrote disparaging statements about candidates' liberal and Democratic Party affiliations on the applications she reviewed and that she voted to deselect candidates on that basis. The third member of the 2006 Screening Committee, Daniel Fridman, who was a career Assistant United States Attorney on detail to the Office of the Deputy Attorney General, appropriately raised concerns that political or ideological affiliations were being used by McDonald to both his supervisor and to Elston.

However, Elston, the head of the 2006 Screening Committee, failed to take appropriate action when he learned that McDonald was routinely deselecting candidates on the basis of what she perceived to be the candidates' liberal affiliations. The evidence also showed that Elston himself deselected some candidates – and allowed the deselection of others – based on impermissible considerations.

For example, we found that McDonald and Elston deselected an Honors Program candidate who was first in his class at Georgetown Law School, had clerked for a judge on the U.S. District Court for the Southern District of New York, and was clerking for a judge on the U.S. Court of Appeals for the Second Circuit. This candidate had also worked for a Democratic U.S. Senator and a human rights organization.

In another example, McDonald and Elston deselected a SLIP candidate from Yale Law School who was a member of the *Yale Law Journal,* a Rhodes Scholar, graduated *summa cum laude* from Yale College, and had interned with the U.S. Attorney's Office for the Southern District of New York. This candidate also had worked for organizations promoting civil liberties and human rights.

In sum, we concluded that many qualified candidates were deselected by the Screening Committee in 2006 because of their perceived political or ideological affiliations. We concluded that McDonald's and Elston's actions constituted misconduct and violated Department policy and federal law that prohibits discrimination in hiring for career positions based on political or ideological affiliations.

It is important to note that our report did not conclude that candidates who made it through the Screening Committee were unqualified, as some have suggested after our report was issued. The candidates who the Screening Committee allowed to be interviewed – those with conservative, neutral, or liberal affiliations on their applications – generally appeared from their resumes to have appropriate qualifications to be considered for the Honors Programs. It

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is therefore unfair to suggest that candidates selected in 2002 or 2006 were unqualified. Yet, it is true that many candidates who were deselected by Elston and McDonald also had sufficient qualifications for the program and were unfairly denied the opportunity to interview for a position with the Department on the basis of their political or ideological affiliations.

At the Department component level, we found that the processes individual components used from 2002 through 2006 for proposing candidates to the Screening Committee appeared to be merit based. We did not find evidence that components employed inappropriate criteria such as political or ideological affiliations to select candidates to be interviewed for the Honors Program or SLIP. However, our findings about the components did not include the Civil Rights Division, which, as discussed above, will be covered in a separate report.

Finally, we believe that various employees in the Department deserve credit for raising concerns about the apparent use of political or ideological consideration in the Honors Program and SLIP hiring processes. For example, Fridman deserves praise for reporting his concerns about the process in 2006 to both his supervisor and Elston and for avoiding the use of improper considerations in his review of candidates for the Honors Program and SLIP. Several Department political employees also objected to the apparent use of political or ideological considerations in the hiring process, such as Assistant Attorneys General Peter Keisler and Eileen O'Connor. Certain career employees, particularly in the Tax Division and the Civil Division, also raised concerns about the hiring process and deserve credit for doing so. By contrast, we believe that others in the Department did not sufficiently address complaints about the deselections.

II. POLITICIZED HIRING BY MONICA GOODLING AND OTHER STAFF IN THE ATTORNEY GENERAL'S OFFICE

The report released on July 28 described the results of our joint investigation into allegations of politicized hiring at the Department by Monica Goodling and other staff in the Office of the Attorney General.

Our investigation examined allegations that Goodling, who held several positions at the Department including the White House Liaison in the Office of the Attorney General, inappropriately considered political or ideological affiliations in the selection and hiring of certain Assistant United States Attorneys (AUSAs) and career attorneys in the Department. We also investigated whether Goodling and her predecessors as White House Liaison, Jan Williams and Susan Richmond, considered political or ideological affiliations when selecting candidates for details of career attorneys to Department offices. In addition, we investigated allegations that Sampson, the

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former Chief of Staff to the Attorney General, Goodling, and her predecessors as White House Liaison inappropriately considered political or ideological affiliations in selecting immigration judges, which are career positions. Finally, we investigated allegations that Goodling discriminated against a career Department attorney who had applied for several temporary details on the basis of her rumored sexual orientation.

Based on our investigation, we concluded that Goodling violated federal law and Department policy, and committed misconduct, by improperly considering political or ideological affiliations in screening candidates for certain career positions at the Department.

For example, in one instance the interim U.S. Attorney in the District of Columbia sought approval from Goodling to hire an AUSA for a vacant position. Goodling responded that the candidate gave her pause because, judging from his résumé, he appeared to be a "liberal Democrat." Goodling also said she was reluctant to approve the request because the Republicans had lost control of Congress after the November 2006 elections, and she expected that Republican congressional staff might be interested in applying for AUSA positions in Washington. Eventually, after the interim U.S. Attorney complained to Sampson about Goodling's response, the U.S. Attorney was allowed to hire the AUSA.

In addition, we determined that Goodling often used political or ideological affiliations to select or reject career attorney candidates for temporary details to Department offices. Goodling's use of political considerations in connection with these details was particularly damaging to the Department because it resulted in high-quality candidates for important details being rejected in favor of less-qualified candidates. For example, an experienced career terrorism prosecutor was rejected by Goodling for a detail to EOUSA to work on counterterrorism issues because of his wife's political affiliations. Instead, EOUSA had to select a more junior attorney who lacked any experience in counterterrorism issues and who EOUSA officials believed was not qualified for the position.

We also determined that in several instances Goodling and Susan Richmond, one of her predecessors as the Department's White House Liaison, opposed on the basis of political affiliation the extensions of details for career Department attorneys working in the Office of the Deputy Attorney General, even though these candidates had the full support of the Deputy Attorney General and his staff.

While some temporary detail assignments to certain high-level Department offices may be of a "confidential, policy-determining, policy-making, or policy-advocating character" and thus possibly exempt from the

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civil service restriction on considering political affiliations in hiring, we concluded that some of the detailee positions at issue in this report were clearly not included within the scope of this exception and that it was improper for Goodling to consider political or ideological affiliations when hiring for those positions.

We found that the most systematic use of improper political or ideological affiliations in screening candidates for career positions occurred in the selection of immigration judges, who are career employees who work in the Department's Executive Office for Immigration Review (EOIR). In the fall of 2003 and the spring of 2004, Sampson created and implemented a new process for selecting immigration judges which ensured that all candidates for these positions were selected by staff in the Office of the Attorney General rather than by EOIR officials, which had been the usual practice up until that time.

Sampson told us that he implemented this new process because he believed that immigration judges were not subject to civil service laws based on advice he received from an EOIR official and from the Department's Office of Legal Counsel. However, we did not find evidence to support Sampson's claim that the EOIR official or the Office of Legal Counsel provided such advice to Sampson.

Under the process implemented by Sampson and followed by Williams and Goodling, the principal sources for immigration judge candidates were the White House Offices of Political Affairs and Presidential Personnel. We concluded that Sampson, Williams, and Goodling violated federal law and Department policy by inappropriately considering political or ideological affiliations in evaluating and selecting candidates for immigration judges.

For example, Goodling screened candidates for immigration judges by using a variety of techniques for determining their political affiliations, including researching the candidates' political contributions and voter registration records, and using an Internet search string containing political terms.

Not only did this process violate the law and Department policy, it also caused significant delays in appointing immigration judges. These delays increased the burden on the immigration courts, which already were experiencing an increased workload and a high vacancy rate. EOIR Deputy Director Kevin Ohlson repeatedly requested candidate names to address the growing number of vacancies, with little success. As a result of the delay in providing candidates, the Department was unable to timely fill the large numbers of vacant immigration judge positions.

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With regard to another matter, we found that Goodling violated Department policy and federal law, and committed misconduct, when she refused to extend the detail of a career AUSA, and later tried to block the AUSA from obtaining other details, at least in part because of rumors regarding the AUSA's sexual orientation.

We also concluded that Goodling committed misconduct by providing inaccurate information to a Civil Division attorney who was defending a lawsuit brought by an unsuccessful immigration judge candidate. Goodling told the attorney that she did not take political factors into consideration in connection with immigration judge hiring, which was inaccurate.

III. DEPARTMENT ACTIONS TO ADDRESS OIG/OPR RECOMMENDATIONS

Both prior to and since issuance of our reports on politicized hiring, the Department has taken steps to attempt to address problems with its screening and hiring processes for career Department positions. In particular, Attorney General Mukasey has agreed to implement the recommendations in our reports.

The first changes occurred in April 2007, as a result of the widespread complaints from career employees that arose following the 2006 selection process, when the Department revised the process for selecting Honors Program and SLIP candidates by removing the screening conducted by political officials on the Screening Committee and by providing written guidance on the criteria that should be applied. In our June 24 report, we concluded that these changes were appropriate and will help address problems that we found in that investigation. However, we recommended additional changes for the Department to help ensure that political or ideological affiliations are not inappropriately used to evaluate candidates for the Honors Program and SLIP in the future.

For example, we recommended revising both the Department's written guidance for selecting candidates for the Honors Program and SLIP and the Department's Human Resource Order to emphasize that the process for hiring career attorneys must be merit based and also to specify that ideological considerations cannot be used as proxies to discriminate on the basis of political affiliations. We also recommended that the briefing and training materials for Department political appointees should stress that candidates for career positions must be evaluated based on their merits and that ideological affiliations may not be used as a screening device for discriminating on the basis of political affiliations.

Earlier this month, the Department issued revised versions of its Honors Program and SLIP guidance and of its Human Resource Order that addressed

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issues raised in our report. The Department also is developing new training materials for officials who participate in the hiring process for the Honors Program and SLIP.

The Department made another change in 2007 in response to allegations about Goodling's inappropriate consideration of political affiliations regarding waiver requests by interim U.S. Attorneys to hire career AUSAs when former Attorney General Gonzales directed that such requests be reviewed by career employees in EOUSA rather than by political appointees in senior Department offices. In addition, we determined that EOUSA has recently ended the practice of reviewing the résumés of such candidates and instead assesses waiver requests based solely on the budgetary status of the U.S. Attorney's Office and the status of the U.S. Attorney's nomination.

With regard to immigration judges, as a result of the civil litigation over the unsuccessful candidacy of an immigration judge applicant, in April 2007 former Attorney General Gonzales approved a new process to fill immigration judge positions which returned the responsibility for evaluating and selecting immigration judges to career officials in EOIR. According to a senior EOIR career official, the process is working more effectively now and political considerations are not being used in the selection of candidates.

With regard to approval of detailees, in response to concerns about Goodling's actions, in July 2007 the Deputy Attorney General was granted the authority to detail attorneys to the Office of the Deputy Attorney General without approval from the Attorney General's Office.

In our report this week, we also recommended that the Department clarify its policies regarding the use of political or ideological affiliations to select career attorney candidates for temporary details within the Department. As discussed in our report, it is unclear which detailee positions are included or excluded from the scope of civil service law, and the Department's existing guidance on this issue is inconsistent. We recommended that the Department clarify the circumstances under which political considerations may and may not be considered when assessing career candidates for details to various Department positions. In response to our report, the Department has agreed to implement this recommendation.

In conclusion, the Department must ensure that the serious problems and misconduct we found in our reports about politicized hiring for career positions in the Department do not recur in the future. I believe that implementation of our recommendations, and vigilance by current and future Department leaders, can help prevent a recurrence of the misconduct and violations of federal law and Department policy that are described in our reports.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On Hearing on "Politicized Hiring at the Department of Justice"
July 30, 2008

Today, the Committee welcomes Glenn Fine, the Inspector General of the Department of Justice, to discuss the findings of his office's investigation into the hiring of attorneys for key career positions throughout the Department. I look forward to hearing Mr. Fine's testimony, and thank him and his office, again, for their important work. That work is unfinished, however, with the investigations into several other aspects of the political scandals at the Department of Justice yet to be concluded.

The report the Inspector General released this week, along with a previous report released last month, shines much needed light on hiring decisions at the Department. For years, those decisions have been shrouded in a shadow cast by the Bush White House. These reports confirm what I and others have suspected all along – that senior officials within the Department of Justice used illegal political and ideological loyalty tests in making hiring decisions for career positions that, by law and the Department's own rules, are non-partisan. They broke the law. They did so as political partisans and cronies.

Since this report was released on Monday, a number of papers around the country including *The San Francisco Chronicle, USA Today, The New York Times,* and even *The Washington Post* have editorialized against the partisanship of the Ashcroft and Gonzales regimes, and called upon the current Attorney General to take action in response to these alarming reports and hold people accountable. That is something that has been sorely lacking over the last eight years. Yesterday, a respected former Deputy Attorney General, Jamie Gorelick, explained why the Justice Department must be and be seen as non partisan. She wrote:

> "In a long career counseling individuals being investigated by the Justice Department, I have had to explain to sometimes cynical citizens that politics are prohibited from influencing such inquiries. My ability to give that assurance has hinged on both the public perception – and reality – that the career assistant U.S. attorneys, line prosecutors and lawyers who work at the Department are picked on their merits and proceed without regard to politics. Until now."

When I resumed the chairmanship of this Committee at the beginning of last year, we began our oversight efforts and conducted a bipartisan investigation into the unprecedented firing of U.S. Attorneys who had been appointed by President Bush for partisan political reasons. What we uncovered reminded me of the dark days of the Watergate scandals. Now **I am convinced that the U.S. Attorney firings, their cover-up, and the widespread, illegal hiring practices within the Justice Department that have been revealed, represent the most serious threat to the effectiveness, professionalism and independence of the Department since Watergate**.

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We learned through the course of our investigation of the firings of the U.S. Attorneys that only "loyal Bushies" would ultimately keep their jobs. Last month we saw that political functionaries under Mr. Ashcroft and Mr. Gonzales corrupted the honors program for the best and the brightest coming out of law schools, turning it into a gauntlet for all but the most demonstrably loyal conservative Republicans. Now we see in the reports of the Inspector General that our worst fears are also realized in the Department's hiring and assignment practices for nonpartisan attorney positions, those of immigration judges and prosecutors. We have laws against such practices. Those laws were broken. As a former prosecutor, I would hope that the Department of Justice would take its responsibilities seriously now, and hold people accountable. Only then will the Department have moved forward to help ensure that this never happens again. But I have yet to see any such response from the current leadership of the Department. One of my questions to Mr. Fine today is whether the Inspector General has made referrals to the prosecuting arms of the Department for further investigations and possible prosecutions.

One of the many excuses we heard from the administration's political allies last year as the truth about the U.S. Attorney firings began to come out was that the firings of U.S. Attorneys did not matter because the real work of law enforcement was carried out by the dedicated, non-partisan career staff. Now we know the truth that we have long suspected and feared – that even the ranks of professional career prosecutors were being subverted by partisan politics.

The Inspector General's reports confirm that senior officials who report to the office holders at the highest levels at the Justice Department and who interacted with the White House sacrificed the independence of law enforcement and the rule of law in allegiance to the current administration. The key question should be whether the applicant is qualified for the job. However, according to the report, the key question from Monica Goodling, the Department's White House Liaison, and others, was: "What is it about George W. Bush that makes you want to serve him?" Federal prosecutors and immigration judges take an oath of office, but that oath is to the Constitution. They are to serve justice and the American people. This administration has had it wrong from the outset, and all of us and our institutions of government have been the victims.

The revelations in these reports pain those of us who care about law enforcement, respect law enforcement and who understand the role of law enforcement. It is troublesome to see a Department of Justice turned into just another agency this administration has manipulated into a partisan arm of the White House and made into a wholly owned subsidiary of the Republican Party.

There are chilling examples in this week's report that show the danger of putting loyalty to a certain office holder above the duty to enforce the law. The report documents one incident where: "[A]n experienced career terrorism prosecutor was rejected by Goodling for a detail to [the] Executive Office of U.S. Attorneys

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(EOUSA) to work on counterterrorism issues because of his wife's political affiliations. Instead, EOUSA had to select a much more junior attorney who lacked any experience in counterterrorism issues and who EOUSA officials believed was not qualified for the position." It is as if we have hit the replay button on the tragic aftermath of Katrina, where cronyism was valued over competence.

It is a dark day for this country when the administration charged with keeping America safe willingly sacrifices merit and qualifications to political and ideological tests. For those who rail against affirmative action, for those who have been held back by racial discrimination and gender bias, I offer up this example of affirmative action of the worst kind. Rather than strengthening our national security, the Department of Justice appears to have bowed to the partisan practices of political operatives like Karl Rove.

According to the report, the system put in place by the chief of staff of then-Attorney General Alberto Gonzales for selecting immigration judges, appointments that by law are non-political, was the most "systemic use of political or ideological affiliations in screening candidates for career positions [that] occurred." The Department's practice not only subverted the law and placed political loyalty above fairness -- it caused serious delays in filling immigration judge positions just as the workload and importance of those judges was increasing. Further, the report reveals that the "principal source" for politically vetted candidates considered for these important positions was the White House—demonstrating the extent of the political reach of the Bush White House into the Department's career ranks.

There can be no remaining question that this administration encouraged politics to infect the Department and law enforcement. The question is what will Attorney General Mukasey and the President do about it to provide accountability? In our oversight hearing earlier this month, Attorney General Mukasey essentially dismissed the findings of last month's report as the actions of just a few bad apples. This reminds me of the administration's ongoing attempt to place the blame for the actions at Abu Ghraib solely on the shoulders of a few soldiers there, rather than see those excesses as a consequence of the policies and practices put into place by the President, the Pentagon, and the Department of Justice.

This week's report, like the one that preceded it, makes clear that the problems of injecting politics into the hiring decisions of the Department are rooted deeper than just the actions of a handful of individuals. It is now clear that these politically-rooted actions were widespread, and could not have been done without at least the tacit approval of senior Department officials who allowed the subversion of the Department's mission.

Even with blanket claims of privilege and immunity from the White House in their effort to try to cover up the truth, we continue to learn about the unprecedented and improper reach of politics into the Department's professional ranks. By infusing politics into the hiring of career Assistant U.S. Attorney positions, senior career attorney positions, Main Justice detailees, young career attorneys, and Immigration Judges, this administration and its operatives have done serious damage. The American people look forward to a serious response from the current leadership of the Department of Justice.

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New York Times
July 29, 2008
EDITORIAL

There Was Smoke — and Fire

It was hardly news that President Bush's Justice Department has been illegally politicized, but it was important that the Justice Department finally owned up to that sorry state of affairs. An internal investigation released on Monday found that the department's top staff routinely took politics and ideology into account in filling nonpolitical positions — and lied about it.

The details of what the investigators found were appalling, and Attorney General Michael Mukasey's response was disgracefully lukewarm. If he hopes to leave office with any sort of reputation for integrity, he needs to get serious about punishing this sort of wrongdoing.

The report, prepared by the department's Office of Professional Responsibility and Office of the Inspector General, does not delve deep enough. There is much more work to be done. But even this dip into the murky waters of the Justice Department found that senior officials took into account applicants' political views in hiring United States attorneys and other nonpolitical positions. This, the report said, "violated federal law and department policy, and also constituted misconduct."

The department was so determined to hire only reliable, conservative Republicans for what are supposed to be apolitical jobs that Monica Goodling, then the White House liaison for the Justice Department, rejected an experienced career terrorism prosecutor to work on counterterrorism because of his wife's politics. Instead, the department hired a junior attorney without counterterrorism experience who was considered unqualified by department officials.

Ms. Goodling "provided inaccurate information," the report found, to a department attorney defending a lawsuit from a rejected applicant. Another official, still employed at the department, prepared a statement for a reporter — who was asking questions about politicized hiring — that "he knew to be inaccurate."

Despite these incriminating findings, the report is disappointing for what it omits. Did these hiring practices have any impact on the handling of political cases — like those involving phony charges of election fraud — or its prosecution of individuals? What role did White House officials, including Karl Rove and Harriet Miers, the former White House counsel, play in the politicization?

And what about former Attorney General Alberto Gonzales, whose memory went so conveniently fuzzy under questioning by Congress? It strains credulity to believe that a functionary like Ms. Goodling could act so brazenly unless she knew that she was doing what her bosses wanted.

Mr. Mukasey's response to the report focused on making sure that the improper and illegal activity "does not occur again." He does not seem to understand that, as the nation's top law enforcement officer, he has a duty to investigate crimes committed in his own department and to punish the offenders. The report's authors could not interview Ms. Goodling because she no longer works at the Justice Department. Mr. Mukasey, who has subpoena power, presumably could get her to talk — as well as Mr. Rove, Ms. Miers and all of the others who need to testify under oath before this matter can be put to rest.

The strength of American democracy depends on our ability to be shocked by abuses like these — and to punish them appropriately.

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Injustice Department

San Francisco Chronicle. Tuesday, July 29, 2008

The U.S. Justice Department has completed its internal investigation about the procedures of former Attorney General Alberto Gonzales and the news, though predictable, is still grim. Gonzales' senior aides, Monica Goodling and D. Kyle Sampson, routinely broke the law in their hiring procedures. They passed over hundreds of qualified applicants and killed promotions for others in lieu of appointing candidates who they believed were more loyal to the Republican party line.

With regard to Goodling and Sampson, the most generous thing that can be surmised about the involvement of these two lawyers is that they were clearly ignorant of the law. It's a violation of civil service laws to take political factors into account for career positions.

Yet, to listen to these two, you'd think they had never been to law school: In her cringe-inducing testimony before Congress in 2007, Goodling said that while she knew she took political considerations "into account," she didn't "intend" to break the law. Sampson claims to have believed that immigration judges weren't career positions and that it was appropriate to take their politics into account. They've both resigned; neither should be allowed anywhere near a government office again. Nor should Gonzales: it's outrageous that he had the nerve to tell the inspector general that he had *no idea* of what Goodling and Sampson were doing.

The Justice Department needs to restore its credibility, and pronto. For all of his faults, attorney general Michael Mukasey has made the right moves when it comes to overhauling the department's hiring procedures. His successor, under the next president, must also vow to keep up that good work.

Our view on tainted justice: Not just another case of routine partisan politics

Political meddling leads to lawbreaking at Justice Department.

If any more proof were needed that the Justice Department became just another political arm of the White House under former Attorney General Alberto Gonzales, it came Monday in a devastating report by the agency's own independent investigators.

(Photos, left to right - Kyle Sampson / Tim Dillon, USA TODAY; Monica Goodling / H. Darr Beiser, USA TODAY)

For nearly two years, according to the report, young aides to Gonzales sought to pack the agency with prosecutors and immigration judges who adhered to conservative political views, even though the jobs called for independence and objectivity — and, *under law*, were supposed to be non-political.

This is not a trivial matter, nor is it just standard partisan politics. Until now, presidents of both parties have understood that both the quality of the Justice Department and the credibility of the justice system depend on hiring the very best talent to enforce the law neutrally.

The White House abandoned that principle. One key aide, Monica Goodling, rejected a prosecutor for a job, in part, because Goodling suspected she was a lesbian. Another job applicant got a positive review because of his views on "god, guns + gays." An award-winning prosecutor was denied a counter-terrorism slot because his wife was a Democrat. The job went to a junior lawyer with far less experience. So much for the department's aggressive pursuit of terrorists.

The incidents were part of a broad pattern that inserted politics into the department — from choosing how to enforce the law to firing nine top federal prosecutors across the nation. The firing scandal, which burst into the headlines last year, forced Gonzales to resign, but the stain on the department remains. Monday's report was another blow.

It's now up to Attorney General Michael Mukasey, Gonzales's successor, not only to fix the problems internally but also to restore public confidence in the nation's premier law enforcement agency. That will take more than quiet, institutional change and limp statements, such as the one he issued Monday through spokesmen.

It will take loud, clear public action, and Mukasey has plenty of opportunity for that.

Monday's report found that Goodling and Gonzales Chief of Staff Kyle Sampson "violated federal law and department policy" by inserting politics and ideology into some job selections. If laws were violated in a department where they should be sacrosanct, the violators should be pursued.

Further, the actions of the lawyers and judges hired by Sampson and Goodling should now be analyzed for independence. It's up to Mukasey to investigate and report publicly.

A strong statement by Mukasey, and better yet, by the president would go a long way toward making clear such actions won't be tolerated.

A skeptical public may believe that everything in Washington is political. And much of it is. But one exception has always been the ranks of career prosecutors at the Justice Department and in U.S. attorneys' offices around the nation. No matter who was president or attorney general, no matter how political Justice's upper ranks became, the public could count on prosecutors chosen for smarts, integrity and an allegiance to the law.

The Bush administration changed that. Before leaving town in January, it should do its best to put things back the way they were.

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Justice Besmirched
How the Bush administration soiled itself

Editorial, Washington Post, Tuesday, July 29, 2008; A16

THE LATIN phrase on the seal of the Justice Department loosely means "he who prosecutes on behalf of justice." During the reign of Monica Goodling and D. Kyle Sampson it also should have read, "Democrats need not apply."

Ms. Goodling was counsel to the attorney general from October 2005 to April 2006 and was the Justice Department's liaison to the White House from April 2006 to April 2007; Mr. Sampson joined the Justice Department in August 2003 and became chief of staff to then-Attorney General Alberto R. Gonzales in September 2005. He left the department in March 2007. According to a report released yesterday by the Justice Department's Office of the Inspector General and Office of Professional Responsibility, the Justice Department of Ms. Goodling and Mr. Sampson was one in which connections and politics mattered more than competence and professionalism. To these callow and undeserving public servants, this may have seemed the very definition of how Washington works. But such considerations should have no place in the hiring of career lawyers who are entrusted to carry out nonpolitical investigations and prosecutions.

During the Sampson-Goodling tenure, lawyers who applied for nonpolitical career positions were routinely queried about party affiliations and political donations. Anyone suspected of being a Democrat -- or a "big D" as one Bush Justice Department crony put it -- was stricken from contention. Well-qualified candidates were out of the running if, as Ms. Goodling scribbled during one candidate interview, they were not "Cons. On 'god, guns + gays.' "

For his part, Mr. Sampson overhauled the way in which immigration judges were selected to ensure that Republicans or conservatives got the jobs. Before Mr. Sampson, these judges were vetted by the Executive Office of Immigration Review; after evaluating qualifications and experience, the office would forward finalists to the attorney general. It was understood that the positions were career slots, and political affiliations or views could not play a part in selections. That all changed under Mr. Sampson; instead of routinely posting vacancies and taking applications nationwide, Mr. Sampson turned to the White House or congressional Republicans for names of candidates, most of whom would turn out to be donors or former staff members or others with political connections to the Republican Party. These candidates would almost invariably get the nod.

The inspector general concluded that Ms. Goodling and Mr. Sampson broke federal civil law and violated Justice Department policy. It is exceedingly frustrating that both could escape the punishment they deserve because they have left the department; Justice no longer has the standing to take legal action against them, but individuals directly harmed by their breaches could potentially file suit. In truth, the entire Justice Department and all Americans were harmed by their arrogant ethical breaches. Ms. Goodling testified before the House Judiciary Committee last year under a grant of immunity; the immunity, however, is pierced if the testimony is not truthful. The inspector general's report notes that new evidence seems to contradict several points asserted by Ms. Goodling during that testimony. These discrepancies should be investigated.

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