

other Islamic terrorists who wish to defeat us. It is about time we realize our brave men and women in Iraq are putting their lives on the line, they are under fire every day. They are fighting a battle and they are making progress in the global war on terror. They need the funds for equipment, which we finally passed to them, but they also deserve our moral support and support in winning the hearts and minds not only of the United States but of the world.

I yield the floor, and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WEBB). Without objection, it is so ordered.

NO CONFIDENCE RESOLUTION

Mr. HATCH. Mr. President, this afternoon the Senate will decide whether to end debate on proceeding to Senate Joint Resolution 14, which expresses the sense of the Senate that the Attorney General no longer holds the confidence of the Senate or the American people.

I rise to oppose this so-called no confidence resolution on both procedural and substantive grounds and will urge my colleagues to vote against ending debate. To paraphrase Shakespeare, whether or not this joint resolution amounts to sound and fury, it signifies nothing. It is nothing more than a bit of political theater which should be rejected out of hand.

Let me make two points about its form and two points about its substance before offering a few comments about the controversy from which it arose. The first point I want to make about its form is that this measure would express the sense or opinion of the Senate through a joint resolution. As opposed to regular Senate resolutions that require only Senate passage, joint resolutions are legislative vehicles requiring passage by both houses and signature by the President.

We use joint resolutions to propose constitutional amendments and some other legislative business, but this legislative vehicle is simply the wrong way to conduct non-legislative business such as expressing the opinion of one house. In a report dated today, the Congressional Research Service concludes that the form of this measure as a joint resolution is inappropriate for what it purports to do.

I think this is significant and the reason for this conclusion is obvious. If this joint resolution should somehow pass the Senate—which I certainly expect it will not—it will be sent to the House.

How on Earth can the House vote on the sense of the Senate? What could a House vote about the Senate's opinion

on this matter possibly mean? By a negative vote, would the House be saying that what the Senate has expressed as its own opinion is really not the Senate's opinion? This makes no sense whatsoever. In fact, the House already has its own resolution regarding the Attorney General's service, and it is a regular House resolution.

The sponsors of S.J. Res 14 either do not understand or have disregarded how the legislative process is supposed to work. I suspect it is the latter, using this political ploy to force the President's involvement.

Either way, this body should reject it out of hand.

The Senate has not used a joint resolution in the past on the rare occasion when it has sought to criticize executive branch officials. Resolutions in the 109th Congress to censure the President or condemn remarks by a former Cabinet Secretary were Senate resolutions.

The resolution to censure the President introduced in the 106th Congress, offered by one of the cosponsors of today's joint resolution, was a Senate resolution. Resolutions in the 81st and 82nd Congresses demanding the resignation of Secretary of State Dean Acheson were Senate resolutions. The resolution to censure and condemn President James Buchanan in 1862 was a Senate resolution. Our only attempt to censure the Attorney General, back in 1886, was through Senate resolutions. This unprecedented use of a joint resolution would distort our legislative procedure, and I urge my colleagues to reject it.

The second point about the form of this measure is that it purports to be a no confidence resolution. Parliaments take no-confidence votes for an obvious reason. In a parliamentary system of government, the legislative body's confidence or support is necessary for the head of government and cabinet ministers to serve.

For an equally obvious reason, the so-called no-confidence resolution before us should be rejected. This is not a parliament. In our Presidential system of government, the separation of powers means that the chief executive is elected separately from the legislature, and cabinet officials such as the Attorney General serve at the pleasure of the President.

Under the Constitution, the Senate's consent was required for the Attorney General's appointment, but our confidence is not required for the Attorney General's continued service. The Attorney General serves at the pleasure of the President, not at the confidence of the Senate.

The separation of powers has been a casualty throughout the controversy concerning the removal of U.S. Attorneys that gave rise to this misguided resolution. As with the Attorney General—and with very few exceptions—U.S. attorneys serve at the pleasure of the President.

The U.S. attorney statute says that they are subject to removal by the

President. Neither the Constitution nor this statute say anything about the confidence of the Senate for the continued service of officials the President has authority to appoint.

The separation of powers, a principle fundamental to our constitutional system itself, is becoming a casualty of partisan politics.

The brand new Congressional Research Service report I mentioned earlier could not identify a single resolution like this one even being offered in the past and this should not be the first. No matter what its substance, a joint resolution is inappropriate for expressing the sense of the Senate about his issue. No matter what its form, a resolution expressing a lack of confidence in an executive branch official is inappropriate in our system of government.

Let me now address two points regarding the substance of this inappropriate joint resolution. The first point is about the real purpose behind its words. Even though expressing a lack of confidence in an executive branch official is irrelevant in our system of government, we all know that the real purpose behind this resolution is to pressure the Attorney General to resign.

On the one hand, if its sponsors want to call for the Attorney General's resignation, they should be honest and do so. On the other hand, Senators certainly do not need a resolution—especially one as fundamentally flawed and inappropriate as this one—to call for the Attorney General's resignation. As a number of this resolution's sponsors have already done, with the rapt attention and constant repetition of a compliant media, Senators can demand the Attorney General's resignation any time they choose.

My second point about the substance of this misguided joint resolution concerns its actual content, the words themselves.

This joint resolution does not condemn or criticize the Attorney General for anything he has done or said. It does not call for his censure. And, just to repeat, this joint resolution does not call for the Attorney General's resignation.

In the past, the Senate has considered resolutions doing each of these, albeit through regular Senate resolutions properly suited to the task. But this joint resolution before us does not even contain a single "whereas," clause offering any indication of the basis or any reason for what it says. Rather, this joint resolution speaks vaguely of "holding confidence," as if this were an all-or-nothing proposition, as if this were some kind of a pass-fail test.

Even when parliaments take no-confidence votes, those votes are at least limited to the confidence of parliament itself. This joint resolution purports to speak about all the confidence of all the American people. But what could a "yes" or "roll vote on such a resolution possibly mean? Would a "no" vote

mean that no American has any confidence in the Attorney General about anything?

Would a “yes” vote mean that every American has complete confidence in the Attorney General about everything?

Because neither one of those can possibly be true, a resolution worded this way is either seriously misguided or nothing but a publicity stunt. It is not focused on his job performance, or his leadership of the Justice Department, but is focused on the Attorney General himself.

A resolution asking for a “yes” or “no” vote on something as vague and misdirected as confidence in a person attempts to reduce the multifaceted and complex to the unilateral and simplistic. In doing so, this misleading joint resolution turns a bit of political theater into a theater of the absurd.

The Senate should not even consider such a resolution evoking the image of Caesar listening for the chants of the crowd before giving a thumbs-up or a thumbs-down. Rather than purporting to speak for the American people, I think we should let the American people speak for themselves.

I found 16 opinion polls by nationally recognized polling outfits during March and April asking Americans whether the Attorney General should resign. These polls did not ask a vague, squishy question such as: Do you have confidence in the Attorney General? No these polls asked the real question behind the joint resolution before us today: Do you think the Attorney General should resign? An average of 39 percent of Americans said “yes.” Only one poll showed bare majority responding in the affirmative and, considering its margin of error, even that one might not show majority support for this result at all.

Frankly, I am a little surprised that the percentage of Americans who say the Attorney General should resign is not higher. My Democratic colleagues and many of their media allies, after all, have been working very hard week after week after week to persuade our fellow citizens that the Attorney General should go.

Daily front-page news coverage, Senate and House hearings, protests and lobbying by activists, blogs, columns, editorials—the Attorney General’s critics have been pulling out all the stops for 6 months now. And while the joint resolution before us suggests that this aggressive, coordinated effort has deprived the Attorney General of everyone’s confidence about everything, only a little over a third of Americans think he should resign. The Pew Research Center examined news coverage during the week in March when the Attorney General gave a much-criticized press conference. They found that the story about dismissed U.S. attorneys was the most reported story in the national media, with coverage jumping eight fold from the previous week. In spite of that Herculean media effort,

however, only about 8 percent of Americans said this is the story they followed most closely.

These national polls are far better suited to measure what the American people think than the joint resolution before us, and my Democratic colleagues might want to consider another nugget of public opinion.

A USA Today/Gallup poll showed that while 38 percent of Americans believe that the Attorney General should resign, 40 percent of Americans believe that Democrats in Congress are spending too much time on this issue. Let me repeat that. More Americans say Democrats spend too much time on this issue than believe the Attorney General should resign. One reason might be that there is so little to show for the effort.

Just a few weeks ago, one of my distinguished Democratic colleagues said during a press conference that Democrats just know that U.S. attorneys were fired last year for improper reasons. How do Democrats know this? Because they have any evidence for that conclusion?

No. My Democratic colleague had to admit that “we don’t have a smoking gun.” That is Washington political code for “just take our word for it because we can’t prove it.”

Just a couple of weeks before that, another distinguished Democratic colleague told a gaggle of reporters after a Judiciary Committee hearing that he “just knows” someone in the White House ordered that those U.S. attorneys be removed. Now, how does he know this? Because he has any evidence for this conclusion? No. He too had to admit that “of course we don’t know that”

It is truly ironic that this controversy involves prosecutors. Prosecutors must have some evidence to bring charges. Prosecutors must have some evidence for a conviction. I just wish that some of my Senate colleagues felt such an obligation either to prove their allegations or move on to more important matters.

We have been investigating and probing the removal of those U.S. attorneys for 6 months. Dozens of staff in the Senate, the House, and the Justice Department have done little else since the 110th Congress began. We have seen hearing after hearing, interview after interview, thousands of pages of documents, and even hundreds of thousands of taxpayer dollars to hire outside law firms as reinforcements.

Democrats continue to authorize subpoenas not only for people who have not refused to testify, but for people who have agreed to testify, and even for people who have already testified. And after all that, my Democratic colleagues have to admit that they have no smoking gun, they cannot prove the accusations they continue to repeat. There are plenty of innuendos, caricatures, and characterizations. But repeating talking points, sound bites and clichés is no substitute for evidence.

This summer, Americans will see sequels of several movies in the theaters. Here in the Senate’s political theater, we have already seen several sequels of the same movie. Last week’s Judiciary Committee hearing, for example, was part five on the hiring and firing of U.S. attorneys. Every one of those same sequels has the same ending. It is no wonder more Americans believe that enough is enough than believe the Attorney General should resign.

Before I close, let me say a few words about the controversy that was the impetus for this misguided joint resolution. As I said earlier, U.S. attorneys serve at the pleasure of the President. With very few exceptions, he may remove them for whatever reason he chooses. The President has the authority to remove a U.S. attorney to allow someone else to serve in that position or because that U.S. attorney’s performance is, in some general or specific way, inadequate. Each of the U.S. attorneys removed last year had served his or her 4-year term and had no right to serve longer if the President didn’t want them to. That means the real issue is whether these U.S. attorneys were removed for genuinely improper reasons, such as interfering with an ongoing case. After all this time, all this effort, and all this taxpayer money, there is no evidence for that conclusion.

I must candidly say, at the same time, that the process by which this administration set out to evaluate U.S. attorneys and replace some of them was bungled from the start. Proper respect for the office of the Federal prosecutor and for the individuals who occupy it would, it seems to me, require a more rigorous, disciplined, organized process than apparently was used here. The Attorney General has said as much and said he should have been more involved. I also think the individuals who were asked to resign deserve better, more respectful treatment. But there is a high burden of proof for those who say that a badly executed and explained process, even a poorly conceived and mismanaged process, was instead a nefarious, partisan, political scheme to subvert the justice system. Continuing to make such claims without coming close to meeting that burden appears to many designed, instead, to serve partisan political goals.

As I close, I ask my colleagues to consider one more set of polls. During the same 2 months, March and April, as they were asking about the Attorney General’s resignation, national polling outfits also asked Americans if they approve of the way Congress is doing its job. While an average of 39 percent of Americans believe the Attorney General should resign, an average of 56 percent of Americans disapprove of how we are doing our job. Should we all resign? I think there are some people who probably would say yes. Far more Americans disapprove of Congress than believe the Attorney General should resign. I wonder whether spending so

much time on fishing expeditions that yield no fish and wasting time on inappropriate, misleading resolutions such as the one before us today only add to Americans' disapproval of our job performance.

In a statement last Friday, the main sponsor of this joint resolution said the vote on this resolution is about loyalty. I suppose he meant loyalty to the President, as if that were the only reason to oppose using the wrong vehicle for a misleading statement that has no relevance to our system of government. In a way, I agree this is about loyalty, but I think it is about loyalty to the Constitution, to the integrity of the legislative process, to this body as an institution, and to a fair and honest debate about these issues. If my colleagues are loyal to those, they will see that this bit of absurd political theater serves no real purpose and will only add to most Americans' already negative view of how we are doing our job.

So I urge my colleagues to reject this cloture motion.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. FEINSTEIN. Mr. President, I wish to ask what the time allocation is because I wish to speak on the Democratic side.

The PRESIDING OFFICER. The remaining 20 minutes is under the control of the majority.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, similarly reserving the right to object, I have been waiting. I wonder if we might have a unanimous consent agreement that I be permitted to speak for 10 minutes, unless the Senator from California wants to go first?

Mrs. FEINSTEIN. Mr. President, if I might respond to that. Of course I want to cooperate, but I wish to use the 20 minutes of Democratic time. I would be prepared to extend the time for morning business if the Senators would agree to that.

Perhaps there could be a unanimous consent agreement that Senator SPECTER is allowed 10 minutes, and I would be allowed the 20 minutes of Democratic time, requiring an extension of 10 minutes of morning business.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The majority has 18½ minutes and the Republican time has expired.

Mr. SPECTER. Mr. President, the majority has 18½ minutes, and the minority has how much?

The PRESIDING OFFICER. The minority time has expired.

Mrs. FEINSTEIN. If I may, Mr. President, through the Chair to the distinguished ranking member of the Judiciary Committee, say my suggestion is we extend the time of morning business to accommodate the Senator's 10 minutes and my 20 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to speak about the resolution of no confidence on Attorney General Gonzales. This resolution poses many currents and crosscurrents and many overlapping currents and crosscurrents. I have written down five of the currents which I believe are involved in the analysis of this issue.

First: Have I lost confidence in Attorney General Gonzales? Second: Is this resolution politically motivated? Third: Does Senator SCHUMER have a conflict of interest? Fourth: Will this resolution likely lead to the departure of Attorney General Gonzales or give him more reason to stay on? And fifth: Is the principal reason for this resolution to help the Department of Justice or to embarrass Republicans? It is an interrelationship and a wing of these various considerations which has led to my own conclusion on this resolution.

First of all, have I lost confidence in Attorney General Gonzales? Absolutely yes. Attorney General Gonzales has made representations which are false. He said he was not involved in discussions. He was contradicted by three of his top aides and by documentary evidence, e-mails. He said he was not involved in deliberations. Again, he was contradicted by three top aides and documentary evidence, the e-mails. He said he was not involved in the memoranda which were circulated on this matter. Again, contradicted by three top aides and documentary evidence.

He said the terror surveillance program brought no objection within the Department of Justice, and we find on examination there were serious disents within the Department of Justice on the constitutionality of the terrorist surveillance program. So much so that Alberto Gonzales, when he served as White House counsel, was one of those who went to the hospital room of then-Attorney General John Ashcroft to get Attorney General Ashcroft to certify that the program was constitutional. So there is no doubt in my mind that there is no confidence which is residing in Attorney General Gonzales.

This is much more than a personnel matter. This is a matter for the administration of the Department of Justice, which is second only to the Department of Defense on the welfare of the people of the United States. The Department of Justice has the responsibility for investigating terrorism and antiterrorism, has the responsibility for enforcing our drug laws, has the responsibility for enforcing Federal laws of violent crime and white-collar crime. The Attorney General has the responsibility for supervising 93 U.S. attorneys from around the country who have very important positions, something that I know something about in some detail, since I was the district attorney of Philadelphia for some 8 years. There is no doubt the Department at the present time is in shambles.

The Attorney General called me before his hearing came up and asked for my advice, and I said: Set out the reasons why you asked these individuals to resign. Set out the reasons why. He did not do so. The day after a very tempestuous hearing in the Judiciary Committee, he called me again and asked for my advice as to what he ought to do. I said: Al, you still haven't responded as to why you asked these people to resign. I took the position at that time, and I take the position at the present time, that I am not going to ask the President to fire Attorney General Gonzales. That is a matter for the President to decide. I am not going to let the President tell me how to vote, and I am not going to say to him how he ought to run the executive branch on grounds of separation of power. Similarly, with Attorney General Gonzales, as to what he does, that is a personal decision for him to make. But I have been very emphatic in the Judiciary Committee hearings, as we have investigated this matter, that I think the Attorney General has not done the job and that the Department of Justice would be much better off without him.

The second question I looked at is: Is this resolution politically motivated? I think that it certainly is. This ties in to the crosscurrent as to whether Senator SCHUMER has a conflict of interest. I believe he does. I said so to Senator SCHUMER eyeball to eyeball, confronting him in the Judiciary Committee meeting. The day after New Mexico's U.S. Attorney David Iglesias testified about a conversation that Iglesias had with Senator DOMENICI, the Democratic Senatorial Campaign Committee posted on their Web site criticisms of Senator PETE DOMENICI. The following day, the Democratic fundraising apparatus, led by Senator SCHUMER, published a fundraising letter, and there is no doubt about that conflict of interest. Senator SCHUMER has been designated to lead the investigation because he is the chairman of the relevant subcommittee. So I think there is no doubt about the overtone of heavy politicization and the conflict of interest.

The third consideration I have is will this resolution likely lead to the departure or give the Attorney General a reason to stay on? My hunch is the thrust of the resolution, if it seeks his ouster, is going to be a boomerang and is going to be counterproductive. My own sense is there is no confidence in the Attorney General on this side of the aisle but that the views will not be expressed in this format. Already, some who have called for his resignation on the Republican side of the aisle have said they will not vote for this resolution. Others who have declined to comment about his capacity have said that this is not the proper way to proceed, that our form of government does not have a no-confidence vote.

Is the principal reason for this resolution to help the Department of Justice or to embarrass Republicans? I

think clear cut, it is designed to embarrass Republicans. It is designed to embarrass Republicans if the Senate says the Senate has no confidence in the Attorney General, and it is designed to embarrass Republicans who vote against the motion for cloture because it will be a "gotcha" 30-second commercial in later campaigns. It will be used to say that whoever votes against the motion to invoke cloture is sanctioning the conduct of Attorney General Gonzales, and anybody who votes against the motion to invoke cloture is going to be the recipient of those 30-second "gotcha" commercials.

Now, there are many reasons to vote against the cloture motion. One reason—and a dominant reason—is that the Senate has a lot more important things to do than engage in this debate on this issue. Thursday night, the majority leader took down the immigration bill. Regrettably, he had cause to because the Republican Senators who had objected to the immigration bill wouldn't allow any amendments to come up. They wouldn't allow their amendments—they didn't step forward with their amendments, nor did they allow others to offer amendments. But we were on the verge of getting a list. It was taking a little more time. The majority leader took down the bill. But the national interest would be a lot better served had we continued with the bill on Friday or perhaps on Saturday—we can work on Saturday—or return to the bill today—or still return to the bill today, instead of taking up this resolution.

Another reason why people could justifiably vote against cloture is because the investigation is not complete. That is still hanging fire, so why have the resolution before we finish our investigation?

But there is another reason: the Constitution arguably expresses a way to deal with Attorney General Gonzales, and that is by impeachment, as it is not in line to have a resolution of disapproval. That is the British system of no confidence. It is my sense that many on this side of the aisle, if not most, if not almost all—I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. It is my sense that many on this side of the aisle—most, if not almost all—will vote against cloture because there are ample reasons to vote against cloture. But as I look at this matter, as to which is the more weighty, the more compelling, the more important, candidly stating I have no confidence in Attorney General Gonzales or rejecting the outright political chicanery which is involved in this resolution offered by the Democrats, I come down on the side of the interests of the country, and moving for improvements in the Department of Justice is to make a candid statement that I have no confidence in the Attorney General, which I have said repeatedly. It is no surprise. I am going to

deal with this resolution on the merits and vote to invoke cloture.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I don't often differ with the distinguished ranking member. But I came to the floor as a member of the Senate Judiciary Committee now for 15 years and as one who takes no particular pleasure in what I am about to say. I urge a "yes" vote on cloture. I want to say why.

The Department of Justice is one of the country's most important departments. It has a budget of \$24 billion and over 100,000 employees. It is charged with combating terrorism, fighting violent crime, stopping drug trafficking, upholding civil rights, and enforcing civil liberties. It houses key agencies, including the FBI, DEA, the Bureau of Prisons, the Marshals Service, and U.S. Attorney's Offices.

As a leader of the Department, the Attorney General is the chief law enforcement officer for the people of this Nation. He is the chief lawyer of the United States. He runs a big department. He must be a strong manager who can direct the day-to-day operations and an independent leader with an unyielding commitment to the law, who is willing to stand up against, yes, even the President, if necessary. He must lead by example, upholding the highest ethical standards.

I think President Lincoln's Attorney General put the challenge on the map when he said this:

The office I hold is not properly political, but strictly legal, and it is my duty above all other ministers of state to uphold the law and to resist all encroachments from whatever quarter.

That is the job of the U.S. Attorney General. The subject before us today is the fact that, for many of us, this Attorney General has not lived up to this standard, and he has lost our confidence. Unfortunately, the Attorney General has failed to meet the challenges during his tenure.

The Department of Justice has become highly politicized in its hiring and firing—I hope to lay that out—and I believe in many of the legal opinions it issues as well. In many respects, it is today an extension of the White House, rather than the scrupulous, independent enforcer of Federal law as suggested by President Lincoln's Attorney General.

Through the investigation into the hiring and firing of at least 9 U.S. attorneys, we have heard Attorney General Gonzales give vague and unconvincing responses in critical areas about his Department's performance.

The Attorney General testified that he does not know who selected the various U.S. attorneys to be fired; therefore, he does not know why they were fired. Can you believe that? He testified that the firings were based on a "process of consulting with senior leadership in the Department." However,

every single one of the Department of Justice's senior officials who have testified has stated under oath that they did not place a U.S. attorney on the termination list, with one exception—Kevin Ryan of California. This includes Kyle Sampson, the Attorney General's Chief of Staff; James Comey, former Deputy Attorney General; Paul McNulty, Deputy Attorney General; Mike Elston, Paul McNulty's Chief of Staff; Monica Goodling, White House Liaison; Bill Mercer, Associate Attorney General; Mike Battle, Director of the Executive Office of the U.S. Attorneys; and David Margolis, Associate Deputy Attorney General. They have all said they did not add names to the list of those to be fired. To this day, we have been unable to find out who put in place the unprecedented targeted program to fire several U.S. attorneys midterm, at one time, and who made the decision to place these attorneys on that firing list.

We also learned that an internal order, entitled "Delegation of Certain Personnel Decisions to the Chief of Staff," that was issued March 1, 2006—in that order, the Attorney General designated his role in hiring and firing certain senior officials in the Department of Justice to his Chief of Staff, Kyle Sampson, and a young, 33-year-old former researcher for the Republican National Committee, Monica Goodling. I must say that I find this a major abdication of the duty of a leader. In fact, according to internal memos, the Attorney General was going to completely abdicate his role, until the Office of Legal Counsel stepped in, saying he must at least be consulted in the process.

In a memo dated February 24, 2006, Paul Corts, Assistant Attorney General for Administration, wrote this:

The Office of Legal Counsel advises that permitting the Attorney General's delegates to approve appointments (or removals) of constitutionally "inferior officers" . . . would be inconsistent with the [Excepting Clause in the Constitution]. The Office of Legal Counsel recommends that the delegates exercising the authority of this delegation submit appointments or removals to the Attorney General.

Taken together, the most favorable interpretation of these various actions is that the Attorney General has clearly sought to avoid these key responsibilities.

Unfortunately, information has come to light that demonstrates that the problems are not limited to poor management. Rather, the Department's reputation, independence, and credibility have been put in serious question.

Mr. Gonzales has stated that he believes the Attorney General wears "two hats"—one as a member of the President's staff and another as the Nation's top law enforcement officer. How does this compare with what I just read from Abraham Lincoln's Attorney General? Answer: It does not.

It is this perspective which I believe has led the Attorney General to treat

the Department of Justice as a political arm of the White House rather than as the independent law enforcement agency it should be. For example, the committee's investigation has shown that seven of the nine U.S. attorneys who were fired were not fired for so-called "performance reasons" at all, as stated. In fact, when reviewing the six evaluation and review staff reports, which are called the EARS reports, of the fired U.S. attorneys, all were given strong, positive performance evaluations. Here are some examples:

Bud Cummins:

United States Attorney Cummins was very competent and highly regarded by the Federal judiciary, law enforcement, and the civil client agencies.

Despite this review, Mr. Cummins was fired in June of 2006.

Carol Lam:

U.S. Attorney Carol Lam was an effective manager and a respected leader in the District . . . The United States Attorney committed significant prosecutorial resources to the felony immigration and border crime cases.

Despite this review, Mrs. Lam was fired on December 7, 2006, ostensibly for the very reason that the EARS report found she had done a good job.

David Iglesias:

This U.S. Attorney had well-conceived strategic plans that complied with Department priorities and reflected the needs of the District overall. The U.S. Attorney effectively managed complaints, detention decisions, and pretrial practices.

Despite this review, Mr. Iglesias was fired on December 7, 2006.

Dan Bogden:

U.S. Attorney Bogden was actively involved in the day-to-day management of the U.S. Attorney's office, had established an excellent management team, and had established appropriate priority programs that support Department initiatives.

Despite this review, Mr. Bogden was fired on December 7, 2006.

Paul Charlton:

U.S. Attorney Charlton also made his goals and expectations clear to his staff. . . . The U.S. Attorney's office prosecuted more immigration violations than any other district.

Despite this review, Mr. Charlton was fired December 7, 2006.

John McKay:

McKay is an effective, well-regarded, and capable leader of the [U.S. Attorney's office] and the District's law enforcement community.

Despite this review, Mr. McKay was fired on December 7, 2006.

The Department did not turn over the EARS reports for the two U.S. attorneys who were said to have performance concerns and who were not identified until late in the process—Margaret Chiara and Kevin Ryan.

Since the initial cause for the firing, performance was clearly debunked by these reports. It now appears that these 6 U.S. attorneys were fired because they upset the political arm of the White House.

For example, David Iglesias, by all accounts a rising star, was only placed

on the list to be fired after the President and Karl Rove called the Attorney General to pass along complaints.

Specifically, Kyle Sampson, former Chief of Staff to the Attorney General, testified on March 29, 2007, that:

I do remember learning, I believe, from the Attorney General that he had received a complaint from Karl Rove about U.S. Attorneys in three jurisdictions, including New Mexico, and the substance of the complaint was that those U.S. Attorneys weren't pursuing voter fraud cases aggressively enough.

Mr. Sampson went on to testify that he also remembered that:

Just a week before I left the Department in March, I remember the Attorney General telling me that he had had a meeting with the President in October sometime. . . . I remember the Attorney General saying, "You know, I remember the President in that meeting we had in October telling me that [there were] concerns about Iglesias."

In addition, the committee's investigation has shown that many of the U.S. attorneys who were fired, or put on a list to be fired, were handling contentious election-related cases, including Todd Graves, former U.S. attorney in Missouri, who recently revealed that he, too, was forced to resign after he had refused to support a case against the Democratic secretary of state in Missouri, alleging that Missouri was violating Federal law for failing to purge voter rolls—that is despite the rules of the Department urging that no case involving election practices be brought prior to an election; John McKay, former U.S. attorney in Washington, fired, it appears, because he refused to bring a case during the hotly contested gubernatorial race against essentially the Democratic candidate; David Iglesias, former U.S. attorney in New Mexico, who, it appears, was fired because he refused to bring a case alleging voter fraud prior to the election; Tom Hefflefinger, former U.S. attorney in Minnesota, who was put on a list to be fired when he was pushing for an investigation into voter discrimination against Native Americans; Steve Buskupic, U.S. attorney in Wisconsin, who was put on a list to be fired, and his district was the focus of a document sent over from the White House for investigation that provided information on Milwaukee voting trends.

These are just examples of U.S. attorneys who were fired or considered to be fired because of their involvement in election fraud cases. Other U.S. attorneys who were fired were involved with sensitive public corruption cases.

The congressional investigation has also uncovered that political considerations were being taken into account with regard to hiring and firing decisions for career employees at the Department and the prestigious Honors Program. Now, that is a no-no.

Monica Goodling, a young, inexperienced lawyer, 33 years old, was named White House Liaison at the Department of Justice, and in that role she was given the authority to hire and fire personnel for many critical positions at the Department.

On May 23, 2007, Ms. Goodling testified that "I may have gone too far in asking political questions of applicants for career positions, and I may have taken inappropriate political considerations into account on some occasions."

This is a 33-year-old making these decisions. Where was the Attorney General?

The Congress has also discovered that political appointees directed changes to be made to the performance evaluations of career staff and overrode career attorneys' recommendations regarding which cases to pursue or not pursue.

For example, in testimony before the House, Joe Rich, who worked at DOJ's Civil Rights Division for 37 years, testified that he was "ordered to change the standard performance evaluations of attorneys under my supervision to include critical comments of those who had made recommendations that were counter to the political will of the front office and to improve evaluations of those who were politically favored."

What does this do to the credibility of the Department of Justice of the United States?

In the Senate Judiciary Committee's hearing last week, Brad Schlozman testified that "on a number of occasions, I believe I did order [Joe Rich to change performance evaluations.]"

There you have it, the politicization of the Department of Justice.

Sharon Eubanks, lead attorney for the Department of Justice on the tobacco cases, has stated that in June 2005, she was pressured to ask for lesser penalties against the tobacco companies. She said:

At first, the administration officials attempted to get the litigation team and me and my staff to agree to lower the amount, but there was no basis for doing that, and we refused. And finally, after a number of very heated discussions, I said, "You write it and I'll say it."

What a terrible comment about some of the biggest cases ever made in the history of the United States.

Each of these facts on its own is disconcerting, but taken together, they show a department being run based on politics and not on law.

I also believe the Attorney General has compromised important legal principles by taking positions and espousing opinions that are outside the mainstream of legal thought. For example, the Attorney General testified on January 18, 2007, that habeas corpus, the right to challenge one's imprisonment, is not protected by the Constitution. Here is what the Attorney General said:

There is no express grant of habeas in the Constitution. There is a prohibition against taking it away . . . I meant by that comment, the Constitution doesn't say "Every individual in the United States or every citizen is hereby granted or assured the right to habeas."

He has also pushed to narrow the definition of torture and changed to whom the Geneva Convention applies. In the January 2002 memo he wrote:

In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.

And when it comes to Guantanamo, Attorney General Gonzales has expressed strong objections to closing the detention facility and moving detainees to the United States.

The New York Times reported on March 22 of this year that Mr. Gates argued to close Guantanamo. But according to administration officials—this is the newspaper only:

Mr. Gates's arguments were rejected after Attorney General Gonzales and some other Government lawyers expressed strong objections to moving detainees to the United States, a stance that was backed by the Office of the Vice President.

And despite the fact that the U.S. Code states "the Foreign Intelligence Surveillance Act shall be the exclusive means" by which electronic surveillance may be conducted, the Attorney General has argued that the language used in the authorization for use of military force implicitly authorized the President to exercise powers, "including the collection of enemy intelligence."

In his prepared testimony from January 2006, he stated:

The Supreme Court confirmed that the expansive language of the resolution—"all necessary and appropriate force"—ensures that the congressional authorization extends to traditional incidents of waging war . . . [and] the use of communications intelligence to prevent enemy attacks is a fundamental and well-accepted incident of military force.

He is thereby saying that Guantanamo is a creature of this and, therefore, legal. I don't agree with that assessment.

I believe each of these legal opinions has had dramatic negative consequences, including negatively impacting America's relationship with most countries abroad.

Finally, and perhaps most disturbing, the Senate has heard testimony from Deputy Attorney General James Comey that calls into question the Attorney General's character and integrity.

Mr. Comey testified about the conversation in the intensive care unit of George Washington University Hospital where he witnessed then-White House Counsel Gonzales "trying to take advantage of a very sick man" to reverse a judgment that the Terrorist Surveillance Program was illegal.

The testimony—his testimony, Comey's testimony—raised questions about actions that are contrary to the ethical standards lawyers are required to uphold.

Mr. Comey's testimony stands in sharp contrast to the statements made by Mr. Gonzales to the Senate about this incident.

In response to Senators' questions on February 6, 2006, the Attorney General left the impression that any reports of disagreement within the administration about the surveillance program were either inaccurate or in reference to some other program or issue.

He said:

There has not been any serious disagreement [about the program] . . . The point I want to make is that, to my knowledge, none of the reservations dealt with the program that we are talking about today.

That was under oath, Mr. President, before us. He didn't tell us about this. He didn't tell us that he went, as White House Counsel, to a critically ill man's intensive care unit bed and tried to reverse a decision that the Acting Attorney General was making. It wasn't until Mr. Comey came forward and told us about it did we know.

What do I conclude? Each of these issues is serious on its own and each would raise serious questions about the qualifications and service of this Attorney General. The Department of Justice is charged with enforcing the law and protecting all Americans' rights and security. The Attorney General must enforce the law without fear or favor to its political ramifications. He must act independently and pursue justice wherever it may lead, and without compromise. He must uphold the highest ethical standards.

Let me quote again from President Lincoln's Attorney General:

[t]he office I hold is not properly political, but strictly legal; and it is my duty, above all other ministers of State, to uphold the law and to resist all encroachments from whatever quarter. . . .

This is what the Attorney General should be. That is why I am going to support the motion to close off debate and support the resolution.

I thank the Chair. I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

CREATING LONG-TERM ENERGY ALTERNATIVES FOR THE NATION ACT OF 2007—MOTION TO PROCEED.

The PRESIDING OFFICER. Under the previous order, the hour of 3:30 p.m. having passed, the Senate will resume consideration of the motion to proceed to H.R. 6, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time until 4:30 p.m. shall be equally divided and controlled between the chairman and ranking member of the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that we be allowed to equally divide a full hour, which was our plan this afternoon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Some of that time may be yielded back, but I didn't want to cut off anyone who wishes to speak on this issue before we go to a vote.

Mr. President, today we begin consideration of energy legislation in the Senate. Later today, we will be voting to take up legislation that will make a meaningful and bipartisan contribution to charting a new direction for America's energy policy.

There is a growing consensus among Federal, State, and local policymakers across the ideological spectrum, also from corporate leaders and the American public in general, that our Nation needs to move faster and needs to go farther to secure its energy future.

America's family farmers and businesses look no further than the prices that are posted at the corner gas station to see the vivid and daily indicators of the economic perils inherent in maintaining the status quo. In fact, they have watched as gas prices have stayed at more than \$3 per gallon for well over a month.

Our national security experts cite the geopolitical implications and the foreign policy challenges presented by the rise of State-owned energy companies and by our own growing dependence on oil imports. In 2005, the United States imported roughly 60 percent of the petroleum that we consumed. Without decisive action, that figure is expected to approach 70 percent over the next two decades, with more than 35 percent of that increase expected to come from member nations of OPEC or the Organization of Petroleum Exporting Countries.

Meanwhile, economists take note of our energy policy's fiscal implications as well related to America's global competitiveness. In 2005 and 2006, our dependence on petroleum imports combined with rising prices to add an estimated \$120 billion to our Nation's trade deficit.

There is no doubt there is a compelling case for action, but there is also something more fundamental that is embedded in the American consciousness that is animating the national call for a new direction in our energy policy.

President Franklin Roosevelt once observed:

The creed of our democracy is that liberty is acquired and kept by men and women who are strong and self-reliant.

Perhaps it is this American principle of self-reliance that is driving national debate forward when it comes to energy policy.

After all, by tapping America's limitless capacity for innovation, our most abundant renewable resource, the United States can become more energy self-sufficient. Americans believe we can and should lead the world when it comes to developing the new technologies that will produce clean alternative energy and help us to address the threat of global warming. Inherent in this grand challenge is enormous opportunity—opportunity to build a