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Bush Justice Is a National Disgrace

By John S. Koppel
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As a longtime attorney at the U.S. Department of Justice, I can honestly say that I have never been as ashamed of the department and government that I serve as I am at this time.

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The public record now plainly demonstrates that both the DOJ and the government as a whole have been thoroughly politicized in a manner that is inappropriate, unethical and indeed unlawful. The unconscionable commutation of I. Lewis "Scooter" Libby's sentence, the misuse of warrantless investigative powers under the Patriot Act and the deplorable treatment of U.S. attorneys all point to an unmistakable pattern of abuse.

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In the course of its tenure since the Sept. 11 attacks, the Bush administration has turned the entire government (and the DOJ in particular) into a veritable Augean stable on issues such as civil rights, civil liberties, international law and basic human rights, as well as criminal prosecution and federal employment and contracting practices. It has systematically undermined the rule of law in the name of fighting terrorism, and it has sought to insulate its actions from legislative or judicial scrutiny and accountability by invoking national security at every turn, engaging in persistent fearmongering, routinely impugning the integrity and/or patriotism of its critics, and protecting its own lawbreakers. This is neither normal government conduct nor "politics as usual," but a national disgrace of a magnitude unseen since the days of Watergate - which, in fact, I believe it eclipses.

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In more than a quarter of a century at the DOJ, I have never before seen such consistent and marked disrespect on the part of the highest ranking government policymakers for both law and ethics. It is especially unheard of for U.S. attorneys to be targeted and removed on the basis of pressure and complaints from political figures dissatisfied with their handling of politically sensitive investigations and their unwillingness to "play ball." Enough information has already been disclosed to support the conclusion that this is exactly what happened here, at least in the case of former U.S. Attorney David C. Iglesias of New Mexico (and quite possibly in several others as well). Law enforcement is not supposed to be a political team sport, and prosecutorial independence and integrity are not "performance problems."

In his long-awaited but uninformative testimony concerning the extraordinary firings of U.S. attorneys, Attorney General Alberto R. Gonzales did not allay these concerns. Indeed, he faced a no-win situation. If he testified falsely



regarding his alleged lack of recollection and lack of involvement, he perjured himself and lied to both Congress and the American people. On the other hand, if he told the truth, he clearly has been derelict in the performance of his duties and is not up to the job. Either way, his fitness to serve is now in doubt.

Tellingly, in his congressional testimony, D. Kyle Sampson (the junior aide to whom the attorney general delegated vast authority) expressed the view that the distinction between "performance" considerations and "political" considerations was "largely artificial." This attitude, however, is precisely the problem. The administration that Sampson served has elided the distinction between government performance and politics to an unparalleled extent (just as it has blurred the boundaries between the White House counsel's office and the attorney general's office). And it is no answer to say that U.S. attorneys are political appointees who serve at the pleasure of the president. The point that is lost on those who make this argument is that U.S. attorneys must not serve partisan purposes or advance a partisan agenda - which has nothing to do with requiring them to promote an administration's legitimate policy priorities.

As usual, the administration has attempted to minimize the significance of its malfeasance and misfeasance, reciting its now-customary "mistakes were made" mantra, accepting purely abstract responsibility without consequences for its actions, and making hollow vows to do better. However, the DOJ Inspector General's Patriot Act report (which would not even have existed if the administration had not been forced to grudgingly accept a very modest legislative reporting requirement, instead of being allowed to operate in its preferred secrecy), the White House-DOJ e-mails, and now the Libby commutation merely highlight yet again the lawlessness, incompetence and dishonesty of the present executive branch leadership.

They also underscore Congress' lack of wisdom in blindly trusting the administration, largely rubber-stamping its legislative proposals, and essentially abandoning the congressional oversight function for most of the last six years. These are, after all, the same leaders who brought us the WMD fiasco, the unnecessary and disastrous Iraq war, Guantanamo, Abu Ghraib, warrantless domestic NSA surveillance, the Valerie Wilson leak, the arrest of Brandon Mayfield, and the Katrina response failure. The last thing they deserve is trust.

The sweeping, judicially unchecked powers granted under the Patriot Act should neither have been created in the first place nor permanently renewed thereafter, and the Act - which also contributed to the ongoing contretemps regarding the replacement of U.S. attorneys, by changing the appointment process to invite political abuse - should be substantially modified, if not scrapped outright. And real, rather than symbolic, responsibility should be assigned for the manifold abuses. The public trust has been flagrantly violated, and meaningful accountability is long overdue. Officials who have brought into disrepute both the Department of Justice and the administration of justice as a whole should finally have to answer for it - and the misdeeds at issue involve not merely garden-variety misconduct, but multiple "high crimes and misdemeanors," including war crimes and crimes against humanity.

I realize that this constitutionally protected statement subjects me to a substantial risk of unlawful reprisal from extremely ruthless people who have repeatedly taken such action in the past. But I am confident that I am speaking on behalf of countless thousands of honorable public servants, at Justice and elsewhere, who take their responsibilities seriously and share these views. And some things must be said, whatever the risk.

The views presented in this essay are not representative of the Department of Justice or its employees but are instead the personal views of its author.

John S. Koppel has been a civil appellate attorney with the Department of Justice since 1981.

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