



## **Prepared Remarks of Attorney General Michael B. Mukasey Before the American Bar Association**

**New York  
Tuesday, August 12, 2008 - 10:00 A.M.**

Good morning. Thank you, Laurel, for that kind introduction. And thank you for the opportunity to address this distinguished group.

The American Bar Association has a 130-year history of involvement in the issues that shape American law and the way it is practiced. Because you are leaders of the ABA, one of your important roles is to help set and maintain professional standards. You do that not only for lawyers in the private sector, but also for lawyers in the public sector, and you and your predecessors have been doing that for decades.

Given that history, I would like to talk to you today about a topic that I'm sure is of mutual interest – namely, professionalism at the United States Department of Justice. Or, to be more precise, about well-publicized recent reports that some people at the Justice Department in the past few years failed to observe professional standards and violated civil laws that govern the hiring of career employees and summer law interns.

Before I turn to that troubling subject, I should tell you, affirmatively, that professionalism is alive and well at the Justice Department today. When I go to work at the Department, I'm surrounded by a staff that stands in the first rank of legal talent among the many talented people I have had the privilege to work with and deal with in my career. Any one of them could make many times their salaries in the private sector, probably with shorter hours, and assuredly with less stress. But they have chosen instead to serve their country, and all of us benefit from that choice. I benefit perhaps most of all, because I not only share in the same way that all other Americans do in what they achieve, but I also get credit for a lot of it.

This is not to say, however, that the Department's reputation hasn't been harmed. As I expect you know, the Justice Department's own Office of Inspector General and Office of Professional Responsibility recently released two joint reports about hiring practices at the Department in and before early 2007. The reports included detailed findings that improper political considerations had been used in hiring decisions relating to certain career employees, including Immigration Judges, some Assistant United States Attorneys, and employees detailed to offices in Main Justice, and in hiring decisions relating to candidates for the prestigious Attorney General Honors Program and the Summer Law Intern Program.

The conduct described in those reports is disturbing. The mission of the Justice Department is the evenhanded application of the Constitution and the laws enacted under it. That mission has to start with the evenhanded application of the laws within our own Department. Some people at the Department deviated from that strict standard, and the institution failed to stop them.

I want to stress that last point because there is no denying it: the system failed. The active wrong-doing detailed in the two joint reports was not systemic in that only a few people were directly implicated in it. But the failure was systemic in that the system – the institution – failed to check the behavior of those who did wrong. There was a failure of supervision by senior officials in the Department. And there was a failure on the part of some employees to cry foul when they were aware, or should have been aware, of problems.

The good news is that much has changed since the period covered by these reports – as the reports themselves acknowledge. I have made repeatedly clear, in both private meetings with Department

employees and in public appearances, that it is neither permissible nor acceptable to consider political affiliations in the hiring of career Department employees. I am confident that the supervisors working under me know that they are expected to live up to their titles – to supervise – and that they have primary responsibility to ensure that hiring in their divisions and other units is lawful and is proper. I am also confident that, if problems were to recur and anyone in the Department became aware of them, those people would promptly alert more senior officials in the Department, up to and including me if necessary.

More important, I have acted, and I will continue to act, to ensure that words are translated into reality so that the conduct described in the recent reports does not recur at the Department. Even before the reports were issued, the Department had remedied many of the institutional problems identified in the reports. Each of the two reports contained a few additional recommendations for institutional reform, and I immediately directed that those recommendations be implemented.

The institutional reforms have been substantial, both in number and in reach. Among other things, the Department now has new hiring processes for immigration judges, members of the Board of Immigration appeals, honors program candidates, and summer law interns – with codified roles for career attorneys in the decision-making process. We have instituted mandatory training for all political appointees regarding Merit System Principles and Prohibited Personnel Practices, and we will shortly be expanding that training to include all Department employees, whether political appointees or not, involved in career hiring. And we have revised various orders to reiterate the Department's commitment to merit systems principles and to remove political appointees in the Attorney General's Office from the process of hiring career attorneys.

We also are taking several additional steps in response to the two reports – steps beyond the recommendations made in the reports themselves. To the extent we can, we intend to contact candidates for the Attorney General's Honors Program who may have been improperly eliminated from consideration and encourage them to apply for any vacancies at the Department. Each of them will be assured a fair evaluation. Similarly, we will contact those who may have been improperly denied temporary details to jobs at Main Justice to see if they are interested in any new opportunities that are or may become available.

Our reforms have not stopped with hiring, the subject of the recent joint reports. We have implemented various reforms to ensure that the Justice Department can advise and consult with others in the Executive Branch, including the White House and other departments, and consult with Congress, without having that interaction improperly affect the functioning of the Department, notably the prosecution and defense of civil and criminal cases. In December, shortly after becoming Attorney General, I revised the Department's White House contacts policy and significantly narrowed the list of those who may communicate with the White House about ongoing criminal and civil enforcement matters. And over the past few months, we have distributed several memos reminding employees about election-year and transition sensitivities. The bottom line message of these communications has been simple: Politics must play no role either in the hiring of career employees or in the investigation and prosecution of cases.

I am well aware that some people have called on me and on the Department to take even more drastic steps than those I have described. For example, some commentators have suggested that we should criminally prosecute the people found in the reports to have committed misconduct. Where there is evidence of criminal wrongdoing, we vigorously investigate it. And where there is enough evidence to charge someone with a crime, we vigorously prosecute. But not every wrong, or even every violation of the law, is a crime. In this instance, the two joint reports found only violations of the civil service laws.

That does not mean, as some people have suggested, that those officials who were found by the joint reports to have committed misconduct have suffered no consequences. Far from it. The officials most directly implicated in the misconduct left the Department to the accompaniment of substantial negative publicity. Their misconduct has now been laid bare by the Justice Department for all to see. As a general matter in such cases, where disciplinary referrals are appropriate, they are made. To put it in concrete terms, I doubt that anyone in this room would want to trade places with any of those people.

Other critics have suggested that we should summarily fire or reassign all those people who were hired through the flawed processes described in the joint reports. But there is a principle of equity that we all learned in the schoolyard, and that remains as true today as when we first heard it: two wrongs do not

make a right. As the Inspector General himself recently told the Senate Judiciary Committee, the people hired in an improper way did not, themselves, do anything wrong. It therefore would be unfair – and quite possibly illegal given their civil service protections – to fire them or to reassign them without individual cause.

Also, that some of the officials involved in hiring gave improper consideration to politics does not mean that the people they hired are unqualified for their jobs. I am a former federal judge. I will disclose to you in this room, as I did more than once in the courtroom where I used to preside, that I did not sit for a competitive examination to get that job, nor did any of my colleagues, and I do not flatter myself with the thought that my selection was in any rigorous sense a merits appointment. Politics can and does play a role in the appointment of federal judges, but it doesn't follow from that that federal judges are unqualified to do their jobs. To select only one example, Edward Weinfeld, perhaps the paradigm for excellence as a federal district judge, was active in politics before he went on the bench, and friendly with others who were active in politics.

Or consider an example closer to home. One of the Immigration Judges identified by the joint report as having been hired through the flawed process was recently tapped – by the revised hiring process that gives no consideration to politics – to be a member of the Board of Immigration Appeals. Putting aside fairness to him, it would have ill served the public interest not to appoint him merely because those who first hired him had violated the civil service laws. Firing him and all those like him would be wrong, and it would be harmful to the Department and to the country.

Finally, it is important to stress that those people hired under the circumstances described in the report have been, and will be, regularly evaluated – as is every employee at the Department. New hires are subject to a period of probation during which their performance is rigorously evaluated. And employees undergo regular evaluations even after the probationary period has ended. If anyone – whether Democrat or Republican, whether appointed through a flawed process or a flawless one – is found to be handling or deciding cases based on politics, and not based on what the law and facts require, there will be a swift and unambiguous response.

As a result of all the reforms we have made – including several others I haven't mentioned to you this morning – I am confident that the Department is on surer footing today than it has ever been before, and that the institutional problems identified in the reports have been remedied. Nevertheless, I will continue my efforts to identify additional ways to improve the Department. In addition, the Department's Offices of Inspector General and Professional Responsibility have indicated that there are two more joint reports to be issued, one relating to the hiring of career attorneys in the Civil Rights Division and a second relating to the removal of certain U.S. Attorneys in December 2006. I do not know when those reports will be issued. But I am optimistic that they will recognize the many changes and actions already taken by current Department employees to address the relevant issues. And I will review carefully those reports and any recommendations in them, as I have past reports and recommendations, and I will not hesitate to respond as appropriate.

Publication of these reports and the headlines they generate are painful for everyone who works at the Department – not the least because they inevitably harm the reputation of the institution. Although the Department has made many institutional changes to prevent a recurrence of these actions, it remains important under circumstances like these to look back and figure out what happened, painful though that process may be. Taking stock – and taking stock publicly – is an important part of determining and acknowledging what went wrong and why it went wrong, and is crucial to ensuring that we do not again have to face such problems.

Unfortunately, overlooked in many of the headlines and editorials about these reports is the valuable and skillful work that the employees at the Department of Justice are doing, and have done, on behalf of this country. The Department of Justice has over 100,000 employees – almost all of whom focus exclusively, as they did before and during the period covered by these reports, on doing the right thing. And it is Department employees, including many career employees, who are making the changes to ensure that these issues do not recur.

It is those dedicated men and women I found when I first showed up at the Department last November.

And it is those dedicated men and women with whom I am proud to continue to serve.

Thank you very much.

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