

Through bipartisan efforts among those from both sides of the aisle who care about federal law enforcement and the Department of Justice, we joined together to press for accountability.

That resulted in a change in leadership at the Department, with the resignations of the Attorney General and virtually all of its highest-ranking officials.

But the oversight efforts did not complete our work. We continue in the waning days of the Bush administration to try to return to the right track and ensure that the rule of law is restored as the guiding light for the work of the Department. Mr. Rowan, who currently serves as acting head of the National Security Division, has an opportunity now and if confirmed to play a significant role in that restoration.

In the wake of the tragic attacks on September 11, 2001, and toward the end of President Bush's first year in office, this country had an opportunity to show that we could fight terrorism, secure our Nation, and bring the perpetrators of those heinous acts to justice, all in a way that was consistent with our history and our most deeply valued principles. A number of us reached out to the White House in an effort to craft a thoughtful, effective bipartisan way forward. The White House, supported by the Republican leadership in Congress, chose another path. They diverted our focus from al-Qaida and capturing Osama bin Laden to war and occupation in Iraq. They chose to enhance the power of the President and to turn the Office of Legal Counsel, OLC, at the Department of Justice into an apologist for White House orders—from the warrantless wiretapping of Americans to torture. In my view, that approach has made our country less safe.

We are all too familiar now with the litany of disastrous actions by this administration: rejecting the Geneva Conventions—which the President's counsel referred to as “quaint”—against the advice of the Secretary of State; establishing a system of detention at Guantanamo Bay in an effort to circumvent the law and accountability; attempting to eliminate the Great Writ of habeas corpus for any non-citizen designated by the President as an enemy combatant; setting up a flawed military commission process that, after 6 years, has finally resulted in its first trial of a terrorist after more than 80 have been tried successfully in our court system; and permitting cruel interrogation practices that in the worst cases amount to officially sanctioned torture.

These misguided actions and policies have rested upon a legal edifice built in secret by OLC opinions that have turned the rule of law on its head by interpreting laws Congress has passed. This week the Judiciary Committee

authorized subpoenas relating to those opinions. For the better part of 8 years, OLC's work has largely been kept secret from this oversight Committee, despite our efforts. Keeping binding interpretations of secret law from Congress is wrong.

The advice we have seen from OLC has been deeply flawed, sloppy, and flat out wrong—but it has been permitted to happen because secrecy has prevented our oversight. Unjustified secrecy continues to prevent the review by this Committee that would provide a check and some control on how the administration is interpreting the law that is Congress's constitutional responsibility to write. That obsessive secrecy even prevents us from knowing the subject matter on which OLC has written opinions.

There is no justification for keeping OLC legal interpretations secret from this committee, let alone the index I have long sought. That is why I sought and now have the authorization for subpoenas after years of being rebuffed and slow-rolled in our attempts to find out how this administration has interpreted and applied the laws written by Congress.

Another one of the misguided policies of the Bush-Cheney administration was rebuked earlier this summer in the Supreme Court's 5-4 decision in *Boumediene v. Bush*. That decision reaffirmed our core American values by concluding that detainees at Guantanamo have the right to bring habeas corpus claims in Federal court. I applauded that decision because I have maintained from the beginning that the provisions of the Military Commission Act that purported to strip away those rights were unconstitutional and un-American.

This should not have been a hard decision, but I hope Mr. Rowan understands that it was a vitally important one. The Courts have a long history of considering habeas petitions and of handling national security matters, including classified information. I have great confidence in our system of justice and its ability to handle these issues. The administration made this mess by seeking to avoid judicial review at all costs, causing years of delay and profound uncertainty. It has now been rebuked four times by the Supreme Court. Habeas Corpus is the ultimate guarantee of fairness and a check on executive excess.

It is vital that we ensure that we have a functioning, independent Justice Department, and that this sad era in the history of the Department is not repeated. We have seen what happens when the rule of law plays second fiddle to a President's agenda and the partisan desires of political operatives. It is a disaster for the American people. Both the President and the Nation are best served by a Justice Department that provides sound advice and takes

responsible action, without regard for political considerations—not one that develops legalistic loopholes and ideological litmus tests to serve the ends of a particular administration.

I congratulate Mr. Rowan and his family on his confirmation today.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT 110-22

Mr. WHITEHOUSE. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on September 26, 2008, by the President of the United States: Agreement on Conservation of Albatrosses and Petrels, Treaty Document No. 110-22. I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the Agreement on the Conservation of Albatrosses and Petrels, with Annexes. In addition, I transmit for the information of the Senate the report of the Department of State, which includes a detailed analysis of the Agreement.

The Agreement, done at Canberra on June 19, 2001, and that entered into force on February 1, 2004, was adopted pursuant to the Convention on the Conservation of Migratory Species of Wild Animals (the “Convention”), done at Bonn on June 23, 1979. Although the United States is not a Party to the Convention, the United States may nonetheless become a Party to the Agreement. The Agreement's objective is to achieve and maintain a favorable conservation status for albatrosses and petrels.

I believe the Agreement to be fully in the U.S. interest. Its provisions advance the U.S. goals of protecting albatrosses and petrels. As the Department of State's analysis explains, the Agreement is not self-executing and thus does not by itself give rise to domestically enforceable Federal law. Implementing legislation would be required, which will be submitted separately to the Congress for its consideration.