

AG Mukasey Hints at Revision of McNulty Memo, Spars With Senators at Hearing

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Wednesday morning's oversight hearing of the Justice Department by the Senate Judiciary Committee got off to a contentious start between Attorney General Michael Mukasey and the committee's top senators.

And then Mukasey dropped the bombshell: The so-called McNulty memorandum may be revised and is likely to be replaced by a new set of guidelines for the handling of attorney-client privilege in corporate fraud investigations.

Responding to Sen. Arlen Specter, R-Pa., the ranking minority member, Mukasey revealed that Deputy Attorney General Mark Filip is drafting a letter to Specter addressing "real significant proposed changes" that could replace the policy named after former Deputy Attorney General Paul McNulty.

"There's no such as thing as a memo that achieves perfection. ... There are adjustments in the McNulty memo that can and will be made," Mukasey said. "In particular, we will no longer measure cooperation by waiver of the attorney-client privilege."

Mukasey said Filip's letter can be used to discuss changes "that may very well produce a memorandum in short order."

Specter, the lead sponsor of a bill in the Senate to modify the McNulty guidelines, had asked Mukasey what justified "coercing a waiver of the attorney-client privilege" and whether legislation is necessary.

The McNulty memo, which addresses how prosecutors should treat suspected corporate wrongdoers and their invocation of the privilege, is one of several in a succession of Justice directives that have been criticized as far-reaching and unfair to corporations.

Last month, Mukasey hinted that the memo could be tweaked.

Earlier Wednesday, at the outset of the question and answer session, Sen. Patrick Leahy, D-Vt., the committee's chairman, accused Mukasey of failing to keep his promise, made last fall, to review all controversial legal opinions by the department's Office of Legal Counsel issued in recent years.

"Why have you done that?" Leahy asked bluntly.

"Respectfully, I don't think I've gone back on my word," Mukasey said. Mukasey went on to say that he has reviewed "all significant OLC memos," some of which have been made available to the judiciary and intelligence panels in Congress.

Leahy quickly interjected: "I beg to differ with you a little bit. ... Simply reviewing the current [opinions], I don't think is enough." Leahy explained that revisiting past legal memos on executive powers would help the committee.

"I can't make a commitment to open up drawers of OLC and make them available to this committee," Mukasey shot back.

Leahy next suggested Mukasey make a list available of the memos he chose not to review. The attorney general was not swayed: "For me to give an index of all OLC memos, I don't know that it would serve anybody's interests."

Frustrated, Leahy ended his questioning: "Your answer is, 'No.'"

Mukasey responded: "My answer is qualified."