

LEAHY TO BYBEE: WHY WON'T A FEDERAL JUDGE TESTIFY BEFORE SENATE JUDICIARY COMMITTEE?

Keep in mind, as you watch Pat Leahy complain that Jay Bybee declined, through his lawyer, to testify before the Senate Judiciary Committee what Sheldon Whitehouse said about yesterday's hearing: it was preparation for the release of the Office of Public Responsibility report on Bybee, Yoo, and Bradbury, due out in the next several weeks.

Since he has declined through his lawyers to testify before the Committee, I assume he has no exonerating information to provide. I wish he would testify before us to help complete the record, and [inaudible] it is appropriate because in this case he has done anything but maintain silence about it. He has made a number of statements that sort of give his side, I'd like to hear it all. He's talked to friends and employees, he's communicated to the press, he's communicated through his lawyers to the Justice Department regarding the Office of Professional Responsibility's review of his actions, while as a government employee in the Office of Legal Counsel. Apparently the only people he has not explained his actions to are the people who granted him a lifetime appointment to the Federal Bench, and the American people through their elected representatives in the Senate.

Whitehouse and Leahy have both promised follow-up hearings after the report comes out; it's

likely that Bybee will get himself another invitation after the report—one with some legal force behind it.

But, as Scott Horton suggests, Leahy's invitation and Bybee's refusal to show establishes—even before the OPR report comes out—that Bybee doesn't have anything to say for himself, that a sitting Judge and federal employee won't explain his role in authorizing torture to the Committee that oversees the Judiciary (and approved his nomination).

This invite, too, was about laying a foundation for what comes next.