

HOLDER SJC OVERSIGHT HEARING LIVEBLOG

Leahy talking about the things that Holder has accomplished: improvements in civil rights, recovery funds to law enforcement. Talks about the things that need to improve: state secrets, press, healthcare fraud, hate crimes. Troubled about continuation of Bush Administration's practice of invoking state secrets to shut down wrong-doing. Access to courts is important. Safely and effectively closing Gitmo. Reviewing the bad terrorists that we have held: Timothy McVeigh, Sheikh Abdul Rahman, Zacarias Moussaoui.

"The idea that we cannot find a place to house 250 detainees is not rational."

Leahy calling on hate crimes bill.

Sessions: Starts by talking about details of Sotomayor's confirmation hearings. Disappointed—put Constitution and rule of law above politics. I don't think the actions we've seen so far are consistent. I find myself reading about political appointees who have overruled career attorneys. Rejected OLC that Congress' recent legislation on DC voting was unconstitutional. [Well, Sessions, if you would approve Dawn Johnsen, then maybe Holder would listen to OLC?] Pressure from the left when you allowed DOJ to release OLC opinions on torture.

[blah blah blah: Sessions demagoguing.]

[career attorneys career attorneys career attorneys—Sessions is pretending that these people weren't burrowed in by Rove and Cheney]

[pre-9/11 pre-9/11 pre-9/11 pre-9/11]

Jeff Sessions pronounces it "Fo-Toes."

Holder: Highest priority to protect against acts of terrorism. Close Gitmo. Southwest threat—drug cartels. Civil Rights. Foreclosure scams. Finance fraud. Healthcare fraud.

Leahy: Black Panther. I understand a career employee made the final decision of which people to charge. I thought I'd point that out—want to have the facts here. Injunction against person who was intimidating on decisions. [huh?] President's nominee in Civil Rights. [Don't know if he said OLC too] Holocaust shooting. Open and classified filings, number of hate crimes and positions more vile.

Holder: If any doubt about need for legislation, wiped out by Holocaust and other hate crimes. 10 years ago I testified in favor of this bill. Expands scope of federal hate crimes to include gender, disability, sexual orientation.

Leahy: NYT's latest story on wiretapping. I don't know how we justify continuing these expansive authorities, even expanded authorities being abused.

Holder: Work closely to ensure that national security conducted consistent with legal authorities. Framework that we always try to follow. Congress establishes safeguards. "really strict guidelines."

Leahy: The more we find out, not from the intelligence agencies, not from government, but NYT, we get it quicker, more detail, and we get the crossword puzzle. I don't know how we reauthorize any of these things.

Holder: Couple of instances where problems were detected by department. Corrected the problem and only after did I reauthorize the beginning of the program. Haven't reviewed NYT.

Leahy: I wish you would, because I wrote you 3 months ago, we need department's proposal for reauthorizing it. I would hope you would look at this article. I found it troublesome because I have heard similar rumblings. We want to be secure, but we also want Americans who aren't subject of any criminal investigation or terrorist investigation to know they can send emails back and forth without having it be read by someone having fun doing it. This goes way beyond IRS looking at people's reports. Redouble

efforts to work on media shield bill.

Holder: With what PATRIOT Act preauthorization, lack of a position, what we've seen in paper today, we want to take into account how these measures have been used. They don't expire until December. To base our position on as much experiential.

Sessions: With regards to these intercepts, no difference between intercepting email or telephone call.

[except that's not the law, you asshole.]

Coburn interrupts and says I can assure that that article is right is erroneous.

Leahy: I'd like to hear it from the AG.

Sessions: Grassley. My letter about Uighurs. Grassley three letters unanswered from department. Hate crimes. I would suggest we should have hearing on that. Do you agree that as the person in charge of Gitmo task force for transferring detainees.

Holder: With the other principals.

Sessions: Transferred others. Zuhair allegedly responsible for murder of William Jefferson in Bosnia. And involvement in USS Cole attack. Did you approve transfer?

Holder: I did as did the previous Administration. And he was transferred to Saudi Arabia, subject to judicial review.

Sessions: Was that based on question of evidence that um could not be utilized. I understand military intell showed that Zuhair was involved.

Holder: Consistent with Bush Administration insufficient proof, not question of inadmissibility but insufficiency of it.

Sessions: Another detainee, Binyam Mohamed, believed to be Padilla's accomplice. Did you approve his release.

Holder: I take responsibility for all releases

that have been done. In determinations that we made, we made conclusion either insufficient proof to bring those charges. This process is designed to protect American people.

Sessions: If he's been captured as part of WOT, is he not entitled to maintain that person in custody until war is over. Ensure not a danger.

Holder: To ensure that no longer presents danger to US. All made a determination done by career, that these people do not pose a danger.

Sessions: You've taken on a pretty awesome responsibility to divine these people's intent.

Kohl: Prolonged detention.

Holder: Military commissions, transfer, possibility third category that they will be detained. It would only happen wrt due process. We would work with Congress on due process.

Kohl: All but abandoned to let detainees live in the US. What will happen if there are others that do not have countries to go to.

Holder: Try to place.

Kohl: What steps to depoliticize department?

Holder: Met with every single employee of Civil Rights. Report to me any kind of political interference. Visited with and continue to visit with other divisions.

Kohl: DOT approve anti-trust immunity airline alliances.

Holder: Timely question. Reached out to Secty Hood, will work with us on making determination so Justice Department will have input. Joint resolution.

Graham: Gitmo. One of the reasons we'd contemplate closing Gitmo, help overall war effort. We need a plan to close Gitmo. Some countries concern me. Saudi Arabian rehabilitation program. How successful?

Holder: Some who have returned to battlefield.

Not been 100% correct. It provides a useful tool.

Graham: Less than 25% will get to trial. That third bucket most problematic. Want to make sure we have a legal system to allow every detainee to have their day in federal court.

Holder: We want to work with members of the Committee, the thought we had some sort of review and periodic review.

Graham: I think you're on the right track. I want an independent judiciary validating what the intelligence committee says about these people.

Holder: Exact parameters work with Congress.

Graham: Also have to deal with Bagram. Photo issue. Appreciate your willingness to appeal the 2nd Circuit decision. Legislative fix. Can you tell me the game plan of Admin, if necessary, time limits of executive order. If court rules against Admin, when should EO be written?

Holder: Negative impact on our soldiers in the battlefield. That concern continues. If we were not successful in court, then consider our options.

Graham: My concern is the time limits of order. An EO can't just wipe out a court decision. If SCOTUS denies Cert, then 2nd Circuit stands. If you lose, wouldn't the order be imminent, and how would the executive order stop it then.

DiFi: Clear up repartee between you and Coburn. Email surveillance concerns. I'd like to speak as Chair of Intelligence committee. We were sure April article not correct. I do not believe that any content is reviewed in this program. We will hold another hearing and will go into it again. Surprised by this article and yet everything that I know so far indicates that thrust of story, to collect content, is simply not true to the best of my knowledge.

Leahy: If you could brief Sessions and myself on that issue.

DiFi: Well aware of concerns about it. Welcome Mr. AG. A refreshing breath of fresh air. 4th Amendment did not apply on US soil. Made public in March. Memo in 08 that instructed that caution should be exercised. Conclusions incorrect or highly questionable. Has this opinion ever been withdrawn in its entirety.

Holder; I believe so, let me get back to you on it. I don't know what impact of President's withdrawal of a variety of OLC opinions.

DiFi: Bring us up to date on what you are doing to review OLC opinions. Released some of the opinions. As we continue that review, we will make further releases. Great to have Dawn Johnsen as head of OLC. Critical part in getting that review underway.

[yeah, that's why they're holding her up, Eric.]

DiFi: I had a meeting in SD area on border, top officials of all departments. I learned something quite surprising: virtually all narcotics traffic, routes they travel, people who control those drugs, controlled by certain gangs in federal prisons and state prisons. Spoke to Bob Mueller. Not acceptable that narcotics trafficking directions be given out of federal or state prisons. Asking for commitment to take a look at this. Pick up on Kohl and Graham: laws of war provide to hold combatant for length of war. There is a necessity to provide due process review. Has that due process review been decided upon?

Holder: We have not decided that.

DiFi: SW border drug violence, Mexico's AG, \$10B crosses into Mexico each year. How much of that cash has been intercepted at the border? Role of BATF in stemming this flow.

Coburn: Concerned about what happened in Arkansas and Kansas and different response. Do you believe it's a Hate Crime?

Holder: Don't know all the details. WRT killing of recruitment officer, DOD has primary

responsibility for.

Coburn: Prosecution?

Holder: No, protection. Prosecution would be our responsibility in partnership with local law enforcement.

Coburn: Do current Hate Crimes cover that?

Holder: Race, not military status. We'd have to consider motivation of person.

Coburn: Should we consider legislation to protect soldiers at recruiting offices?

Holder: If it's a problem. We can show substantial number of crimes for the current and proposed expanded categories. I would want to see what the statistics and facts show.

Coburn: Rigorously review Heller. Have you done that? Did you do that before you issued your recommendation on so-called assault weapons?

Holder: I don't think I have said we need a new assault weapons ban.

Coburn: February 25 you said you favor reinstating assault weapons ban. Was this impromptu.

Holder: There is firearms review that is ongoing. Admin has not taken a position wrt reinstating assault weapons ban.

Feingold: Exchanges with Graham, Feinstein, and Cole, chaired a hearing on this topic, urge you and Dept to consider various policy issues involved, even with due process you discuss. I do think this could be a very big mistake, especially with how such a system could be perceived around the world. Wrote to President Monday that Admin hasn't withdrawn legal opinions including 2006 White Paper. Prompted by speech by DNI in which he asserted that program not illegal. In speech to ACS you said: "warrantless surveillance of American citizens." Now that you are AG any doubt that the program was illegal?

Holder: as it existed at that point, unwise. Did not have all the protections that it might have had. As it now exists, having had Congressional approval. Concerns no longer exist.

Feingold: I asked you whether you considered illegal. Explicit statement of President.

Holder: Action inconsistent with FISA. Contravention. I thought that the policy was unwise. Concerns have been remedied.

Feingold: Did you think it was illegal.

Holder: Unwise.

Feingold; Has something changed that would make it hard for you to say it was illegal? It sounds awfully mild. Not only scope of FISA law, underlying Constitutional principle, statute that explicit, it is unconstitutional for the President to override express will of Congress.

Holder: Contravention of, I'm not sure I said illegal.

Feingold: I would hope you'd use the word illegal now, then, request that ADmin withdraw White Paper and other OLC memos, I know you've initiated a review, and certain memos that authorized torture have been withdarwn. Status of review of wiretap opinions?

Holder: Make public. My hope that that process will lead to release of several opinions in short period of time.

Feingold: Legal justification be withdrawn, these memos make unsupported claims of executive power, if President believed illegal, they cannot stand. State secrets, voluntary report to Congress. Since Feburary seeking classified briefing on why assert privilege. State secrets leg before Committee. Consistent with Congress. Will you make sure I receive briefing?

Holder: whether or not properly invoked wrt 20 cases it has been used. Proposals to make public in matter of days.

Feingold: Any reason I can't get this briefing

at this time?

Holder: We'll try to make it available.

Hatch: Arrest 19 Utahans trafficking in Indian artifacts from federal lands. Full SWAT gear, in process, one of leading figures, delivered almost everybody who lived in County, committed suicide. Critical to community. They came in like worst kind of criminals. Really strong individual. Commit suicide. Over 100 federal agents used for this operation. Salazar and others touting how good this investigation was.

[What Hatch isn't saying is that Mormons have had a century's long war with Native Americans in the area.]

[Shorter Hatch: You can use force against drug dealers, but not Mormons.]

Hatch: State secrets privilege. Pending cases. Obama Administration has elected to defend this privilege three times. During April television you said Bush correctly used state secrets. Markup tomorrow on state secrets bill. Mukasey had concerns, constitutional questions. Limits executive power. Any attempt to reallocate national security decisions to judicial branch. No changes in language or address department's concerns. While I have you here—DOJ's view?

Holder: Work with committee and Congress. About to release what our views are. Our view that proposals that we're going to make deal with many of the concerns. I would hope we would have chance to look at our proposal to see if that would be sufficient. I think proposals will be sufficient. Hope release within days.

Leahy: I've been pushing for that kind of response. I'd like to have the department's views. If we don't have it we'll mark up the bill.

Durbin: Torture tape investigation and Bybee, Yoo, and Bradbury investigation? Whitehouse and I asked for copy. He did not do that. I understand that OPR completed report, submitted

to those who were investigated. They submitted their comments 6 weeks ago.

Holder: Pretty close to end of process, lengthened by responses. Some changes making in report. Hope is to share as much as I can. Potentially classified portions of report. Can't get full context until entirety declassified.

Durbin: Time frame?

Holder: Weeks. Worry about classified report, I'd like them to have full range of information.

Durbin: Race and justice. African Americans 6X incarceration as whites. Crack cocaine.

Cornyn: DOT, final decision on Starr alliance airline partnership. DC Voting Rights Act, second opinion. Declined to make that OLC opinion public, saying it was not final.

Holder: No decision WRT Administration on what decision it will take. Concerned about releasing internal deliberations.

[Funny—Cornyn didn't give a shit when BushCo wouldn't release Bradbury's OTHER memos]

Cornyn: Is it possible OLC says something's unconstitutional and department will override?

Holder: Even best and brightest can get things wrong. OLC has delegated power from AG. My responsibility to make sure that anything that comes out of DOJ.

Cornyn: POTUS would make policy decision that overrules OLC.

Holder: POTUS has to decide legal opinions.

[Shorter Cornyn, sure OLC may have been wrong on torture, but how is it possible that OLC would get voting rights wrong?]

[Hey, I just realized, Arlen Specter hasn't gotten his turn yet. Welcome the era of Specter being the most junior Dem on SJC]

Cardin: Reverse red-lining, minority communities

targeted for subprime loans.

Cardin: Intend to have hearings on long-term detainees. Fresh start in how we're going to deal with detainees. Develop what's right for America, but also engage international community.

Holder: Two trips to Europe, spent a lot of time talking about Gitmo with our allies.

Cardin: Surveillance statutes. Terrorism subcommittee will do some hearings. Lone wolf, roving wiretaps, business records. Understand we have incredibly busy schedule, these issues are not always without controversy.

Kyl: Asked if you could break down terrorists at SuperMax. Who they are, any really comparable to HVDs at Gitmo today.

[Kyl: Do you have no clue who Sheikh Abdel Rahman is?]

Holder: Have to get you stats.

Kyl: Recruitment of terrorists in jail. Something FBI Director testified about. How to prevent that?

Holder: I understand the concerns. Measures to be taken, people considered terrorists generally held outside of general population. Programs to deal with, occupy time, so they have alternatives.

Kyl: Gitmo constructed to deal with this. All would be helpful in prep for hearing.

Holder; We will detail how facilities we have can be treated to deal with this.

Kyl: It would be illegal to release within the US.

Holder: House has already passed as part of supplemental provisions that would forbid bringing into US of people at Gitmo.

Whitehouse: Release of OLC opinions necessary and wise. Particularly important given

politicization of that office during the Bush Administration. Those opinions had to be seen to be believed. Completely disagree with ranking member on that subject [Sessions.] Durbin asked about OPR investigation. February 18, 2008 that this investigation was already pending. OPR completed investigation and draft report late December 08. May 4 of this year comment period closed. CIA was given a opportunity for substantive comment and classification review. Is it now the CIA that is holding up the release of the report?

Holder; Other things have to be done. Chiefly in response to responses received in early May. She is new to OPR, understands seriousness of report, has had impact on timing of report.

Whitehouse: Role of CIA in substantive comment and in classification review, interesting conflicts of interest. What assurances from CIA that those who seek to influence OPR report through substantive comment or those who have effect of delaying report are not complicit or involved in underlying conduct. Have you got a clean scrub of those at CIA who are involved in program?

Holder: As complete a report as we can. Declassify as much as we can. Full feeling of what it is that OLC lawyers dealt with. Pushing to declassify as much as we can.

Whitehouse: Doesn't address question of whatever assurances from CIA that in discharge of review role the people involved in that had clean hands WRT this program and are giving untainted advice.

Holder: We haven't gotten anything yet. This may not be an issue at all. Will interact with Panetta. Want to have as much declassified as possible.

Whitehouse: And on question of substantive comments? Is it not important that CIA should be doing so in manner that keeps agencies hands clean.

Holder: I'm actually less worried about substantive comments.

Whitehouse: Would they be likely to look at substantive comments differently if CIA had not kept report from people with clean hands.

Holder: Fact-driven. Conclusion that one draws from the facts, Justice Department's view of facts that we have uncovered.

Klobuchar: Most high profile case you dismissed?

Holder: Stevens.

Klobuchar: Allow Republican appointed USAs, was that the policy when Bush came in?

Holder: I don't know, concern we had was maintain continuity, leave in place those doing good job.

Klobuchar: How many nominees confirmed thus far?

Holder: none. Also urge this committee act on other positions still waiting for Senate approval.

Klobuchar: In our state it worked very well, we had some upheaval. Major cases pending in our jurisdiction. Recommended a marshall? How many are women? Only one.

Klobuchar: White collar fraud. Talk about initial steps to implement FERA?

Holder: Announcement on financial fraud.

Klobuchar: VAWA—rape kits not being paid for.

Specter: Immunity for telephone companies. Pressed an amendment to substitute the government as parties defend. Provision on immunity very troublesome, what it does it take away jurisdiction from district court. On Constitutional issues, I find troublesome. Position I pressed was have govt substitute. What's wrong with that as preferable course to immunity.

[He does know Walker has already dismissed the EFF suit?]

Holder: debated at great length, and a determination made that given what the telecomm companies had done that the immunity provision was appropriate. We have been conducting ourselves on what I consider settled law.

Specter: I wouldn't say that debate was robust. I'd say it was falacious.

Holder: Admin has taken position that we're dealing with settled law and we are proceeding in that way.

Specter: Then-Senator Obama voted in favor of substitution. Difference in institutional approach being Senator than being President. Mukasey invoked immunity defense. Did you make an independent determination on whether immunity should be invoked?

Holder: Not sure...

Specter: Period of time before Court decided case that the new Admin might not seek to invoke immunity defense. Did you consider not using immunity defense?

Holder: Dealt with question based on law as it existed. Didn't seem to me that there was a huge amount of flexibility.

Specter: Even DAs have ability to decide how to invoke defense. Chief Judge Walker. I'm concerned about determination made by SCOTUS. I've introduced SCOTUS take up issues like TSP. Federal Court in Detroit found TSP unconstitutional. 6th Circuit reversed on standing. Do you think it'd be a good idea to mandate that SCOTUS take TSP review.

Holder: Separation of powers concern about mandating review.

[But no separation of powers concern about the fucking immunity for telecoms???

Holder: Concern about whether it is an appropriate use of Congress' power.

Specter: Letter to AG Mukasey on health care costs be submitted.

Schumer: Three questions. Hate crimes. Hard for me to believe that people oppose hate crimes legislation.

Holder: Priority for us.

Schumer: Reporter shield bill. Can the DOJ support a well-balanced reporter shield bill? Commit to working with us?

Holder: Department can support such a bill. Make sure it doesn't impede ability to protect national security. Construct a bill that all would find acceptable. Protect whistleblowers and people like that.

Schumer: ICE authority. DiFI talked about drug trafficking. ICE doesn't have clear title 21 authority, particular in context of border enforcement.

Holder: Talked to Napolitano last night. Will be announced in days.

Schumer: Hampers ability to control borders, have to call someone up.

Sessions: OLC report, DOJ has said it was appropriate for lawyers to respond.

Holder; I think it's fine.

Sessions: AG Mukasey has asked to submit a letter.

Holder: We have views expressed by Filip and Mukasey to include their comments, their views. I assume they would not have objection to that.

Sessions: Warrantless wiretapping, suggesting great violation of constitutional rights. Arise from lawful intercept. In't in truth interception outside of US?

Holder: Existing authority of someone overseas who happens to make a call within the US.

Sessions: Lawful tap on foreign person. Exaggerated threat.

Holder; I would agree with that except that there are minimization requirements.

Sessions; OLC opinion concluding its unconstitutional DC voting bill.

Holder: Decision on torture memos. Info largely public. Techniques had been banned. Also thought continued thought that those would be used propaganda victory.

Sessions: Disapproved by Judge Mukasey and Michael Hayden. I didn't think it necessary. Your opinion that you're hesitant to release memo.

Holder: Not a political component to seek releasing some material. There's no political consideration. It is THIS Attorney General's view that those memos should be released.

Sessions: We do give them now, review when brought into Gitmo. I'm not sure what else you're going to add to that. Right to keep and bear arms fundamental right.

Holder: 2nd Amendment right. SCOTUS has indicated as such.

Sessions: Actually they haven't. They weren't saying whether it applies to states.

Holder: Good point.

Graham: Just talked to Rahm and he indicated that POTUS will not let these fotos see the light of day.

Holder: I have not seen that.

Graham: Preferred route that Congress act.

Holder: Congress act would be a preferred way.

Graham: Stronger hand. My beef is not with the Courts. Courts making reasonable interpretation of FOIA. Stay and have SCOTUS review that case. I would not be surprised if SCOTUS did not review case. Imperative that one of us ask.

Holder: Compelling reasons why those photos should not be released.

Graham: Introduced statement by General "O-de-ner-o" and Petraeus. Still talking about how to

do this war.

Graham: Why appeal judge's opinion that habeas applies to Bagram?

Holder; Not our view that it applies to theater of war.

Graham: Make sure that terrorists—accused terrorists to sue.

Holder: Visceral reaction to that. The notion that our troops would be sued.

Graham: Afghan to Afghan call, routed through the US, do you need a warrant. When we had the two soldiers in Iraq, it took two hours to get approval to continue monitoring conversation.

Holder: Two non-US persons speaking to each other. No warrant.

Cardin: Voting Rights Act. Want your views how important pre-clearance provisions are. SCOTUS decision might restrict.

Holder: That portion a key for our efforts to protect voting rights of all Americans. Number of cases brought under that section. Congress unanimously reauthorized it.