

AG HOLDER OVERSIGHT HEARING

You can follow along on the Committee stream or CSPAN3.

Leahy: Using full range of authorities to fight extremists [must be an attack against Crazy Pete]. After nearly 8 years of delay, may finally be moving forward to bring to justice the perpetrators. Great faith in prosecutors, judges, juries, and American people. They committed murder and we will prosecute them. America's response is not to cower in fear.[I wonder if he's thinking of GoFuckYerSelf Cheney?] Those responsible for attack on USS Cole, MC, Nidal Hasan, military courtmartial. Written to John Brennan, asked him to provide internal investigation, both interim classified, Both Sessions and I should be informed. Have spoken with Mueller. Me and Feinstein were briefed on status of investigation. Try not to do in reckless fashion so as not to interfere with military prosecution.

[Note, that that clarifies who was in that briefing: Gang of Eight, plus the Judiciary Chairs. Presumably Crazy Pete was there and Holy Joe was not.]

Leahy: Financial Fraud Task Force.

Sessions: We don't agree on KSM and 9/11. [Presumably in NYC, but he didn't say it.] You asked for this job. David Beamer, FL, and Alice Hoagland from CA. Lost sons on Flight 93. Lisa Dolan lost her husband at the Pentagon. Debra Burlingame lost brother, pilot. Tim Brown from NYFD. A privilege to have each of you with us today. Blah blah blah blah blah. Policies taking place under new Admin, I fear that is not the case. Admin continuing to delay to provide clear leadership to men in Afghanistan, investigation of CIA officers, cut a deal on media shield legislation to protect indivs to leak classified info to mass media, concede to weakening of

PATRIOT, decline to provide basic information about Ft. Hood, and now announced they will bring KSM back to Manhattan. These policies signal to our people and to inter-nat-shun-all community. Return to pre-9/11 mentality. Al Qaeda doesn't agree. KSM in NY, departs from long-standing policy that these should be treated under the rules for law. He's alleged not to be a common criminal. Correct way to try him is by military tribunal. MC and civilian courts have different functions. US Court system not designed to try unlawful enemy combatants. These are people we are at war with. We are dropping bombs on them every day, attacking their lairs. [anyone wonder whether Jefferson Beauregard Sessions III has a woody?] They are first a prisoner of war, once they're captured. [oops—that's got to be a mistake, all of a sudden admitting that KSM is POW] Ex Part-ay Qweer-in. Our enemies and friends must ask themselves whether they're still serious about this effort.

Leahy: Delighted to hear someone from AL quote approvingly Ulysses S Grant and Abraham Lincoln. The world has come full circle.

Sessions: Well, and they were winners, too.

Holder: Protect security of American people, protect integrity of DOJ, make decisions based on facts and on the law, with no regard to politics. I am a prosecutor, and my job as a prosecutor was to pick the venue where the government would have greatest chance of success. Venue in which we are most likely to obtain justice for the American people is in federal court. I'd like to clear up some of the misinformation. We know we can prosecute terrorists in federal court, bc we have been doing so for years. Our courts have a long history of handling these cases. No district has more experience than SDNY. Both Commissioner Kelly and Mayor Bloomberg think we can do this safely. CIPA. Have used it in Congress. The MC classified rules are based on, derived from CIPA. KSM will have no more platform to spew

ideology than he would have in MC. Before Commissions last year, condemned his lawyers, professed his desire to become martyr. Few complained at that time that his rants threatened our ability to have justice. I have every confidence that presiding judge will preserve decorum. If KSM rants, I have every confidence nation and world will see him for what he is. I'm not scared about KSM, and no one else should be either.

Leahy: I'm glad to see, finally, after all these years, they will be prosecuted, same way McVeigh was convicted. Murder of 13 soldiers and wounding of others at Ft. Hood. At my church on Sunday, prayed for the families. Several of us were briefed (Sessions, Feinstein, and others) [presumably Bond, too?] We're both former prosecutors, we don't want to compromise any investigation. What resources are you using to make sure nothing was missed?

Holder: All resources DOD has requested will be made available, and also to determine how to prevent future attacks like this.

Leahy: During courtmartial, evidence will come out. Will you commit to share with this committee, DOJ, things that were missed?

Holder: President has directed we conduct such an inquiry. Only caution, sequence so not interfere with investigation and prosecution.

Leahy: Requested Admin share more info on classified activities related to PATRIOT. Stating this rather broadly, you know classified areas we're looking for. Department briefing, so senators can be briefed prior to debate. Working on ways to make this available to Senators and Congressmen.

Leahy: Sessions and I working on Managers Amendment. Are you satisfied that bill reported by committee has nothing to prevent you to keep us safe.

Holder: Reauthorization of those provisions, way in which proposed, not have any negative impact

on our ability to reauthorize.

Leahy: Do you think it important to reauthorize.

Holder: Absolutely important.

Leahy: Federal shield law, consensus. You said compromise federal shield bill provides appropriate protection for national security.

Holder: A number of concessions made wrt concerns I raised and IC raised.

Leahy: 2004, Democrats and Republicans passed Justice for All Act. Rape Kit backlog reduction act. Disturbed to learn that despite leg, backlogs remain around country. 12500 untested kits in LA. Other cities almost as severe. 18% of unsolved rape kits evidence has never been submitted. Find out what went wrong, how to get these rape kits tested.

Sessions: Very important decisions. It's not cowering in fear of terrorists to decide that best way for terrorist to be tried is in military commissions. You believe that MCs can fairly try.

Holder: That's why I sent 5 other people.

Sessions: This is causing quite a bit of concern. Kean says he thinks it's a mistake. I would note that Mary Jo White said it may take 3 years. Rudy criticized. Mayor of NY.

Sessions: Obama and you have established review committee. Concluded that presumption that where feasible tried in Article III Court. Is that still policy?

Holder: That is presumption, but also presumption that can be overcome evidence by fact that five will be tried by MC. Using protocol, part is presumption, it's presumption and only that.

Sessions: Baffling to me from the beginning. Part of last campaign. Captured combatant to be tried in military commissions only common sense, and part of our history. Isn't it true it would take compelling factors.

Holder: Variety of factors. Let's look at history of military commissions. 3 trials brought in MCs over the many years they existed. Had to be reformed. Article III have tried these matters before.

Sessions: I don't think people happy with decision. Spectacle of trial. With high paid defense lawyers, Others focused on using that as a forum. A lot of ways compelling these commission cases tried fairly and effectively without problems of normal trial. WRT specific decision you made, you referred to Cole and another case in which military person killed. Isn't it true 9/11, Pentagon attacked.

Holder: No question that that was true, one of factors I considered, Number killed largely civilians. Because of fact that this was an act that occurred on our shores with victim pop largely civilian. **Including Admissibility, to make sure that certain evidence would be admitted.**

Sessions: I don't think we should give preference to civilian trial.

[Leahy puts in letters from conservatives who support NYC decision]

Kohl: When will we meet goal of closing Gitmo.

Holder: Unexpected difficulties in reaching. 100 approved for transfer. 40 referred for prosecution. Decisions for remaining detainees. Expect to have decisions for all remaining detainees. Where those approved for transfer can be placed.

Kohl: When that may arrive at conclusion.

Holder: President said some time this year.

Kohl: WI lost two brave servicemembers at Ft. Hood. As you know, Hasan came to attention last December. Emails consistent with research at Walter Reed, no contact made with DOD. What changes have you made or would you make to prevent from happening.

Holder: Understand what happened. Flags that were missed. Once we have a handle on that. At close to beginning stages of inquiry. Determine on basis of sound investigation, what happened. Disturbing to know interaction between Hasan and **other people.**

[Note, plural: "other people"]

Kohl: Urgency.

Holder: President has given us two weeks, until end of November.

Kohl: Bring 9/11 to trial in federal courts. Not authorize prosecution if not confident that outcome successful. Defendants could get off on legal technicalities. If not result in conviction.

Holder: Many who have criticized have done so from a position of ignorance. Have not had access to materials I have had access to. Have not had a chance to look at facts, look at law. If I didn't think our chances of success were enhanced by bringing prosecutions there.

Hatch: Significant event, FBI's disruption of 3 terrorist plots. Last week during a press conference, you referred to actions of KSM and co-conspirators as extraordinary crimes. Act of war and violation of federal law. Still believe we're at war?

Holder: No question we're at war.

Hatch: Don't agree, not because govt doesn't have ability to detain terrorists. I believe that MCs preferable venue to protect Nat Security information. Not to say Article III cannot handle.

Hatch: Material support to al Qaeda.

Holder: Do not have fingertips of those convicted of material support.

Hatch: I believe closer to 50 rather than 95 bandied about.

Hatch: Successful prosecution. Ghailani. Why not

death penalty? Govt has not opted to seek for death penalty for Ghailani.

Holder: My intention to seek death penalty with 9/11. Decision not to with Ghailani. Prior Admin decided not to seek with 2, jury decided not to seek death penalty. On that basis decided not to seek it.

Hatch: Mukasey, Blind Sheikh. Mukasey asserted that trials damaged Nat Security. Prosecution compelled to provide list of unindicted co-conspirators. Ramzi Youssef, testimony about a cell phone tipped off terrorists.

[You mean sort of like Hoekstra did the other day?]

Hatch: What I would like to know is how do you intend to ensure that nat security information does not end up in hand of terrorists. Especially if KSM decides to defend themselves? Is CIPA really going to work if these detainees do or do not have counsel.

Holder: Has been suggested reveal info. Reality that information protection based on CIPA. If I might, there's been misinformation wrt this co-conspirator list. Co-conspirator list not a classified document. Had there been reason to protect it, prosecutors could have. During embassy trial, cell phone, this allegation is simply wrong. Bin laden stopped using phone long before revealed at trial. Not used after October 9, 1998. Did not being until December 19, 1998. There's a factual problem.

Leahy: PatFitz says, when you see how much classified info involved, you get pretty confident that nothing was leaked.

DiFi: Fully support decision to try 9/11 in NYC. Happen to believe Federal judges are the best. Attack in NY, both act of war and criminal event. I think the fact that these men will be tried in finest of American judicial system is very important. Assume that you believe there is sufficient untainted evidence to obtain conviction.

Holder; Correct, one of my main drivers. What evidence could we present? And to try to minimize the possibility that we would have to deal with tainted evidence.

DiFi: Interrogation group. HIG. Experts from several intel and law enforcement agencies. Role that FBI will be playing? Type of oversight?

Holder: Acquisition, capture of HVDs, group of people steeped in who these people are, using methods consistent with America as nation, FBI will play a part, along with IC, also devising techniques that will be effective wrt specific person.

DiFi: When could we expect announcement of Director.

Holder; Gathering people. Underlying work is underway. Relatively soon.

DiFi: Army Field Manual, plus any additions that task force made. 2008 Federal BP confiscated 1119 cell phones, 250 cell phones from secure institutions. Most of narcotics trafficking done out of prison system, particularly CA prison system. Then I came back and found all these cell phones. I've introduced leg that would make cell phones contraband.

Holder: It is a real problem. I had experience when USA in DC. Maintenance of cell phones ought to be banned. Means of tech to block.

DiFi: Would you look at leg.

Holder: Idea you have very legitimate one.

DiFi: June 2009, GAO, indivs on terrorist watch lists, bought guns 865 times. Terror gap, continued to allow indivs on FBI's list to purchase guns despite fact not allowed to fly on airplane. Bush DOJ supported leg to close this gap. Does DOJ support closing gap.

Holder: Yes.

Grassley: Don't know how you can make statement that failure to convict is not an option. A lot of Americans thought OJ ought to be in jail.

Questions. You previously pledged.

Leahy: He ought to have a chance to respond.

Grassley: as long as it doesn't come out of my time.

Holder: Congress has passed leg that would not allow release into this country of anyone deemed dangerous. That does not mean that person would not be released into this country. I am confident that we will be successful.

Grassley: If not convicted and if somehow the judge lets him out, he becomes enemy combatant, what do you gain? Trying to bring common sense to this. Previously promised to respond in timely fashion. Leahy and I wrote in October on outstanding requests. I am disappointed that your reply indicates not answering pre-2009 questions from this committee. Nat Security, whistleblower law enforcement. You're not upholding pledge to respond to all requests. I even tried to help you giving you big thick file of things previous Admin didn't do right. Why are you and Dept not willing to answer these questions.

Holder: Tried to answer all questoins wrt this admin. I do remember that booklet, I think we've done pretty good job. Staffs meeting MOnday to discuss this. Stay current with questions put to us and deal with backlog. Really trying to prioritize way in which we respond to these questions.

Grassley Leahy has committed he'll work to get that done. Decisions to bering detainees to US and afford them civilian trials. Who is advising you on these decisions. There are attys in DOJ who repped Gitmo detainees or worked for orgs that repped them. PDSG Neal Katyal. Repped OBL's driver and bodyguard in his case, challenging earlier MC. Quoting NJ, Mr. Katyal has not recused himself, still working on detainee matters. Other attys with previous detainee issues. NY Post reported dept hired Jennifer DAskall in NSD. Serves on Detainee issues. Ms. Daskall has no prosecutorial experience, she has

background of advocating for detainees. One detainee could not longer write poetry any more. Want to know more about potential conflicts. Names of political appointees who represent detainees, worked for orgs advocating on behalf, cases before joining DOJ. Would you provide that?

Holder: Will certainly consider that request. Want to make sure that people in dept understand ethical requirements, recusals appropriate, I have been recused bc my firm represented or had some connection to the person who was subject of proceeding.

[Except of course Bauer on Cheney's interview]

Grassley: I asked you for information. Will you provide it.

Holder: I will consider it.

Grassley: You're doing what's usual. What's unusual is size of cluster of individuals affected. It seems to me we need to know who's involve and what their pre-Dye-lections are.

Holder; They are patriots, concerned about security. Whatever their previous roles, put aside or recuse.

Grassley: Very least is a list of recusals.

Feingold: General I want to commend you for decision to try in federal court. About time to bring to justice. This country stands firmly behind legal system and Constitution. Remain skeptical about decision to try five others in MCs. Some have called it scaremongering and called for it to stop. Moussaoui, Don't remember uproar about decision to try Moussaoui in federal court. How does decision to seek justice support fight against terrorism.

Holder: Great faith in our system. Based on experience. Cases you mentioned, familiarity having been a prosecutor in those courts. Concern about dispersal of classified info. We've done it in past, I'm confident we can do it.

Feingold: Indefinite detention. Declaration of infinite detention. simply bad policy. Will there be any that will be neither prosecuted nor transferred.

Holder; possibility exists that at conclusion, there will be a number of people we will seek to detain under rules of law. Consistent with due process. Reviews done on periodic basis. That possibility does exist.

Feingold: In status other than POW?

Holder: Under rules of war.

Feingold: Devastated by tragedy of Ft Hood. Two brave WI soldiers murdered. What went wrong. Not a lot you can say in public now. Important not to jump to conclusions. Hope review will be expedited. Will you commit to making public?

Holder: In a way that's consistent with ensuring that we don't do harm to trial. Make clear to American public.

[John Brennan is probably vomiting.]

Feingold: Heard progress has been made combating meth. Increase in heroin, this heroin is very pure. Increase in crime and deaths. Concerned this may be part of trend. Is this trend happening in other states.

Holder: Increase, chiefly from Mexico. Baltimore, particular problem. DOJ, in conjunction with DEA, using all of the tactics, to get at emerging heroin problem. A lot thought problem of the past. We are focusing on.

Kyl: Grassley asked one thing here. You will not commit to provide a list of your recusals.

Holder: I said I would consider it.

Kyl: You have said decision to try KSM in Article III courts, best chance to prosecute, enhanced in Article III. How could you be more likely to get conviction in federal court, KSM has already asked to plead guilty and be executed.

[Applause]

Leahy calls for order, Kyl seconds it.

Holder: he said that then, I have no idea what he wants to do now with enhanced protections. He may still want to do that. I have to look at where my best chance of success. I decided Article III was best place. KSM is not making this decision.

Kyl: [raises voice] You have to have taken his request to plead guilty into account.

Holder; I'm not going to make this decision based on what a terrorists, what a murderer wants to do. Do we know, as a fact, that that is what he wants to do? I don't.

Kyl: Why is it more likely convicted in federal court. Surely you're not arguing that easier to get evidence into Article III. Rules for admitting evidence more lenient.

Holder: that is not necessarily the case, wrt info elicited in MC, wrt info elicited from terrorists. It is not clear to me, at all, that it would be introduced in MC, even with clean team, or that it would withstand appellate scrutiny. Minimize that kind of evidence.

Kyl: Suppose that someone else wants MC. This appears to be subjective judgment.

Holder; Not a question of where we can easier conviction. Talking to Sec Def, Case involving Cole, Nashiri, attack on warship, uniquely situated to

Kyl: More heinous crime, killing of civilians.

Holder: Not making case about which lives more valuable.

Kyl: Hard to understand rationale that killing civilians.

Holder: Federal law that governs admin of death penalty, cases should be brought where occurred.

Kyl: Assumes in US to start with. You said,

"Justice delayed for eight years." Andrew McCarthy, chutzpah writ large. Leftist lawyers. Some of those lawyers now working for justice department. Covington and Burling, in two years KSM and four war criminals, want to talk about delay. Despite jihadists efforts. Obama's team permitted no movement. Endure incredibly expensive and burdensome civil trial.

Holder: Don't know where to begin. Leftist lawyers prolonging this. Vast majority of time in which these matters not brought to trial, happened in prior Admin, Supreme Court, not a group of leftist lawyers, had concerns. The Congress reinacted the way Commissions constructed. This is not a Congress peopled only with leftist lawyers. Makes for good fodder on talk shows. I'm here to talk about facts, Real American values and not the polemics he seems prone to.

Leahy reads all the numbers on terrorism trials.

Sessions: You said 300 cases, I'd like to know names and what they've been charged with/ [yelling] Yes or no.

Holder: that wasn't the request being made.

Sessions: My understanding

[Wow, these guys are assholes]

Leahy: The only member that actually lives in NY.

Schumer: Brooklyn. I'd like to thank families from NY that have been such strong advocates. My first question. Practical matters. Spoke with Kelly. Strain of conducting trial in NY. Large burden. Kelly and Bloomberg willingly access. Rough estimates, added cost ballpark of \$75 million, just for year of trial. Does not include ramping up personnel. 90% of additional outlays go to overtime. We compete on COPS hiring grant. I worry about safety first, burden on taxpayers of NY. In 1995, city of NY host of Abdul Rahman, at WTC, costs associated with that trial were fully reimbursed. Recommend to

President to cover funding to cover added security costs.

Holder: America was attacked on 9/11, it seems to me that NY should not bear burden alone.

Schumer: You will recommend and fight for these funds from OMB. I just don't want Bloomberg and Commissioner, I don't think or NYC or NYS should be left paying costs of this. Just one other thing, may be other costs. We're not going to find somebody trying to say, this wasn't in original request.

Holder: You're going to be with me at OMB, right?

Schumer: Death penalty. I was primary author for death penalties for terrorists. You indicate you want to seek DP against KSM and cohort. DO you see any legal impediments that would stand in the way of seeking and imposing death penalty.

Holder: I do not see any legal impediments. We will obviously have to convince jury of 12 people that death penalty is appropriate.

Schumer: KSM expressed desire in tribunal to plead guilty. If he professes desire to plead, if he waives right o jury trial, for penalty phase, will you agree to that. To avoid some of the theater. If we are spared a trial and simply go to penalth phase that is something we'd agree to. Feinstein talked abotu Lautenberg law, to prevent access to gun. Restrictions on notification. So people in one end of justice system were not notified when Maj Hasan bought a gun. There should be notificaion. 24 background check gets in way. Will DOJ remove 24 background check to allow FBI to keep records of subjects of terrorist investigations.

Holder: Should be basis for law enforcement to share information about gun purchases. To allow law enforcement share.

Schumer: I'd urge you have Admin to write into budget.

Leahy: Graham has conflict. After Graham's

questions, break.

Graham: I enjoyed working with you on this topic. An important discussion. You're not suggesting that one of the defendants not be released. We would hold them as enemy combatants.

Holder: We have congressional restrictions on releasing.

Graham: I'm sure he will be convicting in federal court. That's not my concern, He will meet justice. If in future if terrorist brought to federal court, you'd have legal authority to hold as enemy combatant.

Holder: Potential for detaining people under laws of war.

Graham: Can you give me case where an enemy combatant caught on battlefield tried in civilian court. We're making history here. The Ghailani case, he was indicted for Cole bombing [oos] We're making history, and we're making bad history. If bin Laden were caught tomorrow, would he be brought to justice.

Holder: Make determination on where to try him.

Graham: Why would you take him some place different than KSM. Does it matter if you use law enforcement theory or MC theory.

Holder: Bin Laden has already been indicted.

Graham: Would bin Laden be entitled to Miranda warnings. It does not depend, if you're going to prosecute anyone in civilian court, custodial interrogation, right to remain silent. If we caught bin Laden tomorrow, couldnt' turn him over to CIA for an interrogation on battlefield. You're confusing people fighting this war. What would you tell military.

Holder: We have captured thousands on battlefield. Case against bin Laden is so overhwleming

Graham[interrupts] Rules in this country, law enforcement rights do not attach. Moment in

hands of US govt, entitled to remain silent. Going to make this country less safe. That is my problem with what you have done. I think you've made a fundamental mistake. Less ability when it comes to intelligence gathering. Deal with people who are war with us, that they may be given same constitutional rights. Main reason that KSM going to court, killed civilians. I think that is a perversion.

Holder: What I said repeatedly is that we should use all tools. Conviction of OBL would not depend on any custodial statements he would make. Would not be dependent on custodial interrogations. With all due respect, a red herring.

Graham: Every military lawyer concerned about criminalizing war.

Holder; WRT those people captured on battlefield. Most not mirandized. People involved include military personnel. NOtion that conviction of KSM would depend on his getting mirandized is not accurate.

Leahy: You were out of room of a lot of qualified military who support this. Already put in statements including military who take opposite view as Graham.