

Questions for the Record from Vice Chairman Saxby Chambliss

FISA

The House Judiciary Committee reported a bill last week that makes permanent the FISA lone wolf agent of a foreign power provision, and extends the sunset on FISA business records and roving wiretaps to 2017.

- **Do you support this House bill?**

Answer: Yes. These authorities should be extended for as long as possible to ensure that the critical national security tools they provide can continue to be used without interruption. The House Judiciary Committee bill would fulfill this goal by extending two of these provisions for six years and make permanent the lone wolf provision. I also would support the agreement that reportedly has been reached between Senate and House leaders to extend the three expiring provisions until 2015. Either bill would ensure that these authorities remain in effect and would avoid the instability and uncertainty caused by recurring short term extensions.

- **Do short-term sunsets provide any operational advantage in national security investigations?**

Answer: No.

Committee Oversight

In your oral testimony before the Committee, you agreed to provide the Committee with documents or other any materials requested by the Committee in order for the Committee to carry out its oversight and legislative responsibilities. You also agreed to ensure that the Department of Justice and its officials provide such material to the Committee when requested.

- **Do you agree that a request from the Vice Chairman is a request from the Committee? If not, please explain the legal and policy reasoning for this view?**

Answer: I understand that the Senate Select Committee on Intelligence has always worked cooperatively and that the Chairman and Vice Chairman regularly join in each other's requests. Especially in light of the tradition of bipartisan cooperation on the Select Committee and because of the need to ensure that national security matters are addressed in a timely and cooperative manner, it would be my goal, if confirmed, to work with others in the Department to respond to all Congressional requests for information, particularly requests from the Vice Chairman, in a timely and respectful manner. I would try to ensure that the Committee's concerns and interests are understood within the

Department and would do whatever I could to ensure that the Committee's oversight needs are met.

- **Will you provide the Committee with any documents or information requested by the Chairman or Vice Chairman?**

Answer: As I indicated in my opening statement before the Committee and in my statement for the record, I understand the importance to the Committee of receiving prompt responses to its oversight requests. If confirmed, I will ensure that I work with others in the Department to respond to and fulfill all such requests, whether raised by the Chairman or the Vice Chairman, to the fullest extent possible in a timely and respectful manner.

- **Will you ensure that the Department of Justice and its officials provide such material when requested by the Chairman or Vice Chairman?**

Answer: If confirmed, I will work with others in the Department to respond to requests for such material, in a timely and respectful manner. I will work to ensure that the Department and the Intelligence Community understand the concerns and requests of the Committee and I will do everything I can to ensure that those requests receive the prompt, respectful response that they deserve.

Committee Oversight - continued

In your current position as the Principal Associate Deputy Attorney General, you serve as the Deputy Attorney General's primary advisor on national security and other matters. Yet, in a number of your responses to the Committee's prehearing questions, you declined to discuss outstanding congressional requests for information from DoJ, asserting that "as a nominee," you were not in a position to speak for the Department.

- **Please explain why you are not in a position to speak to this issue.**

Answer: I understand there are a number of pending requests from the Committee concerning documents related to the Guantanamo Review process, certain OLC opinions and classified declarations from the intelligence community in ongoing state secrets litigation. However, I do not have the authority to speak for or to render a decision on these matters for the Department or for the other government agencies involved. I understand that there are ongoing discussions about how to accommodate these requests. If confirmed, my perspective will be to ensure that national security considerations are paramount and I will work with others in the Department to ensure that all such requests for information receive a timely and respectful response. In so doing, I would consider it my responsibility to ensure that the Department and others in the Intelligence Community fully understand and take into account the Committee's strong interest in exercising its

oversight responsibilities and that the Committee is provided as much information as possible in order to fulfill that critical function.

- **Are you aware of the September 2009 memorandum from the Attorney General recommending that a certain category of detainees be presumed to be eligible for transfer? Did you have any involvement in the drafting of this memorandum?**

Answer: I am aware that the Vice Chairman has requested an Attorney General memorandum of September 2009 that was referenced in correspondence between the Department and the Vice Chairman and noted in the prehearing questions I received from the Committee. I did not draft the referenced memorandum but as an Associate Deputy Attorney General focusing on national security matters during the referenced time period, I participated in reviewing it. My approach on detainee matters generally has been to consistently prioritize national security considerations.

- **A CIA assessment said the AG’s memo recommended that “Guantanamo Review participants should apply a presumption in favor of transfer any detainee” in a certain category. Please explain what category of detainees this memo pertained to and your understanding of what the AG recommended.**

Answer: I am not familiar with the referenced assessment and because the requested information would be contained in confidential communications between the Attorney General and members of the National Security Council, I am not able to discuss its contents. I understand, however, that the Committee has been offered a briefing about this matter and the considerations confronting the Guantanamo Review Task Force at the time.

Guantanamo Bay

I understand that the Pentagon is considering allowing family members to visit detainees housed at Guantanamo Bay. Presumably, this means KSM, Abu Zubaydah, and other high value detainees could have family come see them even as they prepare for military commissions.

- **What concerns could these visits pose from a prosecutorial perspective and is there any way to fully mitigate those concerns?**

Answer: My only awareness of the issue of potential family visits at Guantanamo comes from news reports. Based on those reports, I understand that the Department of Defense, which maintains the security for that facility, is considering whether to permit such visits. Although I have not consulted with the Department of Defense, in light of the fact that some Guantanamo detainees will be prosecuted in military commissions, I believe that the Office of the Military Commission Prosecutor could have concerns about the

potential effects of such visits on prosecutions. I do not know whether there may be protocols and procedures that could be implemented to mitigate any concerns.

- **Is the Department of Justice, including the National Security Division, weighing in on this decision? Do you have an opinion as to whether these visits are appropriate?**

Answer: I do not know whether the Department of Justice has been consulted, and I would want to have a complete understanding of the facts before offering an opinion as to whether such visits would be appropriate.

- **Who would pay for these terrorists' family members to visit them, the U.S. taxpayer, the families themselves, or someone else?**

Answer: I am not aware of what arrangements the Department of Defense would make with respect to the costs of such visits.

Guantanamo Bay - continued

In your Committee questionnaire, you noted that, in February 2010, you introduced the panelists in a discussion entitled, "Lessons from Guantanamo."

- **Given your experiences with the FBI and DoJ, what lessons have you learned from Guantanamo?**

Answer: My experiences have reinforced my view that we must ensure that decision-makers consider all information from the military, intelligence, and law enforcement communities in making critical decisions regarding disposition of detainees in order to ensure that the risk of recidivism posed by the transfer of a detainee is fully considered and weighed against any other disposition. With regard to detainee matters, my overriding and ultimate concern is the national security implications of decisions in this area.

- **Do you believe we are losing valuable intelligence by not having a comprehensive program to capture, detain, and question terrorists in U.S. custody outside war zones?**

Answer: Obtaining intelligence must always be our paramount concern, and I am not aware of instances in which intelligence has been lost in the course of the capture, detention, and interrogation of terrorists in U.S. custody. If I am confirmed, I will do my utmost to ensure that we are able to use all lawful tools and that we ensure flexibility for the operators and agents in the field. In any situation in which we obtain custody of, or can obtain access to, a terrorist, the first priority should be to obtain intelligence and to identify any plot or threat to the homeland or to United States interests.

Administrative Subpoenas

Right now, there are different National Security Letter authorities that apply to different types of records. For example, there is one type of NSL for bank records, one for toll records, one for credit reports, and so on. In certain criminal investigations, however, agents can use a single administrative subpoena and get almost any records. In your responses to the Committee's questions, you noted your reluctance to replace all the different NSL authorities with a single Administrative Subpoena authority.

- **Can you explain what operational advantage there is to using multiple types of NSLs instead of one Administrative Subpoena?**

Answer: My overriding concern is ensuring that national security investigators have the tools they need to get information critical to detecting and disrupting threats. I understand that an administrative subpoena regime could aid that effort. I do not believe there is an operational advantage to using multiple types of NSLs. Rather, what I intended to convey in my prior response is that whatever advantage might be gained by consolidating authorities might be offset by the disruptions this could cause to a system that is currently working well. In the wake of the Inspector General's 2007 review of the use of NSLs, substantial changes were put in place to improve the issuance, training and compliance mechanisms under the existing NSL statutes. (These changes and reforms are described in the prehearing responses I provided to the Committee). Of course, if I am confirmed, I would look forward to working with the Committee to consider the advantages of any proposed statutory changes and the ways to minimize any disruptions or compliance issues.

Interrogation

Counterterrorism attorneys within the National Security Division are often working closely with FBI agents on the front lines when terrorists, like the Christmas Day bomber Abdulmutallab, are captured inside the United States. These attorneys often provide advice on whether or when a suspect must be *Mirandized*.

- **What guidance will you give these attorneys to follow in assessing whether a suspect must be *Mirandized*?**

Answer: In any situation involving an operational terrorist the first priority should be to obtain intelligence about any plots or threats to the homeland or to U.S. interests, and to disrupt and incapacitate the threat presented by the suspect. There is no legal requirement that an individual be provided *Miranda* warnings if the purpose of the interrogation is to secure intelligence. The operators and agents on the ground will generally be in the best position to determine the appropriate course of action in a given situation, and I believe they should be given as many tools as possible and the flexibility to use them. Among other things, my approach in such cases would be to encourage the use of the public safety exception to the *Miranda* rule to the fullest extent possible to

ensure that critical intelligence is obtained. The agents on the ground in any particular situation will be in the best position to determine whether they have exhausted all avenues to identify threats. Ultimately, whether and when to provide *Miranda* warnings will be a fact intensive and case specific situation.

- **Will you inform them that there are alternatives to *Mirandizing* a suspect and bringing him into federal court?**

Answer: I would inform them of all available legal alternatives to ensure that we obtain critical intelligence about any plots or threats to the homeland or to U.S. interests. As with all decisions about operational terrorists that come into the custody of United States, there would be consultation with the rest of the national security community in order to determine the best, most effective means of disrupting the particular threat. During those consultations, other agencies would have the opportunity to raise alternatives for disrupting a particular threat. I would ensure that the attorneys working on these matters in the National Security Division were aware of all these options.

Question for the Record from Senator James E. Risch

During your Senate Judiciary Committee confirmation hearing you were asked the question “With whom do you believe we are at war?” In response you answered, “Pursuant to the Authorization for the Use of Military Force enacted by the Congress in September 2001, the United States is engaged in hostilities with Al Qaeda, the Taliban and associated forces.” Please define the battlefield for this war, as you view it, in as much detail as possible.

Answer: The scope of the battlefield is a complicated question, subject to numerous governing laws, and has broad implications for matters on which the Department of Defense would be expert. At a minimum, the battlefield includes those areas where the United States military is deployed and engaged in armed hostilities such as in Iraq and Afghanistan. However, in my view, and based on my understanding, the authority conferred by the Authorization for the Use of Military Force (AUMF) extends more broadly to those persons or organizations that “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” As such, it is my understanding that wherever we confront Al Qaeda, the Taliban and associated forces the United States can exercise all appropriate authority enacted by Congress in the AUMF.