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TELEVISION PROGRAM TO "CBS NEWS' FACE THE NATION."



## **July 12, 2009 Transcript**

GUESTS: SENATOR PATRICK LEAHY  
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SENATOR JEFF SESSIONS  
R-Alabama, Ranking, Judiciary Committee

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## TRANSCRIPT

BOB SCHIEFFER: Today on FACE THE NATION, is the justice department about to open a new investigation into allegations of torture during the Bush years?

And a preview into the hearings on the nomination of Sonia Sotomayor to the Supreme Court.

Attorney General Eric Holder is leaning toward appointing a prosecutor now to investigate whether the CIA tortured terror suspects after 9/11--an idea the White House originally opposed. It's sure to set off a furor, but we'll get the first congressional reaction from two key players--the Democratic chairman of the Senate Judiciary Committee Patrick Leahy and ranking Republican on that committee Jeff Sessions. Then we'll talk about the rest of the week's events with syndicated columnist Kathleen Parker and Kevin Mirada, national editor of the Washington Post.

I'll have a final word on Michael Jackson week.

But first investigating torture on FACE THE NATION.

ANNOUNCER: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer. And now from CBS News in Washington, Bob Schieffer.

BOB SCHIEFFER: And good morning again.

Senator Leahy, the chairman of the Judiciary Committee and the committee's ranking Republican Senator Jeff Sessions are in the studio with us this morning. And we invited them here, of course, to preview the hearings that open tomorrow on the nomination of Sonia Sotomayor to the Supreme Court, and we will get to that.

But first gentlemen to the top of the news: Two big stories this morning. One in the New York Times that says Vice President Cheney ordered the CIA not to tell Congress about certain still secret programs that would be against the law. And that the administration is now considering appointing a special prosecutor to investigate allegations of torture during the previous administration. Attorney General Eric Holder, now said to be leaning toward doing that, even though President Obama has said he didn't want to go there, that he wanted to look forward not backward.

So, let's start with you Senator Leahy. What about this? Should a special prosecutor be appointed?

SENATOR PATRICK LEAHY (Chairman, Judiciary Committee/D-Vermont): I've always preferred my idea of a-- a commission of inquiry to look at all these-- all these issues, whether people broke the law or whether as-- as some feel some in the past administration actually wrote memos telling people that they could break the law, that somehow they were above the law. If they got the orders--

BOB SCHIEFFER (overlapping): But what about the idea? That's different than appointing a special prosecutor.

SENATOR PATRICK LEAHY: Well, the-- the-- yeah, but here is the-- the point. The inquiry would go into everything.

BOB SCHIEFFER: Okay.

SENATOR PATRICK LEAHY: Special prosecutors are seemed to be very narrowly focused. We have one now looking into the destruction of the CIA tapes, but this would be, at least as I read the stories, very specific and focused. Obviously, Eric Holder is a superb attorney general. He's going to make up his mind what is the best thing to do. I just don't want to see an instance where if the higher-ups gave the order to

break the law that the ones who get punished are the people basically on the front line, the lower-- lower-level troops.

BOB SCHIEFFER: So-- so what does that mean? Does that mean you're for a special prosecutor or you're rather not?

SENATOR PATRICK LEAHY: No, I-- I'm not going to interfere with the special prosecutor. That's entirely up to the attorney general, but--

BOB SCHIEFFER (overlapping): Would you advise him to do that?

SENATOR PATRICK LEAHY: I would love to see-- well, my advice to him is I-- I keep private, that's-- therefore, it's usually more worthwhile, but I-- I will-- I would like to see the inquiry, but I think that there may have some problems doing both because the commission of inquiry I talked about would have given immunity to go into all of these. Obviously, we're not going to want to do that if there's criminal prosecutions being-- being looked at. Maybe some of the people who are opposed to the commission of inquiry now facing the possibility of criminal prosecution may find it a more acceptable idea.

BOB SCHIEFFER: All right. Well, Senator Sessions, what about you? A special prosecutor? Yes or no?

SENATOR JEFF SESSIONS (Ranking, Judiciary Committee/R-Alabama): Bob, I don't know. We've had probably in my committee, judiciary and armed services, thirty or more hearings on this. The intelligence committee has had great numbers of hearings and written reports on it. The military has done a series of independent reports. And I believe that that's sufficient. I don't believe a special commission is necessary. And-- and I would hate it and it would be so sad to me that if the attorney general felt he had to do a special prosecutor.

The-- the President said, there's no doubt about it, he said I want to use every power I have to defend the American people. And the American people said yes. And these soldiers, these intelligence officers all over the world-- I-- I met one who a year after 9/11, he said at eight o'clock at night for dinner that's the earliest he had left work in the entire year. They were in a dangerous personal circumstance. So we were facing some real challenges and there are people who tried to do the best they could. And I don't think I see the evidence yet to justify any prosecution.

SENATOR PATRICK LEAHY: But-- but-- but that somewhat begs the question because it's-- I have a great deal of admiration for the CIA agents who are out there working hard on the front line. And I like Jeff, I've talked with them and I've met with them in-- in Afghanistan, in Iraq, and elsewhere, as well as our soldiers. But remember what happened at Abu Ghraib, which will make a big inquiry and who gets punished? Mostly the corporals and-- and the lower echelon, not the people who condoned that. If, as the New York Times says, we have the vice president of the United States telling people to break the law, now that's a pretty serious matter. Either he did or he didn't. If he did, that's something we ought to know because, I've been here with six administrations, and usually if something is done wrong by one and it's exposed the next one tends to behave themselves.

SENATOR JEFF SESSIONS: I would just say on that Abu Gharib, there was no evidence that the higher-ups participated in any way. In fact one of those defendants that was tried and convicted and went to jail said that, "no, they didn't know. And if they had, they would have been held to pay." In other words it wouldn't have happened. It was an out-- it was an unusual event and the military did the right thing and prosecuted the people who were responsible.

BOB SCHIEFFER: But what about this whole idea though, Senator Sessions, that-- that the vice president is now-- people are saying, I mean sources are saying that he told the CIA not to tell the Congress about it. Now that's pretty serious stuff.

SENATOR JEFF SESSIONS: Well, sources, sources. I mean we've had so much allegations--

BOB SCHIEFFER (overlapping): But shouldn't that be looked into?

SENATOR JEFF SESSIONS: Well, I-- I'm sure it will be. But I would just say that sometimes leaked stories from unnamed sources don't turn out to be quite what they appear to be. Maybe they don't know the full facts and-- and so forth in these matters. Some of the Intelligence Committee people are pushing back on those stories. I don't know what the facts are. But I believe that Vice President Cheney served his country with as much fidelity as he could possibly give to it. And he tried to serve us in an effective way. And I hope that nothing like this would impact on his outstanding record.

BOB SCHIEFFER: So what about that though, senator? Should we just leave that lay or you think it--

SENATOR PATRICK LEAHY (overlapping): Well, I-- I-- I think it's impossible to just leave that lay when you have something like this. It's either-- it's either true or it's not true. But I'd like to know if it's true or not.

I mean, nobody in this country is above the law. If you don't like what the law says then get the law changed. But you can't have somebody say, well, if you're vice president, you don't have to obey the law, but if you're the soldier out there in the field or if you're a civilian, you better obey the law. You-- you can't do that. A democracy can't do that.

BOB SCHIEFFER: All right, well let's-- let's turn to the hearings that open tomorrow on the nomination of Sonia Sotomayor. She's visited now with over eighty-nine senators over these past weeks. There is also an overwhelming Democratic majority and there's an overwhelming Democratic majority on-- on the committee that you chair, Senator Leahy. Some people are saying it's already a done deal--that she's going to be confirmed and that there's nothing Senator Sessions and other-- and the Republicans can do about it. Is she going to be confirmed?

SENATOR PATRICK LEAHY: I suspect she will be confirmed. But you, I would hope that it does not turn into a-- a partisan fight for the good of the courts and for the good of the Supreme Court. You know, Chief Justice Roberts is not somebody I would have recommended as a nominee to President Obama, but I voted for him when he was nominated by President Bush because I felt Chief Justice of the United States should not be on a party-line vote. I just want to read something about-- there's a profile today of-- of Judge Sotomayor, says-- says, She was inspired by the ideal of neutrality. She's saying, "I'm not going to be playing for this Hispanic team, the Democratic team, the Republican team, I'm going to be playing for Constitution team." I don't know what more you could ask of a judge and here's--

BOB SCHIEFFER (overlapping): Okay.

SENATOR PATRICK LEAHY: And-- and here she is-- she's been a judge longer than anybody who has gone on the Supreme Court in almost a hundred years.

BOB SCHIEFFER: Well, let's ask Senator Sessions. What more can you ask?

SENATOR JEFF SESSIONS: Well, I wish she had been saying that in her speeches over the last ten years then what she's been saying. It's absolutely critical that whoever sits on a-- on the bench, and no one should sit on the Federal bench who is not committed to the principles of the oath, which is that you should be impartial and do equal justice to the rich and poor alike and not respect persons but do justice every day.

And in her-- number of her speeches, for example, she has advocated a view that suggests that your personal experiences, even prejudices--she uses that word, it's expected that they would influence the decision you make, which is a blow I think at the very ideal of American justice. Every judge must be committed every day to not let their personal politics, their ethnic background, their biases, sympathies, influence the nature of their decision-making process; it's the core of the American system.

BOB SCHIEFFER: So would you oppose her because of that?

SENATOR JEFF SESSIONS: Well, I think she's going to have to answer that, because this is a mature judicial philosophy that she's stated. She has criticized the idea that a-- a woman and a man would reach the same result. She expects them to reach different results. I think that's philosophically incompatible with the American system.

SENATOR PATRICK LEAHY (overlapping): I totally disagree with that.

SENATOR JEFF SESSIONS: Well, I've read her speeches in great depth. And I'm convinced that's what she said. And it wasn't just a one line, "A wise Latina will do a better job than a-- a white male."

BOB SCHIEFFER (overlapping): Well, she has used that in five-- five different speeches, I think, Senator Leahy.

SENATOR PATRICK LEAHY: Yeah, but you know, that's-- that's grasping at straws. And I'll-- I'll tell you why. Here's a woman who is a mainstream judge. And she deserves respect as a judge. During her time both at the trial court-- it actually for the days that she was a very tough prosecutor to her days as a trial judge to a Court of Appeals judge, that's what we base it on. She has a track record and she is shown to be a mainstream judge. You don't have to guess what kind of a judge she's going to be.

I've asked about her speeches and she said, "Ultimately and completely the law controls." And, as a judge, she's shown over and over again ultimately and completely the law controls. We've had a lot of judicial nominees of both Republicans and Democrats talking about their background, how that has influenced them. Former President Bush talked about empathy when he nominated a-- a Republican to the Supreme Court.

You know, the fact is her answers are these: alternatively and completely the law controls, and she has the experience and the cases show to be a mainstream judge. Anything else is nitpicking and all would give--

BOB SCHIEFFER (overlapping): Nitpicking?

SENATOR JEFF SESSIONS: Well.

SENATOR PATRICK LEAHY: Yes. And-- and it gives the impression that-- that a lot of people were going to oppose anybody--

BOB SCHIEFFER (overlapping): Let me-- let me--

SENATOR PATRICK LEAHY: --anybody that President Obama came up with.

SENATOR JEFF SESSIONS: I am really flabbergasted by the depth and consistency of her philosophical critique of the ideal of impartial justice. I think that's a real expression of hers. And I think it will-- it's-- it does not show up as much on the lower court where you're supervised by your circuit in the Supreme Court. It can show up much more on the Supreme Court. She's advocated international law, criticized to-- to the ACLU in April of this year, Justice Scalia and Thomas, for expressing concern about judges citing foreign law; and praises Justice Ruth Bader Ginsburg for doing so. On issue after issue she indicates an advocacy position or her position in the firefighters' case was consistent with her series of rulings of lawsuits filed when she was--

BOB SCHIEFFER (overlapping): Let me-- let me just bring up something about the firefighters' case. This was the case where she ruled against the firefighters who claimed they were discriminated against because they didn't get a promotion up there in Connecticut because minorities did not score high enough on the same test and the whole same-- the test was thrown out. Now the Supreme Court reversed her on that case. But People for the American Way, which is a liberal group that supports Sonia Sotomayor, is calling attention to what they call Frank Ricci, he's the central character in this, his litigious and

background. And they say they point out that he has been fired from another fire department, that he claimed discrimination because he was dyslexic. Do they have a point here?

SENATOR JEFF SESSIONS: No. That's just typical of the personal attacks of People for the American Way and the hard left that is supporting this nomination. These were eighteen firefighters who filed this lawsuit, not just Frank Ricci. His name was the first one on the case, but eighteen of them. And when you show empathy for one party, Bob, you unnecessarily show a bias against another group.

SENATOR PATRICK LEAHY (overlapping): Can I get--

SENATOR JEFF SESSIONS: And this is the thing-- I just want to say, I think Pat and I would agree on this. We need to think through how we handle these cases today, and do it in a way that-- that is effective legally. And her opinion was rejected by the Supreme Court. And it was a very important opinion.

BOB SCHIEFFER: Will-- will you try to stop this nomination or will you just use this as what some have said will be an educational moment?

SENATOR JEFF SESSIONS: Well, I hope it is an educational moment because I think we are moving at a crossroads in American jurisprudence. Are we going to classic-- adhere to the classical view of the role of a judge as a neutral arbitrator not out to promote an agenda or an ideology or are we going to have a restrained judge who follows the law in case after case?

BOB SCHIEFFER: I'm sorry. We're-- we going to have to end it here.

SENATOR PATRICK LEAHY (overlapping): Well, you remember, on Ricci, she simply followed what the Supreme Court rulings were at that point.

BOB SCHIEFFER: Okay.

SENATOR PATRICK LEAHY: They then, five members of the court, changed their position afterwards. She did what a judge is supposed to do--she followed the court.

BOB SCHIEFFER: All right. We're going to have to end it there.

SENATOR JEFF SESSIONS (overlapping): All nine reversed the opinion.

SENATOR PATRICK LEAHY: No. Five did.

SENATOR JEFF SESSIONS (overlapping): All nine.

SENATOR PATRICK LEAHY: It was a 5-4-- 5-4 decision.

BOB SCHIEFFER: We've got to go. Thank you. We'll be back with a little roundtable in just a second.

(ANNOUNCEMENTS)

BOB SCHIEFFER: And with us now Kevin Merida of The Washington Post. He's the national editor over there and syndicated columnist Kathleen Parker. I'm going to start with you, Kevin, because you put the story at the top of your front page today that Eric Holder may actually appoint a special prosecutor to look into these torture allegations. I would also point out that Newsweek, which is owned by the same folks, also had the same story to give them credit where it's due. How big a story is this?

KEVIN MERIDA (National Editor, The Washington Post): Well, I think it's-- it's part of this ongoing development of whether you look into the past and spend time looking into the past and move forward. And that's been a very difficult line to walk for the Obama administration. I mean--

BOB SCHIEFFER (overlapping): But they didn't want to do this. They didn't want to look back. At least the President didn't. And he's-- you know, he worried that it might be like some banana republic where one group gets elected and they put the guys that came before them in jail. Do you think this is really going to happen? And is this a split between Eric Holder and the White House?

KEVIN MERIDA (overlapping): Yeah, there're certainly splits in the-- there're certainly splits in the White House which will have to be resolved, but Eric Holder has-- has-- has demonstrated that, you know, the more that they look into some of the abuses of the Bush era the more that they think particularly those who carried out some of the interrogation tactics should be held accountable.

BOB SCHIEFFER: If you-- you had to guess right now, do you think he will do this?

KEVIN MERIDA: You know, who knows that they could change his mind, but it looks like he's leaning toward doing it.

BOB SCHIEFFER: Kathleen, what do you make of this?

KATHLEEN PARKER (Syndicated Columnist, The Washington Post): Well, I think it's a real big problem for President Obama because, you know, he really has said quite specifically he wants to not look back. And of course one of the reasons he doesn't is because the Republicans will become-- you know, they'll assume a defensive crouch. This will start a whole new partisan bickering divide, I mean a war really. And that's a problem for his domestic agenda. So it's very, very tricky for the administration.

BOB SCHIEFFER: It is not like things are going swimmingly were-- for the domestic agenda right now.

KATHLEEN PARKER: No.

BOB SCHIEFFER: It looks like health care may be in big trouble.

KATHLEEN PARKER: Well, definitely not. And-- and Obama's own party is-- is losing courage. And, you know, I think what's happened-- well, I shouldn't say courage, but they're becoming very skeptical of this huge, huge, huge debt. And I think, you know, Friday-- I think it was Friday or Saturday The Post ran a story--there was sort of a little FYI story that I think has not quite been acknowledged yet that, you know, we're going to raise taxes, three hundred and fifty-five billion dollars in tax increases on people who earn two hundred and eighty thousand dollars.

BOB SCHIEFFER: I noticed that.

KATHLEEN PARKER: You know, it's-- this is huge. And, I think, once people really start focusing on that things are going to get very, very difficult.

BOB SCHIEFFER: Let's talk about this whole deal on Sarah Palin. Well, what in the world is going on here?

KEVIN MERIDA: Well, you know, I don't know if she's maybe just clever like a fox. I mean, you know, she's the one consistent drawing card for the Republican Party. And they've had some great stumbles with some of their new leaders. And she gets out from under, you know, the pressure of being governor.

And governors are not having a good time. It used to be the incubator-- states used to be the incubator for reform. And now all states are having difficult problems budget-wise. And it's very difficult to be a governor. She has ethics investigations. This allows her to get out, raise money. It remains to be seen what she'll become and how far she'll go nationally.

BOB SCHIEFFER: Do you think she's going to run for something, Kathleen?

KATHLEEN PARKER: I think Sarah Palin is always running for something. And the reason she quit, two things. Number one, she's very tired of being under this harsh scrutiny. She was very hurt by the attacks on her children. But, listen, this woman is poised to make lots and lots of money. So, you know, when you're juggling those choices, you can either govern and deal with ethics violations charges and deal with, you know, hostile media or you can hit the national stage and make millions and millions of dollars while, kind of, building your base.

Now she has said she'll go out and campaign not only for Republicans, some of whom have not invited her to join them on the stage, but-- but she's willing to also campaign for Democrats and independents.

BOB SCHIEFFER (overlapping): I found that kind of interesting.

KATHLEEN PARKER: So, I mean, is she-- you know, is she thinking about a third-party approach? I don't know. But she's certainly running for something.

BOB SCHIEFFER: Do you think -- and I agree with you. I think you're going see and hear a lot of her. I think she's going to be speaking for Republicans around the country. She is-- is a drawing card. But my sense of it is that she will never run for anything.

KATHLEEN PARKER: She'll never be able to run on a national ticket ever again. That's-- that's over. And I don't think she's planning to run for the U.S. Senate. I think she has-- you know, she has transcended politics at this point. She's a celebrity. She has huge drawing power on a number of different stages. She has got a book. She has-- they're talking about TV. You know, she has got lots and lots of options.

KEVIN MERIDA: I wouldn't count her out, Bob.

BOB SCHIEFFER: Really?

KEVIN MERIDA: I wouldn't be surprised to see her run for President in-- in 2012. And-- and who knows if the Republican Party embraces her, maybe not, you know? You remember Ross Perot, that guy, who started an independent effort. Who knows if there's a market for that.

BOB SCHIEFFER: Mm-hm. Let's talk a little bit about what's going on back home while the President has been away. I think most people would agree he, you know, got pretty favorable coverage. He had that one picture that he shared with Sarkozy.

KATHLEEN PARKER: But that's a fake picture.

BOB SCHIEFFER: You think?

KATHLEEN PARKER: It's a fake picture. No, if you've looked at the whole video, you und-- you see that that was not-- he was not actually looking at what he appears to be looking at. He was looking at the ground. And lots of people, even Greta Van Susteren, have come out and shown it and said, look, guys, it's not fair.

BOB SCHIEFFER: I saw the videotape, but I must--

(CROSS TALKING)

KATHLEEN PARKER: What, you think she was look-- he was looking?

BOB SCHIEFFER: No. I don't know what was going on. But I must say I loved the caption in The Washington Post--

KATHLEEN PARKER (overlapping): I just wouldn't want to be him at the dinner table.

BOB SCHIEFFER: --what do-- what do these two people fellows share in common? They're both men. I--

KEVIN MERIDA (overlapping): A little fun there. But--- but the other picture was the picture from Africa. I mean, he was back in his ancestral home for the trip. You know, he went to see the port where they brought slaves in. He compared it to a Nazi concentration camp. So that was a big moment for him. And certainly he had his family with him. And then at the same time kind of encouraged the world to spend more money on hunger.

BOB SCHIEFFER: Thirty seconds left. I'm going to just ask you both quickly, is there be a health care bill this year?

KEVIN MERIDA: I would say yes.

BOB SCHIEFFER: You think yes?

KATHLEEN PARKER: Maybe by the end of the year, but not before the August break.

BOB SCHIEFFER: All right. Thanks to both of you. A lot of fun to have you.

KATHLEEN PARKER: Thank you.

KEVIN MERIDA: Thanks, Bob.

BOB SCHIEFFER: We'll be back in a minute.

(ANNOUNCEMENTS)

BOB SCHIEFFER: Finally today, ask anyone what their favorite music is and they'll usually choose the music that was popular when they were in high school. For me that meant the likes of Elvis and Chuck Berry and Little Richard. And because I'm from Texas Ernest Tubbs and Hank Williams, and a little later George Jones.

Maybe that's why I never got Michael Jackson's music. He was long after my salad days. What I thought of when he died was not his music but the weirdness, the grotesque facial surgery, the Halloween costume attire, the drug rumors, and all of the rest.

That's just me, of course. Jackson and his music meant a lot to many people, thirty one million people watched his memorial service. It was news all right. But before we declare this some sort of never before seen outpouring of emotion and national affection, just a little context, "American Idol" draws close to thirty million on a good night. More people actually tuned in to see the burial service for Ronald Reagan than saw Jackson's memorial service. A far greater audience watched the presidential debates.

And while it is true that an astonishing 1.6 million people registered for a lottery offering free tickets to Jackson's memorial service, a lot more people, more than two million, took the trouble to make their way to Washington to see in person the inauguration of America's first African-American President, even though it was on television too.

Somehow I find that reassuring. Back in a moment.

(ANNOUNCEMENTS)

BOB SCHIEFFER: That's our broadcast. We'll be back right here next Sunday on FACE THE NATION.

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