

ERIC HOLDER HEARING OPEN THREAD

This should be the only really contentious one.
Go to CSPAN3 or the Committee Webcast to see it.

Note, in a bit of timing jujitsu, Biden and Hillary are giving their farewell speeches on the floor of the Senate at 10 and 11, meaning CSPAN2 will be covering those speeches and not this hearing, meaning (in turn) that this hearing won't be available to most Americans watching on teevee.

Leahy's opening statement is a bit of a scold directed at Arlen "Scottish Haggis" Specter for his kabuki opposition to Holder.

Ah Jeebus. Specter is bitching about minority rights—complaining that, after having agreed to the schedule he originally agreed to, he then wanted to change the schedule.

Huh. Did Specter just say that Mary Jo White refused to testify? [I may have gotten that wrong—I'm having technical difficulties with the RealPlayer streams]

John Warner: "bipartisan approach in helping President-elect face the most complicated issues that ever faced a President."

Warner: People in every corner of the country are following this hearing. [Well, they would be if two top incoming officials weren't giving their swan-song speech on the floor of the Senate and therefore hogging the CSPAN2 time]

Note: there appears to be a RealPlayer difficulty on the feed—if you're having problems—getting sound but not picture—try CSPAN's Microsoft feed, which has picture for me.]

Holder's goals:

Protect American people from terrorism. Use every available tactic, do so within the letter

and the spirit of the law. America must remain a beacon to the world.

Restore credibility of department. DOJ will serve justice, not fleeting interests of any political party. Filip and Mukasey deserve gratitude of American people for doing much. (?)

Embrace historic role in fighting crime, protecting civil right, protecting environment, ending fraud. [Talks about accountability in finance.]

Leahy starts with waterboarding. "Two most recent nominees to serve as AG hedged on waterboarding. Do you agree with me that waterboarding is illegal?"

Holder: If you look at the history, I agree with you that waterboarding is torture.

Holder: no one above law. President has obligation to faithfully execute laws of US. Obligations from treaties and Constitution. The President acts most forcefully when he acts in manner consistent with Congressional intents and directions. It's my belief that President does not have power to authorize torture.

Leahy: 2nd Amendment? [Leahy sets up Holder to answer one of the questions GOP will throw at him.]

Holder: My amicus brief was with respect to decisions signed before Heller.

Holder: I support media shield with caveat that I want to talk to the department and protect leaks on national security. [Which basically protects the DC insider leaks but not the whistleblowers.]

Leahy: Review of all OLC opinions and withdraw those problematic ones?

Holder: I will make that pledge. Important that these OLC opinions truly reflect what the law is, want to ensure that these opinions consistent with these two purposes.

Leahy: What did you learn from the Marc Rich

pardon?

Holder: My conduct in that matter was the place where I made mistakes. I've accepted responsibility of making those mistakes. Always said that given opportunity to do differently, would have. Should have made sure that prosecutors were informed. Made assumptions that turned out to be not true. Remains most intense, searing experience as a lawyer. I've learned. I think that, as perverse as this may sound, I'll be a better AG having had this experience. Learned that need to ensure there is full consultation. Have to work to improve pardon process. We have to work on DOJ side to ensure rules followed. It was something that is not typical of the way I've conducted myself as a lawyer. Made mistakes, learned from them.

Leahy: And of course pardon made by Clinton, not by you.

Haggis: Pursuing the Rich pardon. Comment that it's a mistake is one way of approaching it. When you take a look at hard facts, hard to see how you came to conclusion you did, even conceding fact that none of us is perfect.

[Holder taking notes on Specter's details here.]

Haggis: Preponderance of evidence suggests Eric Holder was deliberately assisting Mark Quinn to allow him to bypass DOJ.

[Nice use of the third person there, Haggis.]

Holder: I would not take everything as gospel in that House report. I volunteered to appear before that Committee and yet the claim that I recommended Quinn to the WH appeared in the House report. I, as DAG, according to this report, would have said to a perfect stranger, "we'll work it out." I did not recommend Mr. Quinn. The people who were trying to determine who Rich's lawyer should be, took a number of months picking a lawyer.

Haggis: You recommended Quinn at a dinner.

Holder: As best as I can remember, all I

explained was how the process worked.

Haggis: Are you saying that Quinn's name never came up?

Holder: No, did not. And if you look at the minority part of the report there's some question whether Keck even said that.

Haggis: How do you explain this email that Quinn attributed to you saying "go directly to the White House."

Holder: That would have been illogical. Maybe he misinterpreted something I said. I never told him go straight to the White House.

Haggis: Were you aware of atrocious record Rich had?

Holder: No, and that was one of the mistakes I made. I did not know a lot of the underlying issues.

Haggis: When pardon attorney said "don't do it" was that a reason for you to look into this atrocious record?

Holder: Love wasn't pardon attorney at the time.

Kohl: You must be grateful to the PEOTUS personally. Your first duty will be to the American people and not the President. One top priority to restore integrity of department.

Kohl: If you had big Constitutional disagreement with Obama?

Holder: Resign.

Kohl: How will you close Gitmo.

Kohl: The interrogation methods?

Holder: both PEOTUS and I disturbed. Make sure consistent with treaty obligations and be effective. One concern I have is that enhanced interrogations not effective.

Kohl: Basketball, you also a person of considerable skill on basketball. If he invites you to gym, will you defeat him as badly as I

can.

Leahy: Well, that was the first time that question has been asked.

Kyl sounds like he's on board—he's just asking Holder a series of question to get his support for AZ-related issues on the record.

Kyl: FISA, lone-wolf terrorist. Someone we have no evidence that he's taking orders. There bc no search of Moussaoui, agents could not link him to AQ. Lone wolf needs to be reauthorized.

Holder: Expect I will. 3 provisions up for reauthorization. Want to talk to people to see if they've worked. At least some of those provisions are from Clinton (lone wolf and roving surveillance).

Kyl: other two: PATRIOT's multi-point authority, and 215 authority. Unlike typical Admin subpoena, requires judicial approval.

Holder: multi-point authority, want to have interaction with people using tool.

Holder: 215 orders. That's one that has generated more controversy. Want to know as much as I possibly can. Tools in FISA are important ones. I would expect I would support.

Kyl: Warrantless monitoring of suspected intl communications of terrorists. Do you agree with that principle, do you believe new law is constitutional.

Holder: Law is constitutional. Regrettable—the program, that I've not been read into—is a useful tool. We could have had that tool congressionally sanctioned. Refers to Youngstown.

Kyl: Operation streamline. That's been utilized in 2 sectors.

[5 minute break]

While we're breaking, I wanted to summarize what Holder said about FISA. He said that he thinks the FISA amendments—as passed—are

constitutional. Let's see whether or not Feingold asks him about minimization and reverse targeting. But he also said that he had not yet been read into "the program," which means he is not saying that THAT program was legal. And he also invoked Youngstown when asked about it, signifying that—at the very least—he thought Bush had violated Congressional law. That probably still means that he would support immunity (which is before Vaughn Walker right now). But we shall see what Whitehouse and Feingold ask him.

Update: Jane transcribed the exchange between Kyl and Holder on FISA:

KYL: You indicated that comments that you had made in a speech on June 13 2008 were directed to the status of the law pre FISA modifications from the legislative branch. When Congress later – I believe it was the next month – modified the FISA law there was an explicit type of search that was provided allowing warrantless monitoring of suspected communications of international terrorists predicated on the principle that the 4th amendment gives greater leeway to intelligence investigations of foreign threats. Do you agree with that general principle, but more importantly in the context of our conversation do you believe the new law is constitutional and if confirmed will you support its enforcement?

HOLDER: I believe that the law is constitutional. One of the things that I think is in some ways regrettable is that the program – that I've not been read into and I don't know all the dimensions of it – but as I understand it that that law, that that program is a very use useful tool, it's an essential tool in fighting terrorism. I think that what is unfortunate is that we could have had that tool congressionally

sanctioned at a much earlier stage. I think that as we saw in the Steel seizure concurrence of Justice Jackson, the President has his greatest power when he acts consistent with congressional directives and I think in this instance that is instructive. Had the administration come to Congress and asked for that enhanced authority many years before I have no doubt that Congress would have granted him that tool. Having done that though and having had Congress say that this is an appropriate thing to do, I think as I say that it is a very useful tool and one that we will make great use of.

DiFi Up.

DiFi: Brad Schlozman screening people and removing people. Report found that Schloz made false statements. Have you read this report, and what can you do to follow-up?

Holder: News accounts. Antithetical to anything department stands for.

DiFi: Lying to committee is violation of the law. We can't do nothing if someone representing gov comes before us and lies.

Holder: Prosecutors have made determination, if I'm fortunate enough to be confirmed, I will review. Don't know all the facts. I want to know why determination made.

DiFi: DO you believe military commissions are sufficient?

Holder: I don't think the ones now in place have all the due process I'd like to see them have.

DiFi: Field Manual should be basis for interrogation?

Holder: Starting with what we have in Field Manual. I personally think that techniques are consistent with Article 3. Not convinced that if we restrict ourselves we will be less effective.

This is something that POETUS is considering now, giving all components an opportunity to express their views—giving Intell oppty to make case.

[Sounds like Holder knows Intell doesn't agree]

DiFi: CIA interrogation done by contractors.

Holder: Concern you express legitimate one.

Orrin Hatch: Fourth time you've come to Senate for confirmation, so far without negative vote. Some real issues of concern. FISA?

Holder: In rare instances where law is unconstitutional, POTUS in that instance can act contrary. POTUS has his power at its zenith when acts with congressional direction. Exclusivity: the way in which that can occur. Taking Admin to task for not following dictates of FISA. I think had the Admin worked with Congress it could have had no question of legality.

Hatch: FISA reviews decision in Steel case. How to reconcile analysis of TSP with Keith, in re sealed, Wadi al-Hagge case?

Holder: My belief that statute lays out how executive can do that type of surveillance. Sets out very explicitly the means by which this can be done. Incumbent upon exec branch to be mindful of dictates of FISA.

Hatch: As former DAG under Clinton, were you part of decision-making that authorized warrantless search of Ames?

Holder: Don't know all circumstances in which it occurred. Did not participate in 93. Don't know if there were exigent circumstances.

Hatch: Is POTUS' inherent authority, can it be limited under statute? You're relying on statute, as if it's binding on Article II.

Holder: POTUS has powers that cannot be infringed. Congress does not have ability to say you cannot exercise.

[Hatch trying to corner Holder to say that Bush

was legal.]

Hatch: Immunity provisions. According to this act, in order for this to occur, AG must file certification with Court. Do you believe those private partners should be given civil liability protection.

Holder: Contained within statute. Defend statutes unless compelling reason not to. Obama against immunity but voted for the statute. It would seem that unless compelling reasons I don't think we would reverse course.

Hatch: You'll honor that certification.

Holder: we have to look at if there are changed circumstances.

Hatch: Are you going to prosecute Yoo.

Holder: No one above the law. We will follow the facts and the law. POTUS has said it well, we don't want to criminalize policy differences that exist.

Hatch: Would you consider these policy differences?

Holder; I have to become more familiar with what happened. That would better inform any decision I would make in that regard.

Hatch: Right to bear arms. Your belief that 2nd amendment, collective.

Holder: I will respect the SCOTUS rule.

Hatch: Were they correct?

Holder: there was a good argument to be made. It's one lawyers can disagree on. 5 justices have agreed on what the 2nd amendment is, so they're right.

Feingold: Look forward to many more discussions should you be confirmed. As you know, concerned about wrong-headed legal theories of outgoing Admin to justify exec power. These theories used to justify actions by Exec branch that I believe were in excusable. Clear indication that new

admin will make an unmistakable break from the past. You've already said that POTUS not above law. What is your view of POTUS authority to authorize violations of the law.

Holder: Not above law. Obligation to execute law. Steel seizure concurrence of Jackson, weakest in category 3, where Congress has indicated something contrary to what president wants to do. Never been President upheld when act in Category 3.

Feingold: Does President have authority to authorize warrantless searches in violation of laws passed by congress.

Holder: You're in Category 3. Jackson didn't say President didn't have ANY authority. Difficult to imagine president acting in appropriate way.

Feingold: You see FISA as under Category 3.

Holder: Exclusivity statute was pretty clear.

Feingold: Anything that makes you believe President has ability to disregard FISA statute. Congress will consider lege to reauthorize PATRIOT. Last time, Admin used scare tactics to counter legitimate concerns raised by Democrats. Admin refused to find common grounds.

Feingold: Disagreed with aspects of the amendments. But one I agreed with: IG's report due to be completed by July. Will you pledge full cooperation of DOJ and make as much public?

Feingold: What will you do to make sure that justice is truly served and will you cooperate with oversight efforts from Congress?

Holder: Damage assessment. How has the institution been harmed. What has been the lasting impact.

Feingold: What about the documents?

Holder: To extent that there is not a reason why we are withholding, transparency is the best practice. Institutional concerns.

Sessions wanted to know whether Holder is going

to prosecute Yoo. Holder basically said he had to review the case.

Schumer: now talking about independence. I think that in my entire Senate career my vote against Gonzales may have been the most vindicated. They're cherry picking. Have you ever been Obama's personal lawyer? A staffer? Official Counsel? Did you ever dispatch a staffer to a hospital room? Not a close relation to the President? Professional politician? Did you owe any paid job to Barack Obama? When'd you first meet Obama? What did the President first tell you when he asked what kind of AG?

Holder: He said our good relationship would change.

Schumer: I doubt Bush ever had such a conversation with Alberto Gonzales. I welcome your nomination because Obama will be a different kind of president. Your nomination should you be approved will end the rancid politicization at the department. Full return to rule of law. You, unlike some of your predecessors will be chief law enforcement officer.

Schumer: I asked that Schloz be referred to Dannehy. Do you see any problem with making such a referral?

Holder: I have great respect for the lawyers in USA DC. They're good lawyers there, the fact that they had a chance to fully look at that matter, would be significant for me. On the other hand, I'm disturbed by what I read about the report. I would like to myself review the determination.

Schumer: Without disclosing GJ information, could we at least get a report from why refuse to prosecute? Would you at least commit to do that?

Holder: to the extent I can; GJ frequently prevents a prosecutor from sharing.

Schumer: On Civil Rights Div. Report from IG more like campaign headquarters than hall of

justice. Civil rights division, through Democrat and Republican presidents alike. From 2003 to 2006, Schloz hired 60 lawyers on basis of political leanings. It would be a violation if a Democrat did the same. Overtly racist statement. Do you expect thorough cleaning up of Civil Rights Div.

Holder: I expect to spend a lot of my time restoring it.