

OMNIBUS LIVEBLOG

Two things going on today: the FISA debate, viewable on CSPAN2, and an oversight hearing, on CSPAN3 or the Committee feed.

And I'm gonna do my best to cover them both (that is, until Christy can pick up one of them).

Here's the UC for today on the FISA debate—final votes will be around 11:30.

On Wednesday, July 9, 2008, after the Senate convenes at 9:30am, it will resume consideration of the FISA Amendments Act of 2008 (H.R. 6304). There will be one hour and forty-five minutes of debate, with 30 minutes under the control of Senator Feingold; 15 minutes under the control of Senator Dodd; 10 minutes under the control of Senator Bingaman; 10 minutes under the control of Senator Leahy; 10 minutes under the control of the Majority Leader; and 30 under the control of the Republican Leader or his designee.

Upon the use or yielding back of this time, the Senate will proceed to roll-call votes in relation to the pending amendments. Upon disposition of these amendments, the Senate will proceed to a roll -call vote on the motion to invoke cloture on H.R. 6304, as amended if amended.

If cloture is invoked on H.R. 6304, all post-cloture time will be yielded back, and the Senate will proceed to a roll-call vote on passage of H.R. 6304, as amended if amended.

Right now, Leahy is talking at SJC about how this Administration is more politicized than Watergate. And Mitch McConnell is speaking on the Senate floor—so I'll stick with Leahy for

now.

Leahy is reminding Mukasey that he promised to review the OLC opinions. "We look forward to obtaining these memos. We look forward to learning which aspects of the OLC memos have been modified or withdrawn by AG."

Specter (in SJC) talks about FISA as an unchecked expansion of executive authority.

Specter discussing attorney-client privilege—has a bill pending on this. He's complaining about corporations being asked to waive privilege. (Apparently, he's okay with the DOJ practice of spying on defense attorneys for people accused of terrorism.)

Now Specter complaining that Judy Miller went to jail when Richard Armitage was the source of the leaks. Apparently he just slept through all the dark clouds hanging over Cheney's head.

A leak in the investigation of Curt Weldon. A very distinguished Congressman, led directly to his defeat. Never mind that he's now an arms dealer.

Here's how the voting on FISA will probably go down:

- Dodd Amendment #5064 (strike immunity)
- Specter Amendment #5059 (immunity) (60-vote threshold)
- Bingaman Amendment #5066 (telecommunications) (60-vote threshold)
- Motion to Invoke Cloture on H.R. 6304
- Passage of H.R. 6304, the FISA amendments act of 2008

Mukasey up with his statement, reassuring us this election will be fair.

BREAKING! Kit Bond apparently didn't get dressed in the dark today.

Mukasey on allegations of politicization. It's crucial that we hire career professionals. Equally critical that Americans have confidence. I have done—and will continue to do—what I can to make sure politics is kept out of decisions about investigations and about career hiring.

Leahy: Secret memos from OLC. We've always seen OLC as a place to provide impartial interpretations of the law. Opinions saying President above rule of law. You committed to review opinions and withdraw those without justification. You said this without any reservation. In your answer to written questions—6 months after—you have only reviewed currently operative opinions. You're going back on commitments to Committee.

Mukasey: I don't think I went back on my word. Then-current interrogation programs. I stand by that. I have since reviewed all significant OLC memos that were issued subsequently. This committee has received unprecedented access to OLC memos relating to interrogation and electronic surveillance.

Leahy: Beg to differ with you. When we asked the questions, it was not with a limitation to just current ones. What led us to this, OLC opinions allowing wiretapping, now found not to be legal, allowing torture, found not to be allowed, these other OLC opinions are still there. If you're not going to review those that were used in the past, will you make them available to this Committee?

Mukasey: OLC opinions, WRT to wiretapping, don't have a current bearing. I don't think it would be responsible to do that.

Leahy: These opinions said the President had inherent authority or was above the law. What I'm concerned about are those parts of the memoranda that says there's an inherent ability of the President to ignore the law. Will you give a list of the opinions?

Mukasey: Obligations that decision makers will come forward to get advice.

[Shorter Mukasey: Yup, going back on my word in the approval hearings.]

Leahy: Your answer is no.

Mukasey: My answer is qualified.

Specter: National Security Act, inform intelligence committees of both houses, President did not follow that law for years, piecemeal telling committees. Did the President's powers justify his violating the National Securities Act?

Mukasey: TSP brought under PAA. President has all the authority he needs.

Specter: Not talking about now. Talking about what happened after 9/11.

Mukasey: Conflict between branches.

Specter: So President was right?

Mukasey: I'm not a court.

Specter: C'mon, you're the AG.

Mukasey: After I arrived, program brought under PAA.

Specter: Will you give some study to the issue on whether the President's authority extended that far. Move onto Attorney Client privilege.

Mukasey: DAG will send a memo that will have a clear position supporting Attorney Client privilege. McNulty memo can be used in proper way. We will no longer measure cooperation by waiver of privilege.

Specter: Can we get something we can decide whether we're going to have to do legislation?

Mukasey: Letter in a few days.

Specter: it's a matter affecting a lot of people. [so far as you buy corporations are people]

Specter: Reporters privilege. Justification for keeping Judith Stern [sic] in jail?

Mukasey: That case may be a better argument against the Special Counsel than the legislation proposed.

Specter: Why throw her in jail when we knew the source.

Mukasey: mumble mumble.

Specter: Why give that power to prosecutor when you know who leaker is.

Mukasey: We don't—the Prosecutor must get it cleared through AG.

Biden: Crisp. Crisp. Crisp. You talked about working against politicization. Did you find it had been when you arrived?

Mukasey: Did I find it? The IG found it.

Biden: You act like you float above the ether.

Mukasey: What I found was enormously dedicated people are committed to our success.

Biden: So you disagree with the IG report.

Mukasey: Criticized two people who are no longer there, two who are there having been criticizing. IG report reflected two people had failed to respond with alacrity to charges of politicization.

Biden: Supportive of restoring Burn grants and JAG grants, or do you think they're unnecessary programs?

Mukasey: Focus energy where they can do the most good.

Biden: Burn grants not at top of list.

Mukasey: Putting something at top above another is not what I do.

Biden: Do you think Burn grants don't produce results.

Mukasey: Task force programs, of which grants

are a part.

Biden: But they are not Burn grants. You have eliminated programs. Is it based on efficacy, or is it on devolution of power?

Meanwhile, Russ Feingold is beating up people who still think the President's program was legal.

Feingold: I thought we were past this. I can't believe that we are still debating the legality of this program on the Senate floor, the notion that notifying the Gang of Eight, while still keeping the rest of the Intelligence Committee in the dark, makes it legal. I thought these issues had been put to rest.

Brings up AGAG's lies about whether or not the President had authorized the illegal wiretap program.

Biden: Why aren't you funding US Marshall service?

Hatch at SJC, Feingold at FISA.

Hatch will be whining about Senate approvals. I'm going to ignore Hatch, as a favor to you all.

Feingold quoting the number of times the President has said that the program was legal and worked under FISA.

Feingold: President himself was repeatedly presenting a different picture to the public. Some of the Gang of Eight say they were not fully informed. AUMF argument has been thoroughly discredited. We did not authorize the President to wiretap American citizens.

Feingold: Not inherent power. When action and law conflict, how do you decide? We're talking about President acting in direct violation of statute. At its lowest ebb. Every time SCOTUS has ruled on Presidential action that has conflicted with law, it has upheld the law. FISA overrode any inherent authority. FISA recognizes no inherent authority of President. This

statute, not any presidential power, controls. The *Trump* case that is hauled out was decided BEFORE FISA was enacted. Yet these cases are repeatedly cited. The fact is that not a single court has considered whether after FISA the President nonetheless has the authority to authorize warrantless wiretaps. In fact, just last week, a federal district court indicated that President must follow FISA.

Hatch asked about the *Heller*. Mukasey says (I think) he's not worried.

Kohl: OPR investigating misconduct. Investigations being kept secret. Keeping these secret plays to Americans fears. People have a right to know whether investigations show misconduct. Will you make summaries of OPR investigations that find misconduct public?

Mukasey: Govt has to be as transparent as possible. OPR conducts investigations of lawyers. Particular obligations under Bar. Virtually anything can open OPR investigation. Those opened can be referred to Bar Asscs. One has to be careful on whether one is to ruin career of lawyer based on unsubstantiated allegations. Very reluctant to making them public, firmly committed to making those that should be public public.

Kohl: When they do find misconduct, are you committed to making that public?

Mukasey: If it's very serious, to point of dismissal, yes. But private admonitions no.

Kohl: No action against OPEC cartel.

Mukasey: OPEC very special problem. Dog chasing car. Let's assume we get verdict against OPEC. OPEC can cease to do business against us.

Kohl: Whether you would like department to have authority to take action?

Mukasey: I'd like to look further than I have. We can bring actions in a way that would bring more harm than good.

Feingold on FISA: There are no consequences for illegal behavior. That's just wrong.

Kohl: No anti-trust remedies for freight rail.

Kyl: Now bitching that Biden complained about the Burn grants. It's not my opinion that no role to assist local law enforcement. Focus funds on area where federal nexus. Like immigration.

Feingold: FISA as originally enacted stated ALREADY that FISA was exclusive. The idea that we'd trust this Administration to take this language. Only under the unprecedented actions of this Administration would an Administration read that language and not find it exclusive. And I don't trust this Administration to follow this strengthened FISA language. The President authorized illegal program in blatant violation of a statute. Now a Democratically controlled Congress, we're about to grant immunity to companies that participated in the President's lawlessness. Based on what I know, I can promise that if more information is declassified in the future, members of this body WILL regret that we passed this legislation. I invite my colleagues to talk to me about the collection activities. We will realize what a mistake it was, of that I am sure. I'm confident that history will not judge this Senate kindly. I urge my colleagues to stand up for the rule of law.

DiFi: Very disappointed in your answer to Biden's question. Several USAs were fired for political reasons. Civil Rights, Honors Program, Summer Interns, OLC opinions, Civil and Tax division may have been politicized, Voting Rights, Rules were changed. Red book changed to green book. Hiring of immigration judges. The measure to overturn Comey's opinion on TSP, to convince AG to approve it, when you answered to say, effectively, no politicization.

Mukasey: Two of the items you cite, firing of USAs, and another, currently under investigation, OIG, OPR, they will be acted upon, just as recent report on IG wrt summer

interns and honors, actions were taken even before that report was issued. Revised rules WRT contacts with WH, revised procedures we used for hiring of immigration judges.

DiFi: But when Biden asked the question, you essentially said no. Dept has lost enormous credibility. Question on Gitmo. June 20, first decision on DTA, Parhat, Uigur handed over to the US. CSRT relied on classified info to conclude that Parhat associated with Taliban and AQ. DC Circuit rejected this argument. What are your plans for reviewing the case files of others at Gitmo, to ensure adequate evidence to support detention.

Mukasey: Parhat not only one before us. Boumediene substantial change in landscape. Parhat, inadequacies in CSRT he underwent. Status of CSRTs has to change, going to change. We're trying to organize orderly way to resolve this situation. CSRT enacted by Congress.

[DiFi—you might ask if Parhat will be released??]

[LOL: Mukasey now blaming Congress for having passed an unconstitutional law.]

Grassley: Here are all the letters you haven't responded to Mueller response, exigent letters, Also, you'll soon get a letter from me and Baucus on correspondence we sent around 6 months ago, received a non-response. Misuse of DC USA office money. Received response embarrassingly inadequate.

Mukasey: Did receive letter from Chair referring to past correspondence, dealt with referred to in that letter.

Grassley: Dept headed in right direction, re fraud and other natural disaster. Flood and tornado damage in IA, pleased to see recent press release warning IA not to be victim twice. Hoping IG oversight of disaster recovery.

Specter on FISA: Can't grant retroactive immunity without knowing what it is. An

historical embarrassment—everybody knows we don't know what we're voting on. Here we're caught red-handed. Greatest expansion of presidential authority in history. National Security Act. Signing statement.

Mukasey: Summer intern and honors program in hands of career employees.

Feingold: Accountability for those who did this?

Mukasey: Covered, people who were deficient, some no longer in Department. If you can point to any criminal laws violated.

Feingold: 2007 Draft regs gives AG, rather than Court of Appeals, states to opt-in. Disadvantage petitioner. Concerns about completeness of regulations. No guidance in assessing whether state provided competent counsel. Your responses the last time were more cavalier than expected. I want to understand fully DOJ justification. Commitment to answer questions fully. Personal attention. Will you commit to that? Trying to determine whether AG guidelines can be harmonized. Dept will put in place permit FBI to open preliminary investigations relying on terrorist profile, that may include racist profile. Under these new guidelines, ethnicity, without any evidence of wrong-doing.

Mukasey: No. That represents no change.

Feingold: US citizen of Pakistani decent, who travels frequently to Pakistan?

Mukasey: Person's travel may be one element in determining whether to conduct an inquiry.

Feingold: I asked whether travel to Pakistan itself will be sufficient.

Mukasey: Not prepared to discuss hypotheticals. What I do want to point out, take regulations that apply to opening of criminal investigations and intelligence investigations.

Feingold: What if person also owns a gun. SCOTUS rule. May that person be investigated?

Mukasey: Don't want to get into particular

cases. Presided over first amendment expression because along with other evidence they were relevant determining whether defendants were guilty. Regulations will assure nature of evidence to be gathered and way it's gathered.

Schumer: Mukasey, at confirmation hearing troubled about politicization of prosecutions. Urged you to get to bottom of Siegelman. I pointed out at time, witnesses have contended that his case was selectively prosecuted. Jill Simpson, pictures of Siegelman, Rove personally contacted DOJ, Karl Rove has refused to appear to testify about Siegelman. You were reluctant to look at it. It's time you get to bottom of this. In unusual decision released Siegelman. Substantial question of law or fact reversal. 54 bipartisan AGs supporting appeal. Underscores flimsiness of case. I have to tell you, nothing has troubled me more than this. It's like making DOJ like the justice department in a banana republic. OPR investigation in Siegelman. When did it begin. When will it be done?

Mukasey: Don't know. Meet regularly with head of OPR, no reason to believe anyone's slow-rolling that?

Schumer: This one is different than lots of other cases. If the allegations are true it would be stunning.

Mukasey: If the allegations are true it would be stunning, Appeals court went to issues in indictment, not politicization.

Schumer: Shouldn't it be a priority?

Mukasey: It think it has.

Schumer: Conclusion before end of Administration.

Mukasey: Every expectation it will.

Schumer: How many lawyers?

Mukasey: I don't know. Enough resources.

Schumer: Will you make OPR findings public?

Mukasey: Depends on what they are. For the same reasons as I discussed with Kohl, I don't know what they're going to find.

Schumer: Calling into question the very fundamentals of justice.

Mukasey: Various avenues in investigating, including investing the source.

[Then why not force Rove to appear? Huh?]

Mukasey: If a lawyer neglected attention, I hesitate to make it public. Cases are brought for all kinds of reasons.

Schumer: That's not what we're discussing here. I'm asking that, if the allegations are true, is there any reason not to make it public? If Rove suggested a second prosecution?

Mukasey: Underlying evidence. Why should that not be made public. I don't see publicizing source of allegation if allegation appears to be true.

Schumer: Should Rove be interviewed?

Mukasey: Matter for OPR.

Schumer: You don't think that given the allegations that have been made, that Karl Rove should maybe not be interviewed here.

Mukasey: Avenues for conducting investigating other than OPR?

Schumer: Should someone in DOJ ask Rove?

Mukasey: Depends on what the facts are determined by OPR.

Schumer: Very disappointing.

Leahy: Same concerns you've heard from Specter and myself.

Whitehouse: In eight months in office occasion to determine whether water-boarding torture?

Mukasey: No, not part of program.

Whitehouse: In that answer, and other answers,

detect very pronounced reluctance to look backwards into problems at DOJ. You've assured us that politics will be kept out of your watch going forward. Effects are still alive and well for subjects of those prosecutions. You've revived current OLC opinions. But past OLC opinions are still on the books to be counted as precedents. People hired under politicized processes, it is highly inadequate to have this going forward approach. Be prepared to find out what went wrong and clean it up. We can't be assured it has been cleaned up.

Mukasey: Variety of subjects. Interrogations. Law has changed. You have access to, you in particular bc on SSCI, access to unredacted copies of operative memoranda.

Whitehouse: I've seen exaggerated claims of executive authority. Dramatic lapses of scholarship. Repeatedly, we've seen OLC opinions retracted. OLC is Bush's little shop of legal horrors. Just not adequate to say fine going forward. Not just about your integrity.

Goldsmith: OLC has developed a number of processes to assure that OLC not political, not all those processes followed.

Mukasey: Fact that OLC opinions withdrawn not a shop of horrors.

Whitehouse: What went wrong at the time, opinions that are so embarrassing, that's a matter of legitimate inquiry, and I'm concerned that you're not curious.

Mukasey: A cycle of aggressiveness and timidity in intelligence community. We have people demanding push law to limit. Ultimate conclusions unchanged.

[That's not what Levin said]

Whitehouse: 5th circuit court of appeals, if you look at that case, you see it's waterboarding. It's a case that was prosecuted by DOJ. Person who prosecuted is still in the department. If this matter were being briefed to you as a judge, and a party had missed that case, you'd

be justifiably angry that they missed that case. 50-odd page opinion, they don't cite that case. Something went badly, badly wrong. Not just people being a little energetic. It can recur if we don't figure out what happened.

Mukasey: I agree with your interest in thoroughness. Case is not a torture case. Civil rights laws.

Whitehouse: When a court of appeals describes a technique as torture, isn't that relevant to whether it was torture under a different statute?

Mukasey: Quoting from indictment.

Whitehouse: That's not accurate.

Mukasey: I believe it is.

Cardin, then 10 minute break.

Cardin: What program in place to have widest possible participation in election?

Mukasey: Every single district will have a AUSA schooled in voting laws, alert to misinformation, which as I've said in private conversations, just as much fraud as any kind of fraud. Inspectors in particular districts. Prepared to go into those districts to head off practices you talked about.

Cardin: Monitors already been placed. Extremely important. Encourage in placing monitors to look at previous activities. Also take a look at areas that have recently shown some challenges. To share that information so we can have a better understanding of problems.

Mukasey: Agree we ought to publicize it afterwards. Will have people looking for the kind of conduct you mentioned.

Cardin: If primary is any indication, unusual number of young people. College campuses in the fall. What steps to make sure that students fully participate in political process?

Mukasey: Statutes that require state laws that

provide services to encourage voter reg.