


HOLDER NOMINATION HEARING, PART TWO

 To follow along, see CSPAN3 or the Committee Webcast (though the latter seems to be having the RealPlayer problem it was having earlier).

Sorry. Started a little late. I think Lindsey Graham is beating up on Holder because he once worked for Blago, but that's just a guess. [actually, not sure I got that right]

Graham: Is it fair to say that we're at war?

Holder: No question that we are at war.

Still asking questions about whether our "war"—whether someone in the Philippines financing terrorism was part of the battlefield.

Graham: What about someone who may not be subject to an Article III trial. Have you thought about that group?

Holder: I've struggled with that.

Leahy: Graham has discussed these issues with me, I've relied on his experience from JAG, we've also had some military people risking their own careers saying what should be done. They have been most instructive to members of this committee on how the UCMJ works. I would suggest that you may want to spend some time in informal discussions with people like Graham, we'll at least let you know what our views are.

Holder: That's a good idea. Didn't want to talk about the substance of my conversation with Graham thinking he had thought about our military judgment a lot.

Leahy (who keeps putting in letters of support at key times) is now putting in letters of support from Generals and whatnot.

Cardin: I want to talk about Civil Rights

Division. Resources reduced. Schloz. I want to give you an opportunity to tell me your own personal commitment, and how you will direct that division head what you expect to see during the Obama division.

Holder: Civil Rights is conscience of DOJ.

Cardin: Bush Administration took zero cases supporting African Americans, but they were there to defend the draconian Georgia law that has been called the new poll tax. I'd like to find a way to prevent campaign tactics to be used to suppress turnout.

Cardin: One other area shows a racial disparity in our country. Crack cocaine. African Americans now serve as much time for drug offenses as whites do for violent crimes. We know we have disparities in our laws. It's very clear that's true wrt crack cocaine. I'd like a tough but fair system.

Holder: Our criminal justice system has to be fair, it has to be viewed as fair. I saw that in USA DC. I heard jurors talk about inadequacies in criminal justice system.

Cardin: Let me return to issue of torture. I want to call your attention to rendition, where US has custody and turn them over to other countries where we know they will use torture. Convention Against Torture prohibits rendition to countries where they'll be subject to torture. In your points about torture being illegal, it would be wrong to turn over custody to a country where we have reason to believe they will use torture.

Holder: It should not be the policy or practice of USA to turn over people to countries where they'll be tortured. I've engaged in renditions, but that was to bring people here to trial. If we believe sending someone to Canada, they'll be tried, but it's different if we send someone to a country where they'll be tortured.

Cornyn: [You're aware that our govt is spreading more propaganda about people returning to the

battlefield, right?]

Holder: we need to review the cases about whether they are dangerous or whether they remain dangerous.

Cornyn: Puerto Rican terrorists. Had not applied for clemency.

Holder; I thought the President's determination was reasonable given that nature of offenses—they did not harm anyone. We deal with world now that is different than it was then, we deal with a post-9/11 world.

Cornyn: How about a post WTC bombing, bombing of the Cole? Would those be sufficient to raise concerns about granting clemency?

Holder: I said we didn't understand we were at war soon enough.

[Why isn't anyone asking Cornyn about Bush's decision to let Cuban terrorists go free??]

Cornyn: Did you recommend clemency to the FLN terrorist to Clinton?

Holder: yes.

Cornyn: Post-9/11 would you decline to recommend clemency to Clinton?

Cornyn: Ticking time bomb scenario. You find out terrorists with access to CBN weapons, you've got a detainee who has information that if disclosed would save thousands in the US. Under my hypothetical using waterboarding would save thousands of lives.

Holder: We should not assume that waterboarding is the only way to get information from someone. Waterboarding is not the best way to get that information. I'm not at all certain that waterboarding that person would give us that information, and we have other techniques that would produce the results we want.

Cornyn: Torture is illegal in our laws. I've heard people say sleep deprivation is illegal. Under my hypothetical, if that were the only

thing standing between you and the deaths of 10s of thousands.

Holder: Your hypothetical assumes a premise that I'm not willing to agree with. I don't think it's the only way to get that information.

Cornyn: Assume it was.

Holder: There are timely ways to get that information from people. I can't agree with that without accepting your premise. I don't think I can do that.

Cornyn: You understand that some of those techniques are used in our own SERE, right?

Holder: That's the training we give them to prepare them in case they are captured by people who are far less humane than we are.

[Good job on that series from Holder.]

Leahy: Durbin, your new colleague has been sworn in.

Durbin: Sorry for stepping out. It was to add another Democratic vote. I was present for your opening statement. I paid special attention to your treatment of torture. I felt from the outset that it struck at the fundamentals of who we are as Americans. [Quotes Schlesinger Jr.] It made me vote against AGAG and Mukasey. In the case of Gonzales, had been involved. I listened to your opening statement. In three words, the world changed. You stated without hesitation, that waterboarding is torture. I think it's important for our country. I understand Cornyn's questions. They're questions that anyone who watches Jack Bauer would ask. [nice dig, Durbin!!] The JAG are top military lawyers. I've asked them about techniques other than waterboarding. (Dogs, stress positions, forced nudity, etc.) They've said each violates the law. Do you agree with JAGs that it would be illegal to.

Holder: I'm not as conversant with those. I would not go as far. I don't know enough about them. On the other hand, Common Article III

requires humane fashion. I'd agree that those techniques are in fact correct that those techniques violate Common Article III.

[Durbin asked about the immigration judges as well]

Durbin: Schloz hired 63 lawyers. What to do about them?

Holder: We should not paint with too broad a brush. The focus ought to be on mechanism that was used to get them into the department.

Coburn: I'm sure we're going to be here a while. I've handed you a list of inefficiencies in the DOJ. Will you commit to make sure that the intent of the Emmet Till unsolved Civil Rights crimes are fulfilled. I'm looking for a commitment that that will be a priority whether or not we do a good job of funding it.

Holder: The fact that that initiative exists that this Congress thought it important enough to devote its attention to it is a sign of this govt at its best. Those are examples of crimes committed a long time ago that deserve to be pursued.

Coburn: Alvin Sykes, tried to make a more efficient bill, it still isn't funded, it needs to happen.

Coburn: FALN. Being from OK and the tremendous tragedy there. Why did not the weight of the prosecutors bear more on your decision in thinking that that was reasonable pardon?

Holder: I did factor that in, we had 2 USAs weighed in against it, law enforcement, victims families, balanced that against those who were advocating for it, it seemed to me that on balance in a pre-9/11 world, the sentences they had that that was appropriate. Those were the factors I considered.

Coburn: You admitted to a couple of mistakes of judgment—that's not one of them.

Holder: We can have a difference of opinion

there. But I don't think it was mistake like Rich.

Coburn Terry Nichols, still worriesome.

[This will come up on the Lindh clemency request.]

Coburn: Heller. I believe SCOTUS got it right. Tell me where you sit today and with that thought what you would do with that.

Holder: Post-Heller the options we have in terms of regulating firearms has been narrowed. It has not been eliminated, but reasonable restrictions are still possible. The Heller decision has to be factored in now. I don't think we should turn away from discussions about who has guns and how they should be used. I think that we're in a different world.

Coburn: Do you agree that outside of sporting use there's a right to own a gun?

Holder: [a little surprised by the question] Post-Heller definitely. I agree with Obama closing gun show loophole, banning sale of cop-killer bullets. Those are the things we need to focus on.

Coburn: As AG will you make a commitment to defending Heller?

Holder: Sure.

Coburn: Would you also do so if SCOTUS granted Cert for a case revisiting Heller.

Holder: I'm a lawyer who follows stare decisis. Ultimate arbiter has said what 2nd Amendment says. Heller is a significant opinion.

Leahy: I want to compliment the Senator from OK for his rendition of "Rocket Man."

Whitehouse: I'd like to cycle back to the beginning bc of my affection for the man to say how happy I am that Warner chose to come back to support your candidacy. I'm impressed with your kids.

Holder: Well, you should take into account that they would otherwise be at school right now.

Leahy: I mentioned to your mother that, grandparents are supposed to spoil grandchildren.

Whitehouse: Present at occasionally extraordinary moments. Senator Kennedy, his return for Medicare vote. Year before it was Comey's testimony. What struck me was the personal nature of his discussion. I know you have been there before, when you cleared a special prosecutor. You approved investigation of President himself. Can you tell us what you were feeling?

Holder: You have to treat the facts that come forward, irrespective of the effect it'll have on the administration you serve. Those were not necessarily difficult decisions, it was what I expected of myself. They were ones that, after made, you reflect on. You have feelings about the impact of those decisions. It doesn't give you any great sense of joy. It is what I will do, if I am fortunate enough to become AG.

Whitehouse: Let me rattle off a few quick questions. Bush knocked down firewall between DOJ and White House. I have many disagreements with Mukasey, but he has done that.

Holder: We have already started doing that so that communication between DOJ and WH is consistent with what Mukasey has put in place.

Whitehouse: Corruption pervasive and systematic. If everyone listed something that bothered them, what process do you think is appropriate to do a damage assessment, see what needs to be fixed, so you will know as commander of department, those things will be set right?

Holder: Has already begun. Filip and Mukasey have been honest about areas that need special attention. They were not given luxury of time. We're going to have time. It is incumbent upon those who will run DOJ to do that damage assessment. To come up with mechanisms to repair

that. A lot of that is inspirational. Personal connection. A lot of time walking the halls. Talking to people at the USA offices and making them feel a sense of mission that the DOJ is back to the way it was under both Republican and Democratic presidents.

Whitehouse: Prosecutions of false statements. I have referred the EPA Administrator. In addition to asking you to review the USA DC recommendation, I'd ask you to consider working with us on prosecution guidelines, what is appropriate obligations of those who come before us, I think people forget that they're here under oath. I've heard stuff that is everything from slipshod, to cold blooded lies.

Holder: They need tools so they will acquit themselves. Testifying does not come naturally.

[Leahy invites Holder's kids to run up and down the halls screaming, though warns that it might make the evening news.]

Brownback: Entering a Burton letter into the record. (Holder has noted that Burton's report was not entirely accurate.)

Holder: As I indicated in my opening statement. I made mistakes. One thing I want to make clear, I was not aware of the contributions or the ties between Rich's wife and other people in the Democratic party. One of the mistakes I made is that I did not acquaint myself with all the facts about Mr. Rich. That is one of the things I have said consistently. I'm not minimizing mistakes, but I do think that will be placed in appropriate context.

Hatch: Mr. Holder. You've acquitted yourself well. I support you and believe you should be supported. FISA Court of review released its earlier decision that PAA is constitutional. I know everyone will study the decision. "We hold that a foreign intelligence exception exists when conducted against ... foreign powers or agents of foreign powers reasonably believed to be located outside the US."

[Hatch is entering Lichtblau's inaccurate article into the record.]

Hatch: I hope mistakes of past will influence you to be a great AG, which is what I'm expecting.

Brownback: Leavenworth doesn't want the Gitmo detainees. The primary mission of Leavenworth is to train future leaders. We have heard from students from Egypt, Saudi Arabia, and Pakistan that they will leave if the Gitmo detainees come. The relationships are built there, key relationships in the ongoing war on terrorism. If you hurt that by moving detainees there, this is a big hit. I heard your clear statement earlier that you're closing Gitmo. I would hope you would conduct an open consideration.

Holder. There is a review now underway to figure out what might happen to the number of people who have to move. You've raised some important points. The inability to have people from Islamic countries leave is something that over the long term could harm our efforts. I had not heard that before.