

EMPTYWHEEL TO SENATOR WHITEHOUSE: WE ONLY HAVE 7 WEEKS TO INDICT BUSH

Two and a half weeks ago, bmaz predicted that the Bush Administration would appeal Judge Vaughn Walker's ruling requiring the Bush Administration to turn over a document that likely proves they violated FISA by wiretapping American citizens. Sure enough, on Friday and Monday, they did so.

In a parting shot, the Bush administration's Justice Department shrugged off a San Francisco federal judge's order to make a classified document available to lawyers for an Islamic group challenging the legality of the outgoing president's secret wiretapping program.

[snip]

Chief U.S. District Judge Vaughn Walker ruled Jan. 5 that Al-Haramain could proceed with its case, saying government statements showed that the group had probably been wiretapped.

Walker said he would examine the classified document to see whether it showed that federal agents intercepted the calls without a warrant, a ruling that would allow him to decide the legality of the surveillance program. He ordered the Justice Department to let the group's lawyers see the document, after they obtain security clearances, so they can argue their case while keeping the contents secret.

In Monday night's filing, Justice Department lawyers asked Walker to suspend his ruling while they appeal,

and said the National Security Agency has decided the Islamic group's lawyers have no need for the document.

"Under normal clearance procedures, the NSA would decide – not the court – whether the plaintiffs' counsel should receive access to any classified information," department lawyers wrote.

Between that appeal and Arlen "Scottish Haggis" Specter's highly unusual one-week hold on Eric Holder's nomination yesterday, it sure does look like my theory—that Republicans are trying to delay the time when a Democrat takes over DOJ and starts reviewing Bush Administration actions and considering prosecutions.

In particular, I believe, they are delaying Holder's nomination to shorten the time between the day Holder takes over and the day the statute of limitations on violations of FISA Bush committed on March 11, 2004 start to expire—that is, March 11, 2009, just seven weeks away.

At yesterday's Progressive Media Summit, I had an opportunity to remind Senator Sheldon Whitehouse of that timeline. I reminded him, too, that Bush seems intent on delaying the time when an Article III judge assesses the evidence in the al-Haramain document, which probably proves Bush broke the law.

I don't know whether Senate Dems can do anything to short-circuit Republican efforts to run out the clock. After all, Mark Filip will remain the Acting AG for the next week, at least, and he's likely to follow the same obstructionist approach as Mukasey has. But perhaps with some focus from Senator Whitehouse, we might raise the costs for their efforts. Particularly given the Tice revelations last night, we ought to be able to generate new focus on Bush's efforts to wiretap every American.