

DID HOLDER PROMISE NO PROSECUTIONS?

As I posted, both Sheldon Whitehouse and Pat Leahy suggest that—even though John Cornyn and others made an inappropriate demand that Holder promise not to prosecute any Bushies—Holder did not make that promise.

But right as that came out, the Moonie Times came out with a Kit Bond interview claiming that Holder had made such promises. (h/t Wigwam)

President Obama's choice to run the Justice Department has assured senior Republican senators that he won't prosecute **intelligence officers** or **political appointees** who were involved in the Bush administration's policy of "enhanced interrogations."

Sen. Christopher "Kit" Bond, a Republican from Missouri and the vice chairman of the Senate Select Committee on Intelligence, said in an interview with The Washington Times that he will support Eric H. Holder Jr.'s nomination for Attorney General because Mr. Holder assured him privately that Mr. Obama's Justice Department will not prosecute former Bush officials involved in the interrogations program.

Mr. Holder's promise apparently was key to moving his nomination forward. Today, the Senate Judiciary Committee voted 17-2 to favorably recommend Holder for the post. He is likely to be confirmed by the Senate soon.

Sen. Bond also said that Mr. Holder told him in a private meeting Tuesday that he will not strip the telecommunications companies that cooperated with the National Security Agency after the Sept. 11, 2001, attacks of retroactive legal immunity from civil lawsuits—removing

another potential sticking point among GOP senators.

In the interview Wednesday, Mr. Bond said, "I made it clear that trying to prosecute **political leaders** would generate a political firestorm the Obama administration doesn't need." [my emphasis]

Mind you, I'm not holding my breath for any big prosecutions from the Obama Administration, given his repeated calls to move forward.

That said, I suspect Kit Bond is spinning Holder's clear statements with regards to those who **implemented** Bush's policies into statements about those who **crafted** Bush's policies.

Note how Holder answered this question in written RFQs:

Mr. Holder indicated that he would not prosecute any **intelligence officers** who participated in the interrogation program and who had followed Justice Department guidance.

Prosecutorial and investigative judgments must depend on the facts and no one is above the law, Mr. Holder wrote. But where it is clear that a government agent has acted in 'reasonable and good faith reliance on Justice Department legal opinions' authoritatively permitting his conduct, I would find it difficult to justify commencing a full blown criminal investigation, let alone a prosecution. [my emphasis]

Holder gave written assurances about those who relied on John Yoo's crappy opinions. That's basically what Arlen Specter said Holder had said in assurances to other Republicans.

"The gist of" Holder's stance on the issue, Specter told [TPM's Elena Schor],

"is that if you have an authoritative legal opinion, that's a defense in terms of *mens rea*, of intent. That's a broad generalization. I don't think you can go any further than that until you examine the specific facts of a case."

But now Kit Bond is out there saying Holder gave him assurances about not just "intelligence officers" (which is what he said in his written response) but "political appointees" and, later, "political leaders."

Now, maybe Holder really did say he wouldn't go after people like John Yoo and Dick Cheney and others who deliberately violated national and international law. But I think it just as likely (and more typical of Holder's legalistic style) that Kit Bond is talking out of his ass to pressure Holder to avoid looking into the actions of Bush and Cheney. Hell. Holder hasn't even been read into the illegal wiretapping program yet. It would be the easiest thing in the world for him to say, "Well, I had no idea that Bush deliberately violated Congress' law prohibiting any funds from being spent on TIA" if he were to pursue charges.

But if anyone else has any doubts that the Republicans are primarily worried about protecting Bush and Cheney for their law-breaking while President and Vice President, I guess Kit Bond has put that doubt to rest.

Update: JimWhite had a very productive call with Pat Leahy's office on this. But since his call with Bond's office was considerably less productive, I agree with JimWhite that Bond might need to hear from a few more Americans who believe Senate votes should not be premised on promises of non-prosecution. If you'd like to join in, Bond's office is (202) 224-5721. (Apparently you're not the only caller trying to give Bond a piece of your mind, so be persistent.)

Also, see Spencer on this as well.