

HOLDER ON STATE SECRETS

The Senate debate on Eric Holder's nomination is on CSPAN2 right now. Tom Coburn is on the floor now pretending that Holder is going to bring back the Fairness Doctrine and take away your guns.

But Holder's nomination is bound to pass, with large margins, when they vote this evening. So it'll be interesting to see how Holder implements these highly parsed views, written in response to questions from Russ Feingold, courtesy of Secrecy News.

3. I'm concerned that the outgoing administration may have used the "state secrets privilege" to avoid accountability for potentially unlawful activities, including warrantless wiretapping and rendition. Courts tend to be very deferential to these privilege claims, so there's certainly room for abuse. Will you commit to reviewing all pending cases in which DOJ has invoked the state secrets privilege to make sure the privilege was properly invoked, and withdraw any claims of privilege that are not necessary to preserve national security?

I will review significant pending cases in which DOJ has invoked the state secrets privilege, and will work with leaders in other agencies and professionals at the Department of Justice to ensure that the United States invokes the state secrets privilege only in legally appropriate situations.

4. One reason that the state secrets privilege is so vulnerable to abuse is that courts don't always use the tools that are at their disposal to review privilege claims, such as in camera

review of the privileged evidence. I cosponsored the State Secrets Protection Act (S. 2533 in the 110th Congress), with Sen. Kennedy and Sen. Specter, to require courts to engage in meaningful review of these claims. Would you support enactment of this bill?

I appreciate the Committee's concern about potential abuses of the state secrets privilege and will work to ensure that assertions of the privilege are made only when legally and factually appropriate. I will consult with appropriate career personnel at the Department of Justice and perhaps in other agencies, before making a final judgment on whether to support this or other particular legislation.

"I will review significant pending cases." That would, presumably, include the al-Haramain case. Of course, that says only that he would review the cases.