

March 18, 2010

OBAMA AND THE COURTS

Presented by Barbara Vining

Obama being sworn in by Chief Justice Roberts



Obama's Judicial Philosophy :

Post partisan vocabulary

- ① EMPATHY
- ① EXCELLENCE
- ① COMPETENCE
- ① COMMON SENSE

“We need somebody who's got the heart, the empathy to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African American or gay or disabled or old. And that's the criteria by which I'm going to be selecting my judges.”

~from 2008 Obama campaign speech

“We are looking for experiential diversity, not just race and gender. We want people who are not the usual suspects, not just judges and prosecutors but public defenders and lawyers in private practice.”

~Obama administration

“I wondered if in our reliance on the courts to vindicate not only our rights but also our values, progressives had lost too much faith in democracy. Elections ultimately meant something...Instead of relying on Senate procedures, there was one way to ensure that judges on the bench reflected our values and that was to win at the polls.”

~from Audacity of Hope

“When I think about the kinds of judges who are needed today, it goes back to the point I was making about common sense and pragmatism as opposed to ideology. I think that Justice Souter, who was a Republican appointee, Justice Breyer, a Democratic appointee are very sensible judges. They take a look at the facts and they try to figure out: How does the Constitution apply to these facts? They believe in fidelity to the text of the Constitution, but they also think you have to look at what is going on around you and not just ignore real life.”

~Interview with Detroit Free Press, 2008

Sonia Sotomayor and President Obama



JUDICIAL COMMITTEE TESTIMONY

“I don't believe we should bend the Constitution under any circumstances. It says what it says. We should honor it.”

“It's important to remember that as a judge, I don't make law...And so, the task for me as a judge is not to accept or not accept new theories; it's to decide whether the law, as it exists, has principles that apply to new situations.”

~Sotomayor

“Her opinions reflect a keen understanding of the appropriate limits of the judicial role.”

~Obama administration

2009 JUDICIAL APPOINTMENTS

October, 2009:

Obama --3 appointments including one Supreme Court appointment

Clinton – 9 appointments with one Supreme Court

GW Bush – 8 appointments

MARCH 2010

23 CONFIRMED

Supreme Court – 1

Circuit Courts of Appeal – 6

District Courts – 11

Eastern District of Washington –
Rosanna Peterson

CITIZENS UNITED VS FEDERAL ELECTIONS COMMISSION (5-4) SUPREME COURT, JANUARY 2010

- Overturned parts of McCain- Feingold campaign finance legislation and overturned:
 - Austin vs. Michigan Chamber of Commerce (1990) - political speech may be banned based upon the corporate identity of the speaker
 - McConnell vs. FEC (2003) -- upheld limits and electioneering communication by corporations

“If the First Amendment has any force, it prohibits Congress from jailing or fining citizens, or associations of citizens, for simply engaging in political speech.”

~Justice Kennedy writing for the majority

“The rule announced today, that Congress must treat corporations exactly like human speakers in the political realm – represents a radical change in the law... While American democracy is imperfect few outside the majority of this court have thought its flaws include a dearth of corporate money in politics.”

~Justice Brennan, writing in dissent

Obama's State of the Union Address



“With all due deference to the separation of powers, last week the Supreme Court reversed a century of law to open the floodgates for special interests – including foreign companies -- to spend without limit in our elections. Well, I don't think American elections should be bankrolled by America's most powerful interests, and worse, by foreign entities. They should be decided by the American people, and that's why I'm urging Democrats and Republicans to pass a bill that helps to right this wrong.”

~President Obama

Justice Alito – mouths “not true”

“So I have no problems with that. On the other hand, there is the issue of the setting, the circumstances and the decorum. The image of one branch of government standing up literally surrounding the Supreme Court, cheering and hollering while the Court - according to the requirements of protocol – has to sit there expressionless, I think it is very troubling.”

~Chief Justice Roberts commenting on President's criticism of Citizens United, March 14, 10 (NY Times)

WAR ON TERROR VS. CIVIL RIGHTS OF DETAINEES

Hamdi vs. Rumsfeld (2004) -- Executive branch may not hold a US citizen indefinitely without being brought before a tribunal to challenge their detention as an “illegal enemy combatant.”

Hamdan vs. Rumsfeld (2006) -- Supreme Court has jurisdiction to determine the legality of military commissions. Since Congress had not authorized military tribunals, they were not lawful.

Boumediene vs. Bush (2008) -- Foreign detainees have the right to appeal their status to civilian courts.

OBAMA, THE CONSTITUTION, AND THE WAR ON TERROR

Obama's Campaign Promises:

- ⦿ End the use of torture:
 - January 22, 09 – Executive Order on Ensuring Lawful Interrogations: “All prisoners shall be treated humanely and shall not be subjected to violence to life and person (including murder, mutilation, mistreatment and torture), nor to outrages upon personal dignity, including humiliating and degrading treatment”
 - Nullifies interpretation of federal law on interrogation issued by the Department of Justice and developed between 2001 and January, 2009.
- ⦿ Restrict warrantless wiretaps: Update FISA for more Congressional oversight
- ⦿ Close Guantanamo Bay Detention Center

Source: PolitiFacts.com

Guantanamo Bay Detention Center

- August 2002 – 625 detainees
- April 2006 – 556 names released due to court order
- March, 2007 – Administrative Review Boards reviewed 325 cases, resulting in 55 transfers and 273 continued detentions.
- January, 2009 – 245 detainees still at Guantanamo

Source: Global Security. org/names of detainees on Wikipedia

Ghaleb Nassar Al Bihani vs. Obama (District Court, District of Columbia) Jan. 5, 2010

Judge Janice Rogers Brown writing for 3 panel decision

“the war on terrorism placed the nation past the leading edge of a new and frightening paradigm, one that demands new rules be written...war is a challenge to law and the law must adjust.”

Concurring opinion: This decision that the president's war powers are not limited by the international law on war goes beyond even what the government has argued in this case.

January 25, 2010: Guantanamo Review Task Force Recommendations

- 50 detainees be held indefinitely without charge.
- 35 – be brought to the US and tried in civilian or military courts
- 110 – can be released

Source: FindLaw Blotter; PolitiFact.com

CIVILIAN COURTS OR MILITARY COMMISSIONS

Since 2001, criminal courts convicted 150 terrorist suspects – all apprehended abroad
military tribunals convicted 3 terrorist suspects

Source: The New Yorker 2/15/10

NO RULES OF THE ROAD



“It would have helped if Congress had given us a definition of enemy combatant, but they didn't. The Bush administration gave us four definitions and the Obama administration gave us one more.”

~Judge Royce C. Lamberth at ABA breakfast meeting. Chief Judge overseeing court ordered Guantanamo trials

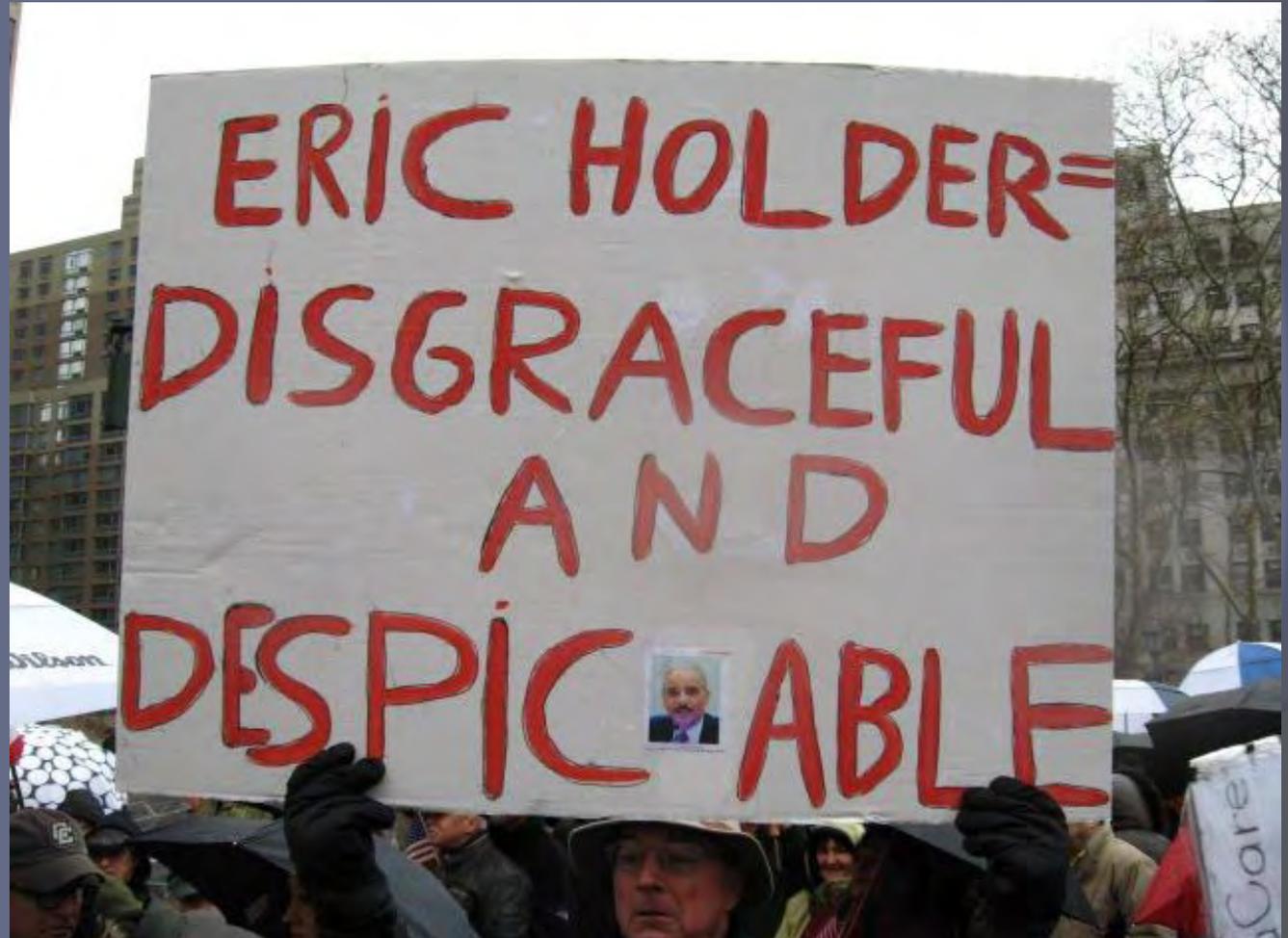
ATTORNEY GENERAL ERIC HOLDER AND THE KSM TRIAL

“After eight years of delay, those allegedly responsible for the attacks of September 11 will finally face justice. They will be brought to New York to answer for their alleged crimes in a courthouse just blocks away from where the Twin Towers once stood.”

*~Attorney General Holder announcing trial
of KSM in lower Manhattan*

“How can someone who is not American have any right to our rights? Eric Holder wants to help the terrorists.”

~Protestor



“The quest for justice, despite what your contemporaries might think, that's toughness. The ability to subject yourself to the kind of criticism I'm getting now, for something I think is right? That's tough. This is something that can get a rise out of me, the notion that somehow Eric Holder and Barack Obama, this Administration is not tough. We have the welfare of the American people in our minds all the time. We'll fight our enemies and we'll do that which is necessary, and we won't turn our backs on the values and traditions that made this country great. That is what is tough.”

*~Eric Holder in an interview with
The New Yorker, 2/15/10*