



Cato Panel Dissects Holder's Justice Dept

By: Robert Feinberg
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The Cato Institute hosted a book forum June 12 for Hans von Spakovsky, senior legal fellow at the Heritage Foundation to present his book that is co-authored with John Fund of the National Review titled *Obama's Enforcer: Eric Holder's Justice Department*. J. Christian Adams, a Justice Department attorney from 2005 to 2010, provided comments and Trevor Burrus, a research fellow at Cato's Center for Constitutional Studies, moderated the forum.

The panelists recognized that this is a very aggravating program, because the book catalogs the outrages of the practice and day-to-day life at the Department of Justice (DOJ), and then leaves readers and viewers with little hope for reform, a view similar to that of this writer with respect to the federal banking agencies. Once agencies jump the tracks or are captured by special interests, they become comfortable where they have ended up and very practiced at justifying the way they operate. They also become self-perpetuating fiefdoms once they are able to put in place a critical mass of lawyers with career status.

Both panelists have the expertise to report on the state of DOJ, because they both worked there, and the book is based on interviews with current or former DOJ lawyers.

Von Spakovsky recalled knowing Holder at DOJ as a good lawyer who had come to the department through an honors program, an exception to the policy of hiring lawyers laterally rather than straight from law school. Holder had asked to be placed in the Civil Rights Division, but instead got his second choice of the Public Integrity Section, which is supposed to enforce anti-corruption laws.

According to von Spakovsky, as the years went by, Holder became more political and ideological, and in the Clinton administration he was appointed the deputy attorney general, second in command under Attorney General Janet Reno, but he became the "go-to" lawyer for politically sensitive matters, because the Clintons did not consider Reno to be politically reliable.

In time, Holder came to relish the political role and to view himself as part of the president's team. This troubled von Spakovsky, whose view of the job of U.S. Attorney General calls for more independence than most other cabinet posts do. He compared the relationship between the Attorney General and the president to that of John Mitchell and Richard Nixon for its willingness to do political chores, including using agencies like the IRS to punish "enemies." (He could have cited the Kennedy relationship as well.) The author gave a pass to the Carter and Clinton

Attorneys General, one that other observers might take issue with but a question that is beyond the scope of this article.

Holder has become the first sitting Attorney General to be held in contempt of Congress, for the Fast and Furious scandal, and von Spakovsky was very critical of the DOJ for not performing the ministerial function of bringing the case before a grand jury. Moreover, DOJ lawyers have established a pattern of pursuing ideological arguments, such as the assertion that the president's policy pronouncements deserve priority over state laws, even after these arguments have been unanimously rejected by the Supreme Court.

Adams discussed the question, why does this matter, and for him it is frightening to see this pattern of administration of what he called "the Ministerial State" from the viewpoint of "people who believe in the Rule of Law and limited government."

Regrettably von Spakovsky did not address the controversy regarding Holder's declaration that "too big to fail" banks are also too big to jail because prosecution would damage the business of the bank and cost people their jobs. This caused such revulsion among senators like Sherrod Brown, D-Ohio and Elizabeth Warren, D-Mass, that Holder had to disavow it, but he has already made this record, with statutes of limitations practically expiring, perhaps mindful of having worked for Big Law before and the interests he is likely to represent after he leaves DOJ.