



Written by [C. Mitchell Shaw](#) on June 14, 2017

Sessions' Testimony: Democrats Get a Lesson in Executive Privilege

The testimony of Attorney General Jeff Sessions (shown) before the Senate Intelligence Committee Tuesday was markedly different from that of ousted FBI Director James Comey last week. Whereas Comey was treated with respect by even those Republicans who disagreed with portions of his testimony and positively lauded by Democrats who hoped to gain political points from his testimony, Sessions was grilled by Democrats on the committee — with one even accusing him of impeding and obstructing the committee's investigation.



Senator Richard Burr (R-N.C.), who chairs the Intelligence Committee, at least attempted to set the stage for a polite discourse in his opening remarks by saying, "As I've said previously, we will establish the facts, separate from rampant speculation, and lay them out for the American people to make their own judgment. Only then will we as a nation be able to put this episode to rest and look to the future. I'm hopeful that members will focus their questions today on the Russia investigation and not squander the opportunity by taking political or partisan shots."

He may as well have saved his breath. Cheap political shots were the order of the day for some on the committee — even if they were masked behind questions related to the investigation.

Both Senator Burr and Senator Mark Warner (D-Va.), who serves as the committee's vice chair, listed some questions, right from the beginning, that they hoped to get to the bottom of. Those questions were, as Burr listed them:

One, did you have any meetings with Russian officials or their proxies on behalf of the Trump campaign or during your time as attorney general? Two, what was your involvement with candidate Trump's foreign policy team and what were their possible interactions with Russians? Three, why did you decide to recuse yourself from the government's Russia investigation? And, fourth, what role, if any, did you play in the removal of then-FBI director Comey?

Things got tense as soon as the first Democrat — Warner — began his questioning. Warner's first question was an attempt to gain a commitment from Sessions that he would make himself "available as the committee needs in the weeks and months ahead," saying that he saw this hearing "as the first step" in a process. From his words, it was clear that the process could drag on and on. Sessions answered, "I will commit to appear before the committees and others as appropriate," adding, "I don't think it's good policy to continually bring Cabinet members or the attorney general before multiple committees going over the same things over and over." Warner pressed the issue and Sessions replied, "I just gave you my answer."

Sessions was clearly on guard. Of course, considering that he was [accused of lying during his](#)



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[confirmation testimony](#) for answering a question within the context of that question, who can blame him for not opening himself up to more of the same?

Warner's next round of questions began a pattern of question and answer that would continue throughout the hearing. Warner asked about an unconfirmed report — something Democrats love to lean on — “suggesting that President Trump was considering removing Director Mueller as special counsel.” He asked Sessions, “Do you have confidence in director Mueller's ability to conduct the investigation fairly and impartially?” Sessions answered, “I have known Mr. Mueller over the years and he served 12 years as FBI director. I knew him before that. I have confidence in Mr. Mueller.” When Warner pushed with, “You have confidence he will do the job?,” Sessions pushed back with, “I will not discuss hypotheticals or what might be a factual situation in the future that I'm not aware of today. I know nothing about the investigation,” adding, “I fully recused myself.”

And then it began.

Warner asked, “Do you believe the president has confidence?” Sessions answered, “I have not talked to him about it.” From this point forward, much of the hearing could be described as Sessions either telling members that he had not talked to (fill in the blank — the president or other officials) or declining to answer questions because he is “not able to comment on conversations with high officials within the White House.”

In fact, the very next question by Warner was, “To your knowledge, have any Department of Justice officials been involved with conversations about any possibility of presidential pardons about any of the individuals involved with the Russia investigation?” Sessions answer was, “Mr. Chairman, I'm not able to comment on conversations with high officials within the White House. That would be a violation of the communications rule that I have to —” Warner cut Sessions off with, “Just so I can understand, is the basis of that unwilling to answer based on executive privilege?”

Sessions answered, “It's a long standing policy” in the Department of Justice “not to comment on conversations that the attorney general had with the president of the United States.” Warner asked if that meant that Sessions was claiming executive privilege, to which the attorney general replied, “I'm not claiming executive privilege because that's the president's power and I have no power there.”

From this point forward, that pattern showed itself in questions and declined answers as Sessions was grilled by one Democrat after another on conversations he may have had with the president or other officials at the Department of Justice. Again and again, he had to explain to these men and women — as if they had never heard of the concept before — that he was simply not at liberty to answer questions about confidential conversations with either the president or other officials at the Department of Justice.

Sessions' demeanor was mostly calm with a few exceptions. His relaxed, measured tone in telling members of the committee that he would not — could not — answer this or that question seemed to anger them more than his exceptional bursts of indignation when he was pushed by them.

In one of the most tense moments of the hearing, Senator Martin Heinrich (D-N.M.) lost his cool altogether. He had asked Sessions about whether his decision to recuse himself from the Russia investigation had frustrated the president, asking, “Attorney General Sessions, has the president ever expressed his frustration to you regarding your decision to recuse yourself?” Sessions calmly began, “Senator Heinrich, I'm not able to share with this committee private communications —” Heinrich cut him off with a short, “You're invoking executive privilege.” Sessions — explaining again what he had



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already said more than once — said, “I’m not able to invoke executive privilege. That’s the president’s prerogative.”

At that, Heinrich launched into accusing Sessions of “impeding” and “obstructing” the committee’s investigation by “not answering questions” even though he swore “to tell the truth, the whole truth, and nothing but the truth.” Heinrich said:

My understanding is that you took an oath, you raised your right hand here today and you said that you would solemnly tell the truth, the whole truth and nothing but the truth. And now you’re not answering questions. You’re impeding this investigation, so my understanding of the legal standard is that you either answer the question. That’s the best outcome. You say this is classified, can’t answer it here. I’ll answer it in closed session. That’s bucket number two. Bucket number three is to say I’m invoking executive privilege. There is no appropriateness bucket. It is not a legal standard. Can you tell me why what are these long-standing DOJ rules that protect conversations made in the executive without invoking executive privilege?

Sessions, as he had done throughout his testimony and as he would continue to do after this, acquitted himself like a gentleman. He answered, “Senator, I’m protecting the president’s constitutional right by not giving it away before he has a chance to review it.” He ignored Heinrich’s interruption of, “You can’t have it both ways” and continued, “And second I am telling the truth in answering your question and saying it’s a long-standing policy of the Department of Justice to make sure that the president has full opportunity to decide these issues.”

Before the hearing was over, Senator James Lankford (R-Okla.) used his time to question Sessions to both rebuke and remind his colleagues that the attorney general was correct about that “long-standing policy of the Department of Justice.” Lankford said:

Attorney General Sessions, good to see you again. You’ve spoken very plainly from the beginning from your opening statement all the way through this time. I am amazed at the conversations as if an Attorney General has never said there were private conversations with the president and we don’t need to discuss those. There seems to be a short memory about some of the statements Eric Holder would and would not make to any committee in the House or the Senate and would not turn over documents, even when requested. That had to go all the way through the court systems for the courts to say no, the president can’t hold back documents and the Attorney General can’t do that. So somehow the accusation that you’re not saying every conversation about everything, there’s a long history of Attorney Generals standing beside the president saying there are some conversations that are confidential, and then it can be determined from there.

Of course, considering the praise those same Democrats lavished on James Comey — during his testimony and during Sessions’ testimony — after spending months calling for his resignation, perhaps it is more a lack of principles than a lack of memory that motivates their actions in their handling of this investigation.

Image of Jeff Sessions: [Screengrab of video by the Senate Intelligence Committee](#)



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