

OVERSIGHT OR POLITICS?

Michael Mukasey has engaged in a remarkable bit of sophistry with his refusal to clue Congress in on the joint DOJ/CIA IG investigation into the destruction of the torture tapes. He explains his decision as an attempt to avoid "any perception that our law enforcement decisions are subject to political influence."

As to your remaining questions, the Department has a long-standing policy of declining to provide non-public information about pending matters. This policy is based in part on our interest in avoiding any perception that our law enforcement decisions are subject to political influence. Accordingly, I will not at this time provide further information in response to your letter, but appreciate the Committee's interests in this matter. At my confirmation hearing, I testified that I would act independently, resist political pressure and ensure that politics plays no role in cases brought by the Department of Justice. Consistent with that testimony, the facts will be followed wherever they lead in this inquiry, and the relevant law applied.

Of course, the "political influence" Mukasey was asked to address during his nomination hearings was the kind exerted when a Senator or a Congresswoman called the Attorney General privately to demand that a USA either accelerate the prosecution of a political figure or be fired. In this matter, Mukasey has been asked to respond to what is an almost unparalleled degree of bipartisan support for an open inquiry into a matter that just stinks, already, of a cover-up. Leahy and Specter (and Reyes and Hoekstra and Durbin and Biden and more) called for a procedure that had oversight built in.

And Mukasey said no.

Now, part of me would like to give Mukasey the benefit of the doubt, to believe he's just going to great lengths to avoid the kind of politicization that occurred under Gonzales. Except that his response to the House Intelligence Committee suggests he's trying to avoid all oversight into this matter.

Additionally, lawmakers from both parties accused the Justice Department of obstructing a House Intelligence Committee inquiry by advising the CIA against cooperating with it.

"Earlier today, our staff was notified that the Department of Justice has advised CIA not cooperate with our investigation," House Intelligence Chairman Silvestre Reyes, D-Texas, and the panel's top Republican, Rep. Pete Hoekstra of Michigan, said in a joint statement Friday.

"We are stunned that the Justice Department would move to block our investigation," Reyes and Hoekstra said. "Parallel investigations occur all of the time, and there is no basis upon which the Attorney General can stand in the way of our work. ... It's clear that there's more to this story than we have been told, and it is unfortunate that we are being prevented from learning the facts. The executive branch can't be trusted to oversee itself."

In a letter Thursday to CIA Director Michael Hayden, the House panel asked the CIA to hand over by Friday all documents and cables regarding the interrogation tapes and their destruction. But the Justice Department since has advised the CIA to refuse the request, a committee official said Friday on condition of anonymity because he is not authorized to speak for the

committee.

However imperfectly they exercise oversight, it is the duty of the two intelligence committees to exercise such oversight. And preliminary accounts suggest that, while members of the Gang of Four didn't object to the torture itself (with the exception of Jane Harman), they did object to the destruction of the torture tapes. Therefore, in addition to expressing contempt regarding multiple court orders, the destruction of the torture tapes also reflects contempt of Congress. Yet Mukasey wants to investigate it himself.

Now, Mukasey suggests there's no whiff of impropriety in all this.

Finally, with regard to the suggestion that I appoint a special counsel, I am aware of no facts at present to suggest that Department attorneys cannot conduct this inquiry in an impartial manner. If I become aware of information that leads me to a different conclusion, I will act on it.

Yet this statement comes from the guy who signed the material witness warrant for Jose Padilla back in 2002, a warrant that almost certainly relied on the testimony of Abu Zubaydah. Thus, even Mukasey himself has improper conflicts, to say nothing of lawyers (Stephen Bradbury, I'm looking at you) who may have given opinions authorizing the destruction of the tapes.

John Dean seems to think the ACLU's motion to hold the CIA in contempt may be the best means from discovering what really went on.

There are three court orders that may have been violated, but one in particular strikes me as a very serious problem for the CIA. Accordingly, we may well be in the unique situation in which a pending civil lawsuit might flush out some answers, and the federal judiciary

might thus embarrass the other branches into actually taking meaningful action. I say "might" because the Bush Administration thinks nothing of stiffing federal court judges who seek information, and they probably figure they can tap-dance for the federal judiciary – along with all the other inquiries – until they are out of Washington on January 20, 2009.

Nevertheless, the situation in the United States District Court for the Southern District of New York, as a result of Freedom of Information Act requests by the American Civil Liberties Union, could well force the Bush Administration's hand. An order holding the CIA in contempt of court might get the Administration's attention.

Let's hope so, because it looks increasingly unlikely that the Administration will be exposed to any more oversight under Mukasey than it was under Gonzales.