HJC TESTIMONY: MR. UNITARY EXECUTIVE AND MR. YOO

Here's a post I did on David Addington's testimony at the Libby trial.

Here is John Yoo's prepared testimony.

Note this hearing is a Subcommittee Hearing—so it's Jerrold Nadler's baby, not Conyers'. That means a subset of HJC's better questioners will appear today: Nadler, Davis, Wasserman Schultz, Ellison, Conyers, Scott, Watt, and Cohen, with Franks, Pence, Issa, King, and Jordan for the bad guys.

Nadler: Subject of utmost importance to integrity of nation. Will not be permitted to be disrupted—anyone will be expelled immediately. Legal memos defining torture out of existence. I speak for many of my colleagues when I say the more we hear the more appalled we become. One testifying voluntarily, one testifying under subpoena. We will not be deterred by unchecked delcaration of privilege.

Franks: Almost 60 hearings on detainee treatment. Torture banned by various laws. Severe interrogations do not involve torture and they are legal. Results of waterboarding KSM, Abu Zubaydah, and al-Nashiri valuable. Alan Dershowitz says we can torture, so everything's okay.

Franks just asked to submit evidence into the record. Nadler went, whuh? Nadler complains about Addington stiffing the committee for written testimony, but then submitting his own exhibits.

Nadler: I want to defend Dershowitz against allegations he's an ultra-liberal. He just wrote a book advocating torture through warrants.

Conyers: More concerned about what we're going to do, not any individual citizen. I don't know why giving someone a lawyer is shocking to anyone. We have reports stating that our witnesses played a central role in drafting legal opinions on torture.

[Note: both sides look unusually prepared today, with Franks and Conyers both showing video from earlier hearings.]

Addington: 3 points. Iran-Contra said I was working for Cheney, in fact designee for Broomfield of MI. An author of prep for minority views, I had left before the report was written. More important, Conyers mentioned, wanted to give benefit of doubt. There's one subject in which there's no doubt, I believe everyone on this committee want to defend this country, protect it from terrorism, differences on how that's accomplished. Thank you.

Nadler: Sorry I gave you too much credit. Is that the entirety of your statement?

[Nadler seems befuddled by ADD]

Yoo: Thank you, appreciate Conyers open mind. Waive rest of my time.

Nadler: You don't want to summarize it?

Yoo: I don't need to.

Yoo: In response to comment about privilege, I have received instructions about what kinds of things I can talk about. I want to make clear, I have every desire to help committee, but also professional obligation to DOJ. There could be conflict between the committee…

[Shorter Yoo: Prepare for lots of stonewalling.]

Yoo: Remember the context. 9/11.

Schroeder: Not here to question anyone's best faith efforts to protect the country. Events have taken place WRT detainees, military commissions, behind each of these occurrences, legal analyses have mistakes in them. Important to look back. Three points about memoranda. 1)

Memoranda starkly reflect extreme view of absolute uncontrolled power. This power if applied to WOT is breathtaking in its scope. Defined that battlefield includes the US. Tactical decisions about how to go after terrorists, interrogate, detain, for the president to assert that in each and every respect that the president has unilateral and unreviewable authority is a position that's far outside mainstream of jurisprudence. 2) Not a criticism simply raised by Bush's opponents. Goldsmith. "Deeply flawed, sloppily reasoned, overbroad" Comey et al refused to agree that warrantless wiretap program was legal. Deeply flawed view of jurisprudence on strengths and limits of what president can do in face of statutory prohibitions. 3) Don't seem to have followed internally within OLC good practices. Yoo supplied more details. Still leave a number of questions in mind.

Nadler: Addington. Did you play a role in analysis of August 1 interrogation memo?

Add: No. I didn't say I had nothing to do with it. Let me read to you. Excerpt from a book. War by other means. Page 33. Various media reports that his (ADD) was so outsized. As the drafter of many of those opinions find this claim to be so erroneous.

Nadler: We don't need these quotes. Tell us what your role was.

ADD: [Writing notes down.] I'd be interested in seeing doct you're questioning me about in front of me. Assuming you and I are talking about the same opinion. Yoo coming over to see Gonzales. Gave us three subjects he was going to address. Goes off and writes opinion. [getting opinion] Mr. Yoo has not defended himself. I can as client on this opinion. [Huh? I thought Gonzales was opinion.]

Nadler: WaPo ADD advocated memo's most radical claim, that the President may authorize any interrogation method even if it crosses into torture.

ADD: No, Yoo said, I'll address COnstitutional authority of President.

Nadler: You didn't advocate any position. Do you believe PResident can authorize violations of torture statute.

ADD: What we're talking about are laws.

Nadler: Do you believe President can authorize violations of federal statute.

ADD: As general principle, no. But facts matter.

Nadler: When do you believe that President can violate certain statute.

ADD: I didn't say that.

Nadler: Is there any set of facts that would justify president violating statute.

ADD: Not going to render an opinion on every law.

Nadler: Do you believe that torture can be justified out of self-defense.

ADD: I've relied on opinions issued by DOJ.

Nadler: Did issue an opinion that President can violate FISA.

ADD: Constitutional questions raised about whether execution of statutes.

Nadler: Torture child to get information

ADD: You're seeking a legal opinion. I'm not here to give you legal opinions, you have your own lawyers to do that.

Nadler: What?

Nadler: Yoo. Severe pain, must rise to death, organ failure, or serious impairment. Where did you get that language from?

Yoo: August 1 memo? Your question is where did it come from?

Nadler: How did you come to that conclusion?

Yoo: When Congress passed that statute, no

definition. No guidance.

Franks: Clinton authorized assassination of OBL. Do you believe this is one of the implausible theories of criminal defense?

Schroeder: I haven't reviewed that opinion. The way the 2002 opinion are among the pieces of legal reasoning that are far-fetched. He says CrimDiv reviewed memo. He doesn't say they approved the memo. I'd be surprised if they did. Unless necessity was explicitly, it wasn't available. I'd be surprised to hear CrimDiv was in there.

Franks: It does appear interesting to me that Clinton could issue memo saying that assassinating someone is self-defense but now we're debating waterboarding. Yoo, part of Esquire interview. Precise guidance. Very well stated. Didn't want opinion to be vague. Clear line. Elaboration?

Yoo: Interview speaks for itself. Now, I think that when you're called on to interpret statute that Congress hasn't defined, people have to have clear definition.

Franks: Try as they might, majority should not be spinning life and death into soap opera. Interrogation was disclosed to Pelosi, she did not object. Was successful in preventing terrorist attacks.

ADD: Schroeder said not a good idea that Bybee memo addresses necessity. That's what his client asked him to do. It is the professional obligation to render opinion on what his client asks.

Conyers: Yoo. Appreciate appearance. During public debate it was reported you were asked that a President could order a suspect's child be tortured in grusome fashion.

Yoo: I continued to explain a number of things. It stops mid-sentence.

Conyers: Okay. Thank you. Is there anything that the president cannot order to be done to a

suspect if he believed it necessary for national defense?

Yoo: It goes back to that earlier question. Can I make clear, I'm not talking about…

Conyers; Just answer the question counsel.

Yoo: My thinking right now is that, first, the question you're posing

Conyers: What is the answer? You're wasting my time. We've all practiced law. Could the president order a suspect buried alive.

Yoo: I don't think that I've ever given the advice

Conyers: I didnt' ask you that. Do you think

Yoo: My view right now is that no American president would feel it necessary to order that.

Conyers: ADD. Did Cheney sit around approving interrogation techniques.

ADD: I wasn't at a meeting of the description you've given.

Conyers: Does unitary theory allow President to do things above

ADD: We all take oath to protect and defend Constitution. I don't know what unitary executive is. It's all described as Addington's. I've used it in quoting OLC opinions.

Conyers: You don't know?

[some steam]

ADD: I know exactly what I mean by it. The use of word Unitary by me, all it refers to is the first sentence of Article II, One president. All executive power. Not the parts that Congress doesn't want to exercise itself.

[Note: a friend in the audience says that Conyers rattled both Yoo and ADD]

King: Perhaps Chairman can bring down temperature.

ADD: Some things in Sands' book that were accurate and some that weren't.

Yoo: Sands said he had interviewed me for the book. He did not interview me.

King: At least WRT that statement, you find that to be a false statement.

Yoo: I can't tell what's in the book. He contacted me, I said, I wrote my own book. He told the committee he'd interviewed me.

King: We're still in middle of war. Context of 2008 or 2001, smoking hole, reconstruction of Pentagon. Without regard to Constitution or statute, different context. If the President had said we were going to cuddle up to terrorists. If we had been attacked again, which we haven't been, well, not on this soil.

ADD: Everyone wants to protect Americans. The Chairman lost several thousand in his district. We looked, I looked, through three filters, back when they were still smoking. First, was support and defend constitution. Everyone takes same oath. President has a different oath. Second filter is how within the law, within the law, I help maximize the President's options in dealing with it. Third filter, when you go to war you ask a lot of people to do some tough things. Chairman served in Korean war period. You want to make sure whatever orders they're given they're protected. One thing I would add, things were different back then. Things are not as different today as people seem to think. There can be legitimate judgments and disputes. No American should think the war's over. That's wrong.

Davis: Yoo, have not read your book. Opening statement you make observation that it was your analysis that the anti-torture statute, the interpretation would depend not just on method, but on subjects metal and physical condition. Test for torture in part subjective? In response, that interpretation did not come from legislative, not judicial opinions, there was no Congressional guidelines. One good source of

Congressional guidance, members of Congress. Did you consult with Sensenbrenner?

Yoo: I want to correct one thing I said.

Davis: Was Sensenbrenner consulted? ADD

ADD: I did not, and I don't know whether anyone did or did not.

Davis: Was SPecter consulted?

ADD: That's irrelevant to legal interpretation.

Yoo: I don't know.

Davis; Process of consulting with intelligence committee. Yoo, did you consult?

Yoo: All I know is what I've read in the papers.

Davis: To your knowledge they were not. Addington.

ADD: no reason their opinion would be relevant.

Davis: Thank you for answering that w/o too much struggle. We've heard "Context" over and over again. You had a Congress that was a rubber stamp for your agenda. You got PATRIOT, Force resolution, bipartisan support for both of them. 107, 108, 109, not a single time Bush Administration rebuffed on nat Security. Got expansion of FISA. Got MCA. We wouldn't be here today had you come to congress if you had said, give us an interpretation of what this meant. Tell us Sensenbrenner, Specter. The problem, I'll address to ADD, when you've got a Congress that's a rubber stamp for what you want. You ought not to be disrespectful of this branch of government. You didn't even trust people who were rubber stamps for you.

Ellison: Did you write August memo.

Yoo: I contributed to drafting about it.

Ellison: You checked in with Addington about what you were going to cover.

Yoo: I'm not allowed to talk about any individuals. I gave draft of opinion to WHCO.

Ellison: Yes or no. I'm asking you to confirm whether what Addington reported was right or not right. I hope this isn't coming out of my time.

Yoo: I have to follow guidance from DOJ.

Ellison: What privilege are you asserting? Who else was present when you checked in with Addington? Is that a repeat of your last answer?

Yoo: It's not my choice.

Nadler: Are you asserting a privilege? What privilege are you asserting?

Yoo: I assume, I can't say what the Justice Department's belief.

Nadler: The DOJ cannot order you wrt your testimony. It can instruct you to take a privilege. If you are asserting a privilege, we're entitled to ask you what privilege you're asserting.

Yoo: I beileve it's attorney-client privilege.

Nadler: since you're not under subpoena, we'll take that under advisement.

Ellison: What do you mean by implement?

Yoo: It can mean a wide number of things.

Ellison: You contributed to memo. Memo was implemented at some point. Guidance was followed and put into action.

Yoo: You're asking whether the memo was followed.

Ellison: I need you to stop wasting my time.

Yoo: You're asking me about things that other people would have done, not me.

Ellison: Schroeder, do you understand about what implement means?

Schroeder: prompted by CIA, once advice was forthcoming, some of the techniques that fell on legal side of line were employed.

Ellison: were the legal techniques employed?

Yoo: We did not make policy.

Ellison: Did interrogators ever come back and ask for interpretations?

Yoo: Again, I can't tell you

Ellison: Shroeder, was memo in effect during Abu Ghraib.

Nadler: Gentleman will suspend, again. Yoo, are you asserting a privilege.

Yoo: Mr Ellison's questions may involve classified information.

Nadler: You're asserting that in order to answer Ellison's questions you might have to reveal classified information.

Yoo: As I understand question, I'd have to discuss classified information.

Davis: Parliamentary inquiry. After come back from break, if the chair would consider addressing Yoo and Addington, I've never seen two witnesses struggle so much with ordinary language. I've never seen it like this before.

Ellison: When the ones who were addressing the witnesses, did those individuals have a lawyer they could go to ask about memo that you contributed to?

Yoo: CIA has about 100 lawyers. I assume you believe CIA conducted interrogations.

Ellison: Were you ever asked questions about whether techniques were permissible.

Yoo: I can't answer your question.

Nadler: You can't answer without revealing classified information?

Ellison: Did your memo allow for use of siccing dogs on interrogated individuals.

Yoo: Same answer.

Nadler: Question was did your memo allow for that.

Yoo: Memo speaks for itself. Does not discuss what you just mentioned.

King: Help! I can't keep flow when the chair asks questions of the member that was recognized. Chair trying to ask what privilege was invoked.

Wasserman Schultz: Addington. September 2002 visted Gitmo. A JAG attorney, Beaver, said the message was do whatever needs to be done. Did you visit Gitmo?

ADD: I went there a number oftimes.

Add: I don't remember dates. I don't know what period you're describing. I've been there 5 times. Three or four

WS: Did you meet with JAG attorneys.

ADD: I don't remember meeting her. Met her at DOD GC much later. Invited by DOD and thought it'd be a good idea. I don't know about methods, I remember they would show us interrogation room, look through one way mirror.

WS: Did yo discuss interrogation methods?

ADD: I'm not sure this memo has methods.

WS: Did you discuss specific methods?

ADD: I don't recall doing it.

WS You didn't, or you don't recall?

ADD: I don't recall.

WS Did you discuss specific interrogation methods.

ADD: I don't recall.

WS Any discussions about Augsut 1 memo that offered advise on interrogations.

ADD: Fairly certain I did not.

WS Do you deny that you said, do whatever needs to be done?

ADD: Yes I do deny that, that quote was wrong.

WS: What kind of interrogation did you observe?

ADD: Orange jumpsuit.

WS: No phsyical contact with interrogators.

ADD: No.