

HJC TESTIMONY: MICHAEL MUKASEY, THREE

Decided to make a new thread to keep this clean.

First order of business: did you notice that Darrell Issa said the Republicans had gotten answers from Rove himself, so he wouldn't have to show before Congress? Well, Issa entered those answers into the Congressional Record and here they are. I'll put up a post on them later—but the short version is the Republicans are now actively conspiring with Rove to allow him to evade responsibility for his actions.

Here's the live stream for the hearing.

And, as a reminder, Governor Siegelman will be joining us at FDL tomorrow at 12ET/9PT. I'm sure we'll talk about contempt for Rove's dodgy answers and about the fact that Michael Mukasey seems to think Bush's invocation of Absolute Immunity was proper.

Gohmert: Raid of Congressman Jefferson's office—to cleanse of protected or privileged documents. Do you have a firewall capacity?

MM: Yes.

Gohmert: Scalia thinks the Courts know nothing about security concerns. blah blah blah SCOTUS micro-managing the trials.

MM: Decision is the law of the land, and I am moving forward to treat it as the law of the land.

Artur Davis: Sanchez raised and I raised in phone call yesterday. Siegelman prosecution. Possible political influence. Not been raised publicly. As you perhaps know, emails that surfaced that suggested that various jurors engaged in misconduct, they had consulted the internet and other conduct that I think you would agree was improper. Motions filed urging

new trial. Protracted dispute. Series of hearings back and forth. Govt took position that evidentiary hearing had to be very limited. In July of this year, Chief of Appellate division notified Defense Counsel that while District Judge Fuller was considering these motions, that District Judge had ex parte communication with US Marshall Service, had been instructed by USA office to conduct its own investigation. US Marshall service reached conclusion that emails were not valid. You were a district judge. Would there have been any circumstance where you would have allowed yourself to have ex parte conversation while you were considering motions.

MM: Facts somewhat differently. Jurist co-workers got copies before judge, turned them to Marshall, Marshall to USA, gave them to US Postal Service. Turned over to someone else. Postal service reached conclusions.

Davis: While the investigation was ongoing in April 2007, after the first evidentiary hearing, Representatives apprised Chief Judge Fuller and concluded that purported emails not authentic. Chief Judge did not solicit this report. They all touched on the underlying question of these emails. Would there have been any instance where you would have allowed yourself to have an ex parte communication from branch of govt while considering a motion.

MM: Don't know the reason here.

Davis: Would it trouble you?

MM: It is important, let me finish. I don't know what role those emails have in larger investigation on OPR. I may be called on if there's a finding of misconduct, so I can't offer opinions.

Davis: Narrow in on alleged facts. Very subject is whether those emails were authentic. What troubles me is the notion that the govt asked teh Marshal service, to conduct an investigation, didn't share it with the Defense Counsel, shared it with the Judge.

MM: Don't know the basis for those rulings.
Enormously big presumption against undermining jury decision.

Davis: Another quick question. Disclosed this info on July 8 of this year. Do you know about the circumstances about which Stimler learned about these communications? Concern again would be this—One year after this ex parte communication, the Marshall service disclosed it to govt. Would raise questions about whether they've turned over all information. Frankly, it appears that the Marshall service may not have told Ms Stimler until very recently. Does it trouble you that Marshall service didn't disclose contacts with Judge Fuller? Should Judge Fuller have disclosed that to Defense Counsel.

MM: Not going into Fuller's decision.

Davis: Are we confident that Prosecution did not have conversations with Judge Fuller about conversations with Marshalls? Should the Department ask them?

MM: Await the OPR report.

Davis: Can we see OPR report?

MM: Absolutely. Congress was the complainant. Complainant always informed. If finding of misconduct, then you'll get the report.

King: If practice to get automatic stay on immigration hearings?

MM: Depends on whether they have a good faith basis for asylum.

King: They're going to seek to stay here, if they're automatically granted a stay, that'd be a human nature response. Looking at caseload, one to put more resources in courts. Another is statutory perspective to narrow appeal.

Keith Ellison: Reports regarding FBI investigations and new policy that would allow them to take into consideration race and religion.

MM: New guidelines. Speculation about whether they would allow that practice. Guidelines that forbid predicating investigation on race, religion, exercise of First Amendment rights. Rationalize process going on since after 9/11 on recommendation of at least Robb Silberman and 9/11 Commissions. FBI becomes intelligence organization. One on how to open investigation. At times cross-cutting. Same behavior described in different ways. New guidelines will also make it apparent, growth of monitoring within FBI and National Security Division that FBI not doing that kind of profiling.

Ellison: What kind of input can members have?

MM: Will be briefed before go into effect. Will be signed by me. Guidelines, not statutes. Can be changed. Plan to sign them, then show them to Congress.

[Shorter MM: No input]

Ellison: Unindicted co-conspirators. Case in Dallas, Holy Land case, 300 people subjected to public derision, but no way to get off the list. In general, whether it's appropriate to publish list of unindicted co-conspirators.

MM: Required to turn over to defense list of unindicted co-conspirators. That's why they do it. Just as much pleadings as any other pleading.

Ellison: I've been involved in cases where unindicted co-conspirators not made generally available. Legitimate to put people on list where you never make claim as to what statements might make them unindicted co-conspirators. What are your views on that.

MM: AUSAs take very great care when they compile such lists.

Ellison: What about when they don't? Shouldn't there be a way to exonerate them?

MM: In the same way you can't announce that someone's not under investigation. My experience those lists are drawn carefully.

Ellison: Sometimes that careful process not followed. Should be some way to clean up mistakes. Watchlists, who get hospitality when they go to airports. We have gone overboard and we need to clean up these lists. Do you think it's a problem?

MM: Seen reports. I know that airport screening process is not perfect. I've been stopped more than once. That said, there ought to be away of making sure the list is accurate. There ought to be a way of assuring that people who aren't on list get off.

Ellison: We waste time on people who shouldn't be on there. Work with you to make sure there's a way to do this.

Trent Franks: Those people just trying to protect the US, disheartened that our committee trying to paint people with recriminations. I agree that Congress should step up on habeas cases. Unelected judges.

MM: Everyone is forgetting 9/11.

Franks: If we could do one thing to protect the country, what would that be?

MM: Pass this legislation. And remind people to be afraid.

[I hate when these things turn into blow jobs like that]

Jackson-Lee: Introduce info into record, Harris County Jail. Letter asking for full investigation on watchlist. CNN reporter John Griffin. Questions for this hearing on new guidelines on ethnic and racial criteria.