

HJC TESTIMONY: MICHAEL MUKASEY

Today's hearing should be contentious. I expect Dems will want to talk about why Karl Rove feels he can blow off Congress, why Michael Mukasey begged Bush to invoke Executive Privilege to protect Cheney's FBI interview reports, torture, and voting rights. Mukasey, undoubtedly, is going to want to talk about how HJC should drop all of those issues and instead focus on his call for Congress to rededicate war against Al Qaeda and to legalize keeping detainees indefinitely even if their habeas petitions say there's no reason to hold them. I'm sure the Republicans on the Committee will alternate between supporting Mukasey's call to rededicate war and interfering with the hearing generally, as they did with the Dougie Feith hearing last week.

As scheduled, the only place to watch the hearing live is the HJC feed. CSPAN will be showing it on tape delay later in the day.

One more relevant announcement: **Governor Don Siegelman will be joining us at FDL tomorrow at 12 ET/9 PT for a live chat—we expect to talk about contempt for Karl Rove, as well as anything that comes up in today's HJC hearing.**

Conyers: Not seen enough cooperation on voting rights. Regular meetings on voting rights have not happened and have not been effective. Probably 100 days before the election, we don't know specifically how govt will respond to practices that made elections of 2000 and 2004 so controversial. Highest order of responsible, because we're going to be held responsible. In addition to serious problems in 2000 and 2004, numerous other problems, troubling redistricting plans. Hearing tomorrow and DOJ to this moment doesn't have anybody committed to coming to that hearing. Head of voting section hasn't agreed to come before us.

Conyers: Trying to get key members of Bush Administration before us: Miers and Bolten refused to cooperate in contempt proceedings bc DOJ has said they're not going to enforce this subpoena. This Department continues to validate unprecedented concept of total immunity for high ranking officials. Last week, they oddly argued that non-grand jury statements somehow privileged. Waiting months and months for critical documents relating to obstruction of justice, secret OLC opinions, strike at core of Constitutional freedom. With less than 100 days remaining before election, this delay is unacceptable. AG has continued unfortunate tradition of refusing to appoint special prosecutor for evidence of misconduct that would require DOJ to bring in outside counsel. We've got a big need for a lot of information, and we hope today will be the groundwork.

Lamar Smith: We could take immediate action to discuss habeas proceedings. It is the responsibility of this Committee to act. SCOTUS opened a pandora's box. AG has made it clear that Congress must act. If this committee fails to act, sensitive information will be revealed, and terrorists can forum shop.

[Jeebus, these guys are so fucking predictable.]

Smith: Protect America's children from cyber-predators. Require retention of subscriber information. Confront and deter criminal activity in IP theft.

[Someone—didn't see who it was—asks for a brief colloquy. Conyers says, "Absolutely not" going to yield for that. As I said, absolutely predictable.]

Mukasey: Thank you for the opportunity to testify. Better acquainted with talented professionals in DOJ. Disagreements, as there will be. Policy disagreements. Instances where interests of executive and legislative branch in tension, part of genius of separation of powers. Work together on behalf of common clients. First, first post-2001 transition looming, take

every step to make sure custody transferred smoothly. 2 weeks ago, a vital step, in passing FISA. Earlier this week, called on Congress to take another step, to pass legislation to resolve detainee issues. Congress and executive branch better position than courts. Outlined six principles to guide this legislation. Look forward to dealing with it promptly. Second, elections, DOJ must make sure elections run smoothly. Department will maintain significant presence through outreach and monitoring. Will supplement our efforts to enforce voter rights act and laws to prevent voter fraud and campaign issues. We will be driven by what the law and the facts require, and only by that. We must pursue all of our cases in that matter. Well aware that allegations played improper role in DOJ—those allegations played out in recent report. Even before I became AG last fall, DOJ had taken many steps to remedy the problems.

[Mukasey asks whether he should be put under oath, Conyers says nah]

Nadler: When you last appeared, no investigation into torture bc of OLC opinions. It's now clear that one of detainees—Zubaydah—interrogated for months before first legal opinion. AG Ashcroft did not recall providing advice before that time. Have you or anyone investigated legality of methods used before Yoo memo?

Mukasey: Part of that question involves whether methods consistent with memo.

Nadler: Do you think someone should take a look at that.

Mukasey: May have been taken.

JN: Subpoena for all unclassified OLC opinions. Department refused to provide to Congress. Why?

MM: Two considerations: One classification.

JN: Unclassified.

MM: Someone has come for advice, before they act. Maintaining deliberative process, ask for advice and get it.

JN: That's a claim of executive privilege.

MM: Deliberative.

JN: A new privilege, other than EP?

MM: I think something separate. One of kinds of protection for good reason.

JN: If not protected against subpoena by EP, then why not give it over.

MM: Authorized to keep in confidence advice.

JN: I understand the reasoning. American people client of DOJ. I ask you to provide committee with legal basis for this. With some citations.

JN: Many states preparing purge list of voters. In FL, such a list was prepared by commercial vendor, 20% error rate, they knew that. What is the Department doing to oversee to make sure that purge lists do not disenfranchise legal voters? Broadly, making sure they conform with all laws. Always available, provisional ballot.

Lamar Smith: Boumediene case. Judge Lamberth took unusual step of issuing news release, hoped Congress would respond sooner rather than later.

MM: After the speech. I do feel it was urgent. I was not drafting legislation, I was asking that Congress step up and do it.

Smith: Sense of urgency.

[Besides an upcoming election?

MM: That one of these folks could be released in US, needs to be prevented. Also much of evidence comes from classified information, protect how it's used. Some put on trial for war crimes, make sure that habeas not delaying military commissions.

[Did I mention there's an election coming up?]

MM: Congress should reaffirm that we have a right to detain enemy detainees. We think there is firm authority, but it wouldn't hurt for Congress to reaffirm that. Practicality appeared numbers times in Boumediene decision, but they

didn't say how to do practicality. Two track system, CSRT and habeas. CSRT system should be cut off completely, and rely on habeas.

Smith: Some of these individuals might be released. If we don't ask, some of those terrorists might be released?

MM: So far, it hasn't happened. Want to commend DC District for steps it is taking, ordering things procedurally. If someone decides they want to bring someone here, there are additional rights bc landing on American soil, we don't want that to happen inadvertently.

Bobby Scott: Criminal justice. Housing crisis. Appears billions lost somebody's made a lot of money, to a large extent through criminal fraud. Try to get a briefing on this. Whether or not crimes were committed that helped perpetuate this.

MM: We have charged more than 400 defendants, ranging up scale from people overvaluing houses, banks closing eyes to that, rating agencies, up to two promoters of hedge fund who are charged with overlooking the fact that the paper they were selling was worthless. Investigation in full pace.

Scott: Several bills pending dealing with gangs. One takes proactive approach. Other legislation waits for people to join a gang and get overcharged. DOJ cites under category of what works, many approaches consistent with Youth Promise act. Could you provide analysis of what works and what doesn't work?

MM: Comprehensive approach. In the end, we are principally a law enforcement organization.

Scott: Can you cite us guidance? Federal prisons. Crisis in personnel. Prison industry widely supported by federal prison personnel. Could you explain why DOJ hasn't been more aggressive in opposing efforts to weaken program. Some concern that staffing levels are so low that prison guards may be in danger.

MM: Not supposed to express relief that supplemental in excess of what was required. Glad to see that. WRT prison industries. Those jobs not only good training, valued by prisoners, control mechanism, loss of job for violence, a helpful way to control people in prison. When I was a judge, a proponent of that program, still am.

Scott: Staffing?

MM: We think we've got it under control.

Coble: IP.

Mel Watt: April 23, Director of FBI. Particular referral finally got a response 2 days ago. October 2006, field office forwarded letter from NC State bureau of investigations, requesting investment into AERO contractors. Participant in CIA sponsored rendition program. We do not have an open investigation under our jurisdiction. Would it be a violation of law for a contractor to fly persons to overseas torture sites.

MM: Before people sent abroad receive assurances that they will not be abused.

Watt: A letter asking for an investigation. Not an active investigation. Don't know what happened in interim. Whether no basis, whether department looked the other way. I don't even know whether you all think sending someone out of the country to a torture site would be a violation of any law, as it stands.

MM: I'd like to look at case before I comment on it. We know little more than I had told him.

Watt: I'd like to know if the department thought rendering someone to a torture site would be violation of law. Voting concern. We believe there will be a voting pattern substantially different than there has been. Nobody is anticipating those demographic shifts. Is your task force including that? Make sure there are enough trained people to get people processed without standing in line for hours on end.

MM: Increased enrollment. Have to keep in mind.

Organized by state and local govts. Need to make sure they know where there is increased enrollment.

Gallego: Immigration reform and amnesty. "Most reasonable people think this could account for 20 million people." Can you do a background check on all those people. Rhetorical question.

Zoe Lofgren: Questions about policies on prosecution of misdemeanor immigration measures, how impacting other prosecution priorities. Trade-off between immigration and violent crimes? 58% of all prosecutions in April for misdemeanor immigration.

MM: Yes, increase in misdemeanor prosecutions. Not one-size fits all. Where we've increased immigration prosecutions, the amount of infiltration has gone down. I don't believe there's been a trade-off.

Lofgren: Prosecutions have turned to local law enforcement. USA offices so busy prosecuting nannies and busboys.

MM: We do prosecute drug cases where it appears that people are bringing in drugs in small amounts.

Lofgren: I don't think your department's statistics back up that claim.

MM: Organized immigration appeals. Managed to screen some summarily.

Lofgren: Emergency for our circuits. Answer to look at what caused this shift to cases. Circuits believe BIA is rubber-stamping.

Steve Chabot: Delta merger.

MM: Weigh merger on competition against two companies that can't stay in business on its own.

Chabot: Members of OH delegation, sent letter expressing concerns about DHL's decisions to enter into agreement—implementation could impact Ohioans and consumers nationwide.

Chabot: Overturn death penalty for child rape. Court claimed consensus against death penalty for child rape. Actually Congress did say this in UCMJ.

MM: I take some consolation that all 9 justices missed it, both parties missed it, and the parties missed it. The fact that Louisiana has petitioned allows us to join that. Decision hasn't been made whether to do that or not.

Sheila Jackson-Lee: Add to concerns of my colleagues. Civil Rights, less than a dollar per American. Express concern on random ICE raids that generated the arrest of American citizens. Report back from DOJ on how coordinating with ICE that bring in Americans. Broken watchlist process, people trying to become a citizen, unable bc of watchlist. Put into record letters regarding watchlists. Series of incidences. Jena 6, Shawn Bell, Tasing of black man in Louisiana. Also Harris County, Prosecutor has sent racist and sexist emails. Proclivity to remove black jurors. DOJ would not review. What is the amount of money and staff that you're using to purge out criminal justice system relating to violation of civil rights of African Americans. What are we doing for those targeted for racial, ethnic, sexual reasons.

MM: Can't tell you amount of money. Number of cases up. We're doing this across the board. WRT Harris County, if evidence comes to hand, we will pursue that. You've been critical, but I'm grateful you've been involved in it.

Jackson-Lee: I ask that you look again. Elimination of minority jurors.

MM: Will get back to you.

Lungren: 1.5 years ago, FISC made a ruling that new circumstances overwhelmed FISA law. Invited Congress to deal with that. We lost valuable opportunities for valuable intelligence. You said one of the concerns about releasing detainee. What does it mean to order release of detainee at Gitmo. Will courts be able to order them brought here and released. Go further about

urgency of the matter.

[Because we've got an election coming up, and we Republicans have nothing else than fear and terror.]

MM: Court has left matter open. Must be open to decision maker to direct release. All are aliens captured abroad in battle conditions who have absolutely no right to be here. No good reason for court to bring them here, people who could pose significant danger.

[Well, I guess your buddy Cheney ought to have made sure these people weren't detained by mistake, then, huh???

MM: Courts can't collect information, Congress can. Courts don't have collective expertise that Congress does.

Lungren: Over 200

MM: Down from 775.

MM: SCOTUS said this has to go ahead quickly. There may be inconsistent results reached. Legislation can ensure

Lungren: Not clear we can produce intelligent legislation.

MM: PAA was intelligent legislation. Capacity and intelligence is here.

Maxine Waters: Discrimination complaints within your own department.

Goodlatte: Voter Fraud!!! How can we make sure illegal aliens don't vote?

MM: Proper identification.

Goodlatte: Can increase turnout! I'll pretend there's no reason turnout might increase in 2006 over 2002. Do you think securing voter ID laws gives voters security and it won't be diluted.

MM: All that study shows is you don't cut down number of voters. Whether cause and effect, I don't know.

Goodlatte: Local officers must be able to communicate with ICE regarding status. Sanctuary policies, released back to murder.

Robert Wexler: Hopeful that you can explain how this administration nullified power of Congress to investigate executive branch. Unfortunately, your actions have allowed this president to assert unprecedented claims and out right refusal to come before us. Cheney interview with FBI. In a demonstration of just how far you have stretched EP, YOU declared that those FBI interviews were internal WH deliberations. These FBI interviews nothing of the story. Zero relation to any official WH business or policy. Transcripts of FBI investigators interviewing Cheney. Does your justice department consider ALL FBI investigators to be part of WH. Any way, any conceivable way, that WH could be investigated without triggering EP.

Mukasey: Not transcripts, reports. Those conversations concern conversations he had internally, concerning matters at the heart of EP. That was the subject of those 302s. The fact that those conversations happened to be recorded doesn't change the protection afforded to them. That's our view. Not my invention. Nicely illustrated in a pair of cases involving Nixon, objection sustained in response to Congressional subpoena, but not sustained in response to investigators subpoena.

Wexler: VP EP in response to his role in outing of CIA Agent?

Mukasey Core EP concerns.

Wexler: IF VP did participate in outing of CIA agent. Core actions?

Mukasey: Prosecutor closed that case, no further investigation necessary.

Wexler: Definition of internal deliberation?

Mukasey Deliberations between President and those immediately around him for purpose of making decision.

Wexler: Only qualify to extent talking about conversations President had.

Mukasey: Purpose of advising president.

Wexler: Scheme to out CIA Agent.

Mukasey: Subject of inquiry by prosecutor.

Wexler: Does it qualify for EP?

MM: In abstract, no.

[Well done, Wexler.]

Keller: Media shield bill. Sensible exceptions not enough for Bush Administration to support shield. Any version you would find acceptable?

MM: Nothing I've seen in bill as presented would allow for sufficient protection of classified information. Media shield bill solution in search of problem. Have a process in place. USAs not free to subpoena reporters. Less than 2 dozen cases since 1993.

Keller: Language that deals with that.

MM: Higher standard for prosecuting leak case. Provide protection for leakers.

Keller: Ranking members and Chairs of intelligence and Armed services committee felt language was sufficient.

MM: Requires showing that classified information properly classified. Childs play to give it to someone not authorized to leak it.

Keller: We can agree that 398 House members voted for it. Obama and McCain said they'd sign it.

MM: Ten angels swearing on a bible would not change the problems with that bill.

Keller: Good results of ATF violent impact team. And COPS program.

MM: COPS program never meant to be perpetual.

[This is total bullshit—Senator Biden told him a few weeks ago that it was intended to be

permanent]

Sanchez: In response to questioning before SJC about Siegelman, you stated there are: Various avenues open for exploring those allegations, including having testimony on the subject. Given that, do you support Karl Rove's decision to ignore a Congressional subpoena?

MM: As I understand it, Rove acted at request of President subsequent to EP. Offered to meet, and

Sanchez: My understanding is that if the WH wants to invoke EP, witness has to show up.

MM: That's a matter that's being litigated.

Sanchez: You agree that Karl Rove can ignore a congressional subpoena.

MM: Question is whether someone has to appear, when proper EP has been made.

Sanchez: Prior case law found that not to be the case. If we're talking about conversations with USA in AL, I have a hard time seeing how EP can be asserted. Apparently we disagree. Non-prosecution issues. Do you believe that all qualified indivs should be able to serve, or do you favor no transparency?

[Goddamnit, Sanchez, you were schooled. No mention of "official duties"? Acceptance of the EP claim?]

MM: Set of guidelines that ensures transparency you advocated.

Sanchez: Issued on the eve before a hearing we were having.

MM: I was unaware of the hearing.

Sanchez: Guidelines lacking specificity.

MM: Wait and see whether they work.

Sanchez: So far it seems to be within the discretion of one person within DOJ.

MM: What happens within guidelines, is that a

panel of at least 3 people, that person has to be approved by DAG. Money that comes to fund someone who serves is paid by corporation.

Sanchez: Still questions to whom that monitor owes his duty.

MM: Owes a duty to act in a fair open and transparent way. Ex-govt people put their reputations for fairness on the line.

Sanchez: We would love to get more information, so far we've not received all the information that we requested.

8 minute recess, I'll start a new thread.