

SANCHEZ V. MUKASEY ON “EXECUTIVE PRIVILEGE”

I wanted to look closely at the exchange between Congresswoman Sanchez and Attorney General Mukasey to see if it gets us any closer to determining whether DOJ reviewed Bush’s invocation of absolute immunity for Rove—and specifically whether Mukasey bought off on the claim that the matters in question pertained to Rove’s “official duties.”

Sanchez: There are a number of different areas of questioning that I have and I’m going to try to get through them as quickly as I can. First off, in response to questioning before the Senate Judiciary Committee on July 9 about the allegations of selection prosecution of Alabama Governor Don Siegelman, you stated and I’m quoting you here, “Various avenues open for exploring those allegations, including having testimony on the subject.” Given your assertion about the ability of Congress to investigate the Siegelman matter through testimony, I’m wondering, do you support Karl Rove’s decision to ignore a congressional subpoena on July 10 and refuse to testify about his role in the Siegelman matter and other matters regarding the politicization of the Justice Department?

Mukasey: **As I understand it, Mr. Rove acted at the request of the President in response to the invocation of Executive Privilege.** He has offered to meet with staff, he has offered to discuss the matter—

Sanchez: But he has not offered to be under oath or be subjected to a transcript, and my understanding from

prior court law—and I would expect an Attorney General to understand this as well—is that if the White House wishes to invoke a claim of Executive Privilege, the witness still has to present himself before Congress and claim that privilege on a question by question basis.

Mukasey: With all due respect, that's a matter that is still being litigated on which I can't comment any further.

Sanchez: But prior case law has held that that is the case.

Mukasey: Don't know that. I know that is a matter under active litigation and is I believe sub judice before a judge in—

Sanchez: So you agree that Karl Rove can disregard a congressional subpoena—

Mukasey: What I'm saying is **the question of whether an immediate advisor to the President has to appear at all when a proper claim of has been made of Executive Privilege is a matter that I believe is actively before a District judge** and I shouldn't comment anymore on that and I won't.

Sanchez: I think if you brush up on your case law, you'll find that prior case law holds that not to be the case. And we are talking about conversations that Mr. Rove might have had with others in the US Attorney's office in Alabama for example, in the Siegelman matter, not conversations with the President himself, I have a hard time seeing how the claim of Executive Privilege can be asserted if it wasn't advice that was given to the President or direct conversations with the President. But apparently we disagree on that matter. [my emphasis]

Can I just say, while I appreciate Sanchez' tone and invocation of case law, Mukasey really schooled Sanchez. Thumped her.

In Mukasey's first description of what happens, he claims that Bush invoked Executive Privilege which—as we usually understand the term—he did not. Bush only invoked absolute immunity, without having DOJ—as Bush had it do last year when Fredo was in charge of the department—review this particular subpoena to see whether Congress' need to interview Rove overcame Bush's need to protect his communications with Turdblossom. Now, perhaps he's speaking broadly—in the sense that this "absolute immunity" bullshit is based on privileges accorded the executive branch. And in his second reference to what happened, Mukasey at least stresses what's at issue here—the claim of "absolute immunity," the claim a senior presidential advisor can simply blow off Congress entirely.

But then, "a proper claim of Executive Privilege" has not been made!

Here's where Sanchez gets schooled. She gets distracted with something totally unrelated—whether or not Bush and Rove talked about witch hunts against Siegelman—which neither Rove nor Bush relied on (because this is not traditional Executive Privilege, it is just absolute immunity in the absence of Executive Privilege).

So, given the opportunity of getting to the question that is relevant in this matter—whether or not the matters in question were part of Rove's "official duties"—Sanchez instead goes into an argument that was perfectly valid and devastating on July 1, when Robert Luskin claimed Bush was **going** to invoke Executive Privilege, but became utterly moot on July 9, when Fielding and Luskin dropped all claim to traditional Executive Privilege and instead relied entirely and solely on absolute immunity. And in the process, Sanchez ignored Mukasey's premise—that absolute immunity must be based on

a proper claim of Executive Privilege—which it was not in this case. Congratulations Congresswoman Sanchez, you blew the best opportunity we have had to pressure Mukasey into either endorsing Rove's claim that his "official duties" pertain to making sure Governor Siegelman gets prosecuted, or to refer Rove's imminent contempt citation to USA Jeff Taylor.

Meanwhile, while I'm certain that Mukasey schooled Sanchez in this exchange (or maybe Fred Fielding schooled both Mukasey and Sanchez), I still can't for the life of me tell whether he has any clue about the facts of this case or whether he has reviewed it at all. I guess I'll have to refocus on my campaign to get an answer out of DOJ Deputy Public Affairs Director Peter Carr (whose phone number is 202-616-2777) or Fred Fielding, rather than hoping that Congress can make it easy and ask these questions themselves.