

# **NOT THREE BRANCHES, NOT TWO BRANCHES, JUST ONE BRANCH OF GOVERNMENT**

Just eight years ago, I remember our country having three independent branches of government. Apparently, the Mukasey DOJ has decided that three branch thing is quaint. In addition to sending Congress snotty letters telling them to back off the torture tape destruction, they've sent a similar letter to at least one judge.

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## **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."

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.

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## **DID THE D.O. LAWYER EVEN KNOW ABOUT BRINKEMA'S REQUEST?**

Among the details in Isikoff and Hosenball's piece on the decision to destroy the torture tapes is a representation of DO's lawyer who advised the tapes could be destroyed which makes it sound like he had no clue there was an active inquiry for the tapes.

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## **WHEN ALL EXECUTIVE ORDERS TURN TO PIXIE DUST**

Marty Lederman tells us not to worry about the legality of the OLC opinions Senator Whitehouse revealed last Friday. But he tells us we may need to worry about the constitutional bad faith that Whitehouse's revelations imply. This post begins a discussion about what happens when all the President's Executive Orders turn to Pixie Dust.

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## **SEEING A CATFIGHT WHERE THERE IS NONE**

Spencer Ackerman's seeing a catfight between Nancy Pelosi and Jane Harman where there is none. Sure, we all know they don't get along.

But on the issue of torture briefings, Pelosi (if anything) makes Harman look good, and portrays agreement rather than disagreement.

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## **MICHAEL MUKASEY, THE SHORTEST HONEYMOON EVER**

Mukasey's having a heck of a honeymoon, isn't he? In addition to running the joint CIA-DOJ investigation of the destroyed terror tapes, now Feingold (on both SJC and SSCI) wants him to answer the questions he refused to answer in his nomination hearings.

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## **THE REVOLT OF THE SPOOKS**

There has been a lot of hand-wringing suggesting that the story revealing some Democratic members of the Gang of Four was a hit piece by Republicans (or, specifically, Porter Goss). That strikes me as an overly Manichean view of things, in which an article that makes Democrats look bad could only be a Republican hit piece. There's another party in this equation—the Intelligence Community. The events of the last ten days make more sense, it seems to me, if you consider all of those events as a revolt on the part of the Intelligence Community.

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# **NANCY PELOSI: CONGRESSIONAL LEADERS DO EXPECT THE SPANISH INQUISITION**

The WaPo breaks the news that Nancy Pelosi and others were briefed on the Administration's use of torture. Pelosi admitted that she raised no objection to those practices.

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# **BUSH'S DIRECT AND CONSTANT KNOWLEDGE OF THE NIE INTELLIGENCE**

The WaPo provides answers most of our questions on the genesis of the NIE. It shows that Bush has known a lot more about the genesis of the NIE than he has let on. Too bad this article appears on a Saturday and under the cloud of the torture tapes news.

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# **WAS RAMZI BIN AL- SHIBH THE SECOND AL QAEDA DETAINEE?**

Have you noticed that no one is telling us who the second Al Qaeda detainee is—the one whose torture tape was destroyed along with that of

Abu Zubaydah? What if it was Ramzi Bin al-Shibh?