

CARETAKER FOR THE REGIME

Carrie Johnson's got an interestingly-timed profile of Michael Mukasey today. She accurately describes Mukasey as trying to, above all, just get to the end of the term with no big new scandals erupting.

From a book-lined den on the fifth floor of the Justice Department, the attorney general is watching the clock.

Tenure, after all, is short for Michael B. Mukasey, a retired federal judge who has just six more months to restore confidence in a department battered by allegations of improper political meddling before time runs out on the Bush administration.

Mukasey is one of several elder statesmen who accepted the president's request to rejoin government late in the second term, only to confront increasingly intense political battles and the detritus left by their predecessors. Yet, unlike Michael Hayden at the CIA and Robert M. Gates at the Defense Department, Mukasey has complicated his task with his steadfast refusal to reopen old wounds and purge the ranks of his roiled department.

Senate Judiciary Chairman Patrick J. Leahy (D-Vt.) recently appraised Mukasey as "content to serve as a caretaker for the regime of excessive executive power established by the Bush administration."

As Democratic lawmakers and White House officials tangle over how actively investigators should explore the past, the attorney general generally has sided with the administration and declined to open criminal probes on matters that predate him.

In the past month, Mukasey has rejected requests to name a special prosecutor to examine whether Cabinet officials committed war crimes when they approved harsh interrogation tactics for terrorism suspects. He refused to take a second look at a public corruption case that 52 bipartisan state attorneys general say smacks of selective prosecution. He refrained from characterizing the department he joined last November as torn apart by partisan discord even though more than a dozen officials, including his forerunner, Alberto R. Gonzales, departed amid a politically charged firing scandal.

I say this is interestingly-timed because most of the stonewalling she lists are the same things Democratic Senate Judiciary Members listed a few weeks back when Mukasey testified before the Committee: torture, Siegelman, the politicization of DOJ (she missed John Yoo's OLC opinions). But that was then, this is now, and in the interim two weeks, two conflicts have arisen, which both threaten to make Mukasey the point of controversy, rather than the guy trying to tamp it down.

First there's the matter of Karl Rove's invocation of absolute immunity. The danger for Mukasey with it is not his involvement. Rather it's the apparent lack of any involvement from DOJ leading up to Rove's extraordinary snub of Congress. As I've explained, it appears that, rather than having DOJ complete a review of whether Rove had any legal claim to invoke this absolute immunity bullshit, Fred Fielding simply dug out a memo pertaining to a completely different subpoena and used it to claim that the White House had cover from DOJ in advising Rove to blow off Congress. Now, given Mukasey's stated policy about enforcing contempt from Congress—that is, that he would not refer contempt to DC's US Attorney so long as the invocation of privilege relied on an opinion

from DOJ—he ought to be willing to enforce contempt in this case. After all, the White House has no advice (or has hidden any advice) from DOJ analyzing this instance and asserting that Rove was, in fact, eligible to invoke immunity in this situation. And if Mukasey tried to claim he was okay with Fielding pretending a memo from last year could apply, with no further analysis, to the subpoena this year, then he would then have to buy off on the dangerous claim that it was Karl Rove's "official duty" to conduct witch hunts against Democrats. Mind you, I don't doubt that Mukasey will still try to find a loophole to prevent DOJ from arresting Karl Rove. But any possible loophole will have some increasingly dangerous possible repercussions.

And then, last week, Mukasey rather ridiculously begged Bush to invoke executive privilege over Cheney's FBI interview report, basically asking Bush to obstruct justice again so that Mukasey did not have to risk jail time in his efforts to prevent us from learning whether or not Cheney admitted to ordering Libby to leak Valerie Wilson's identity. While it appears that Oversight has no business meetings scheduled anytime soon at which it could vote to hold Mukasey in contempt, Waxman did prepare a contempt report that would be ready at hand any time he wants to hold that vote—effectively a metaphorical loaded gun placed in plain view to facilitate further negotiations with Mukasey (No, I don't mean that to suggest Waxman's going to use violence—more that he's using the report to increase the tension behind the negotiations).

Now, as I noted, Johnson's profile of Mukasey is rather interestingly-timed. That's because (as she notes) Mukasey's got a date with HJC on Wednesday. Given that HJC has issued its own subpoena for Cheney's interview report (using a much stronger legislative rationale than Waxman has used), and given that HJC is almost certainly going to be quicker to hold its contempt vote for Rove than Oversight will be to

hold its contempt vote for Mukasey, I would expect Mukasey to have to take some heat on both of these issues on Wednesday.

Who knows how effective that heat will be. But there's the distinct possibility that by Thursday, Mukasey will become an active player in Bush's swamp of scandals, rather than just the guy preventing them from blowing up.