

# SJC MUKASEY HEARING, PART TWO

DiFi: I've been reading your letter. For the first time you disclose that waterboarding is not part of the approved methods. You disclose the method by which a new method is approved. Was this the case in the past?

MM: I'm not authorized to say what happened in the past.

DiFi: It is widely alleged that at least three people were waterboarded. Did the President approve that?

MM: I can't speak to that.

DiFi: Both MCA and Detainee Treatment act, loophole is CIA. I proposed amendment that would put the entire govt under Field Manual. Accepted by House and Senate. If it comes to floor and remains in bill, once and for all, waterboarding be prohibited by govt.

MM: CIA director becomes aware, however he becomes aware of a technique, describes circumstances by which it'll be done, to me, I consult with whomever I have to consult with, then it goes to President.

DiFi: I know how they say it works, I don't know if it's legal or not.

DiFi: What about contractors?

MM: I don't know?

DiFi: I'd like to know if it's legal to contract out enhanced techniques to a contractor.

DiFi: Why hasn't DOJ responded to Scott Bloch?

MM: There are investigations going on by OPR and OIG into those subjects. A response ~~has gone out~~ to Mr. Bloch is in process.

DiFi: After receiving no cooperation for four months, **Mr. Bradbury reiterates the request that we step down.** I assume there is some conflict

with this.

[So this is coming from OLC? Wow]

MM: Bloch is in an office that is not within the department. I will see to it that he gets a response.

DiFi: Will you copy us on that?

**Kyl:** Thanks for writing us a letter. Can you send up a list of all vacant slots that this committee needs to act on? [plus lots of stuff about putting brown people in jail]

Leahy: In addition to the list of empty spots, will you also send a list of those spots for which we have not nominee, and a list of letters to which DOJ has not yet responded.

**Feingold:** Thanks for call regarding treatment of GLBT employees at department. You appear to be embracing the Administration's position without judgment. You say you don't want to say whether waterboarding is torture, bc it would tip off our enemies. We have a system of public laws. Your statement suggests you'd not prosecute a govt official for violating such laws.

MM: I don't see inconsistency. Requires elaborate justification. That's different than saying that bc we prosecute crimes every day. I go to work every day, follow the law, go home, and fall asleep.

Feingold: How do you prosecute situation like this without tipping off enemy?

MM: If somebody is guilty of violating laws of US, they get prosecuted. That is different from talking about circumstances of particular interrogation technique.

Feingold: You indicated that you believe current program is legal. As a member who has been briefed I disagree. What I asked on Dec. 10 is your reasoning and analysis. When will you explain your view of the interrogation technique?

MM: Those letters are classified. What I

undertook to do was review the letters. They analyze the techniques and to see whether they comply with the law. What you've asked me to do is to do something different in the letters.

Feingold: You won't explain your analysis?

MM: The letters are classified. The letters explain it, in far more detail than I could do.

Feingold: this seems unacceptable. You promised to explain to Congress. You'd explain your analysis. It's important to us than have more than a one-way conversation. I'd urge you to reconsider.

Feingold: Retroactive immunity is important to encourage cooperation in the future. You wouldn't encourage telecoms to break the law. Correct? Let's take a situation where following an order would break the law.

MM: We don't want anyone to violate the law. That covers, say, helping a policeman to rob a bank.

Feingold: Congress prevents telecom without court order or proper certification from the AG. That law's been on the books for 30 years; it hasn't been repealed or modified.

MM: That law remains on the books.

Feingold: Should the telecoms be expected to comply with this law.

[Very long pause.]

MM: The telecoms have complied with that law, all of this has been put under the FISA court.

**Hatch:** Good job working with Congress while preserving the unitary executive! Good job, dude! You separated hypotheticals and facts. The WaPo said it was a lawyerly response, and gosh, that's great, IMO.

Hatch: FISA reform tops the list. You and I feel that, most important piece of legislation that we will consider in 110 Congress. I agree with you that stopping terrorists requires

understanding their intention. Your letter describes grave concerns that take a short-term approach to modernizing FISA. No sunset. And let me set you up so you can shoot down Haggis' compromise.

Hatch: Now let me set you up to shoot down limits on tapping Americans overseas and reverse targetting. If the govt was interested in tapping an American, they'd get a warrant, wouldn't they??? FISA makes reverse targeting illegal.

[Shorter Hatch, I'm arguing that reverse targetting isn't a problem, but I will fight to my death to make sure it doesn't become the law.]

Hatch: Has DOJ seen a change in willingness of private sector to assist govt. [Well, I would change it I discovered that Bush overrode the AG and misrepresented that.]

MM: War unlike any other. Our only weapon is intelligence. [shit, with Bush in charge, that means we're screwed.]

**Durbin:** Politics and Language. [Woohoo! I was waiting for someone to do this.] Mr. Orwell was critical of misleading political speech, concrete melts into abstract, on subject of waterboarding, some of your words have melted into the abstract. Can you name your reasonable people who think waterboarding is torture? If waterboarding would not shock the conscience, why did we discontinue it? Your refusal to take a position on torture bc our troops wear uniforms. But there are American personnel who don't wear uniform (Special Forces, CIA), who are in danger if there is uncertainty on position of waterboarding.

MM: The reasonable people? There have been people in this chamber who have disputed. That's a matter of record.

Durbin: This chamber has voted on a bipartisan basis against torture.

MM: And the chamber voted down a prohibition on waterboarding.

Durbin: If the detainee treatment act is clear, and even went so far as to offer amnesty to employees of the govt, you still think that the jury's out on whether the Senate believes that waterboarding is torture.

[Lots of long silences on Mukasey's part.]

MM: The question is whether the Senate has spoken clearly enough on that issue.

Durbin: Where's the lack of clarity in the McCain legislation?

MM: Words that are general, words that people on both sides of the debate have already disagreed. To point to this language or that language is to pick nits.

**Durbin: As the Chairman has noted here, McCain, Warner, and Graham, lead sponsors of this legislation, have said waterboarding is a war crime.**

Durbin: Standard so far has depended on circumstances. Do you see a problem with your ambivalence. It's due caution.

[mumble mumble mumble]

MM: Your second question. I said waterboarding would not shock the conscience. I described a situation where it would. So far as it would be, that was something put into place by the person who wrote the opinion. [Is this the Bradbury opinion??] The use of such techniques to discover information that was only historical information would not shock the conscience.

Durbin: if it would save many lives, would that shock the conscience. Under the military interrogation standards. They are not interested. You're saying that when it comes to non-military, it is still unresolved.

MM: It is unresolved.

Recess until 2.