

# MUKASEY OVERSIGHT: HJC EDITION

Coming in at the end of the opening statements. Conyers' emphasis is on questions on torture and voting rights. Lamar Smith says crack dealers who have already served longer than coke dealers should stay in jail. And Mukasey says the telecoms need [ut oh, he's got his talking points wrong] retroactive immunity and those crack dealers need to stay in jail.

## **Conyers**

Any additional comments about waterboarding now that Hayden confirmed it?

MM: Do you have a particular question?

JC: Are you ready to start a criminal investigation?

MM: That's a direct question. No, I am not. Whatever was done as part of the CIA program, was part of DOJ opinion, through OLC, permissible under law as it existed then. For me to use occasion of disclosure that that was once an authorized part of the CIA program would be for me to tell that they will now be subject to criminal investigation. That would put into question not only that opinion, but also any other opinion from DOJ. That's not something that would be appropriate and not something I would do.

JC: Are you prepared to give us the opinion?

MM: We have provided an unclassified discussion of the legal logic underpinning the opinions. Opinions cannot be turned over, remain classified.

JC: Every member of this opinion cleared for Top Secret.

MM: To the extent that the opinions deal with current program. Opinions dealing with past program, can't simply turn them over.

JC: Can we meet and discuss your response to my question.

MM: Bc it was authorized to be part of CIA program cannot possibly be part of Justice investigation. Same Dept that authorized program would now be subject to prosecution for following that advice.

JC: We're trying to make ourselves conversant with the response to my question. There must be some way we can be made more aware of the document in which you base your response.

MM: Depends on there having been an opinion that defined and authorized a particular program. I'm sure we can talk about additional discussion. My understanding is that there was ongoing discussion, particularly with the intelligence committees.

Recess for four votes.

[Nuts, this feed was dead for a while, so I missed some—at least Smith]

**Berman:** A technique does not have to be lethal to be torture.

MM: Fair to say.

Berman: Desire for cooperation bet DOJ and Congress. Jointly developing procedures for searches on Congressional offices? [Good question]

MM: Emphatically. Ongoing discussions to resolve that.

Berman: Are you saying that DOJ is committed to develop such a mutually agreeable process.

MM: Definitely.

Berman: Understand conduct done pursuant to DOJ authorization. I am curious whether you think the analysis that went behind that authorization was correct?

MM: What I undertook to review was the current program.

[MM will refuse to do any analysis of the torture memos, bc that would be tantamount to saying the only reason they're not being prosecuted is because Yoo or Bradbury authorized them.]

**Sensenbrenner:** Timmeh Russert said, "we get #3 guy in AQ, don't we have the right to beat it out of him." Obama said, emergency situations, I will make judgment at time. Do you agree that if he became President he should be able to make that judgment. Do you think Congress should make that decision right now?

Sensenbrenner: Crack dealers, any stats on the 1600, what communities they were dealing crack in prior to their arrest and conviction?

MM: I believe we can make distinctions based on their criminal history.

**Nadler:** I was interested to hear you say that if the President asks a person to do something that is against the law, it is against the law. President admitted he did that with FISA. Given this apparent prima facie case that the AG engaged in felonious conduct appoint a Special Counsel to investigate this. You said to Leahy you don't know whether President acted in violation of statutes. We need to know the answer. Did the President break the law? I believe we need to know the answer. Will you now agree to appoint outside Special Counsel.

MM: No I will not. Because there is one detail that was omitted and it may have been my fault. There was in place an opinion describing the basis for the program. I understand that there are views on both sides of that.

Nadler: Hamdan ruled that the two excuses from DOJ was not sufficient justification. On behalf of DOJ, representing President, you say it's not illegal. When you attempt to get it into court, then the govt comes out and says you can't get into court, because of State Secrets. You set up situation where the President and the AG assert the President's right to do that and there's no way to litigate that. Is there any way,

otherwise State Secrets has to yield, otherwise no one has a check on the President's claim to power.

MM: To my knowledge the State Secrets backup has been sustained.

Nadler: Would you agree that the court ought to be provided with information in order to rule on State Secrets. Court often rules on affidavit without seeing the docs themselves. Would you agree that the courts ought to see that?

MM: I believe courts have what they consider is ample basis.

Nadler: We held hearings on extraordinary rendition. We've been told that we got assurances from Syria on Arar. Would you commit that you will send someone from dept to answer questions about the assurances from Syria.

MM: Some of this has been subject of classified briefings to this committee and other committees. Also, Arar is still on no fly list.

Nadler: He shouldn't be on no fly list. We have not heard of assurances from Syria, even on classified basis.

Scott: Where is the review of torture? If it is torture in violation of criminal code, they can't immunize themselves from criminal sanctions?

Watt: Concerned about President's budget. Why Bush cut so much from DOJ. Copps, Weed and Seed, Cut \$120 out of Violence against Women. Do you have the same level of concern as we have?

MM: Creation of budget not my area, we had a frank exchange with OMB. We're trying to focus our efforts in coherent way.

Jackson Lee: Elimination of Copps a problem for majority of members. Concerned about Civil Rights Division. Raised at every hearing.

Waters: You have a problem with immediate release of crack dealers. Ignores process that must be followed before anyone is released.

MM: Arises in case some substantial time to come back before the court.

[Hahah! one of the problems is that the USA may not still be there. I wonder why.]

Lofgren: Efforts to adjust or recoup for problems we discovered. Goodling testified that she applied political litmus test. What steps are you taking to combat politicization.

Lofgren: Why would you recommend that Bush veto simply because of monetary reimbursement for telecoms?

MM: It's not just monetary.

Lofgren: If you went to me and said, "shoot Adam Schiff, I couldn't say that's okay because you told me to do it."

Schiff: Can we change the hypothetical.

MM: That's lightyears away from what we're asking.

[Why doesn't Lofgren point out that the law says the AG, not the WHCO, has to certify legality??]

Lofgren: No court is going to assign liability unless there's a bright law.

MM: Ongoing litigation, hit in stock price, we think is unacceptable.

**Wexler: Failure to reply to Congressional subpoenas. Refusal of Bolten and Miers to even appear. Have you been instructed by POTUS to enforce or not to enforce subpoenas.**

**MM: I can't say.**

Wexler: Can you tell me the individual that Clinton instructed not to appear?

MM: Dellinger wrote an opinion.

Wexler: I didn't ask opinions. I asked about the President instructing someone not to appear. Have you been instructed to enforce or not to enforce contempt citations.

MM: That's privileged.

Wexler: Should Congress pass a contempt citation would you enforce it?

MM: If you're talking about a contempt citation based on Bolten's failure to appear—he can't violate the President's request.

Wexler: Are you the people's lawyer or the President's?

MM: AG of US.