

# TWO-FRONTED WAR IN DEFENSE OF THE CONSTITUTION IN THE HOUSE

The AP reported on Steven Bradbury's tortured logic about water-boarding.

"The set of interrogation methods authorized for current use is narrower than before, and it does not today include waterboarding," Steven G. Bradbury, acting head of the Justice Department's Office of Legal Counsel, says in remarks prepared for his appearance Thursday before the House Judiciary Constitution subcommittee.

"There has been no determination by the Justice Department that the use of waterboarding, under any circumstances, would be lawful under current law," he said.

That is, waterboarding is not legal today, but it could be tomorrow if Bradbury made it so at the bidding of David Addington.

That tortured logic is part of Bradbury's prepared statements for an appearance before HJC's Subcommittee on the Constitution, Civil Rights, and Civil Liberties (click here to follow along).

Meanwhile, Chairman Conyers is appearing before the Rules Committee (on CSPAN1) supporting his contempt resolution, describing the importance of the contempt resolution to the balance of powers.

Some have said we risk more if we lose this fight. If we countenance a process where our subpoenas can be readily ignored, where a witness doesn't even have to bother to show up or tell us

that they're not coming, then we've already lost. This is not a matter of vindicating the Judiciary Committee.

Republicans are playing nasty—interrupting the Lantos memorial for stupid parliamentary tricks. Lamar Smith thinks we shouldn't pass this rule because we won't also allow the government broad powers to wiretap us.

And Bradbury is assuring "the committee that every opinion I sign represents my best judgment regardless of political currents."

I'll try to follow both hearings.

Nadler: Is waterboarding a violation of the Federal torture statute?

Bradbury: I think it was reasonable to say that it didn't violate the Federal torture statute. Your description of the procedure is not accurate description of procedure used by CIA.

Nadler: My description is one given to us by former interrogators.

[Bradbury goes on to say we're not doing what the Filipinos did.]

Nadler: AG said he is unable to share your OLC opinions on multiple techniques with us. You're telling us the opinions we're making about waterboarding are wrong because we don't know what it is. So can you tell us precisely what the legal authority is for withholding the documents from the Committee other than the fact that they might be embarrassing.

Bradbury: I fully respect the oversight interest of this committee.

Nadler: We've seen no evidence of that.

[Bradbury keeps trying to filibuster]

Nadler: Will you give us the opinions?

Bradbury: We are giving that serious consideration. These are subject to extensive

oversight of intelligence committees.

Nadler: Is there any legal basis for withholding those documents?

Bradbury: Protecting against disclosure.

Nadler: We all have top security clearance.

[Bradbury has almost as whiny a voice as Shorter Schlozman]

Nadler: What is the legal basis for your ability to have discretion to not turn over those opinions.

Bradbury: Not my place to make that decision.

Nadler: Are you head of OLC, isn't it your job to give opinion on these issues? Have you advised AG that they have the legal right to withhold these opinions.

Bradbury: Executive Branch does have the right to withhold documents.

Nadler: You won't commit to giving us those documents so your recognition of our interests is totally hollow. We'd like an explanation in writing for why we can't see them (or the documents themselves).

Diaz-Boehlert is complaining that Democrats are using parliamentary tactics. Whaaa!

Artur Davis: Why did Mukasey say this was torture but you say it's not?

Davis: McCain was subject to torture in Vietnam. In response to that torture, he signed a confession to a war crime. That was inaccurate—it was a response to the extreme distress he was undergoing, was it not? That's the concern a number of us have. I strongly disagree with his point that we're trying to pass laws that favor terrorists. You are absolutely correct that when people experiencing waterboarding are distressed which may lead them to lie. You state the enhanced interrogation has been used with about 1/3 of the detainees. How many is that, 30?

Bradbury: I'm not authorized.

Davis: Have any of those individuals lied in response to interrogation techniques? Is it conceivable that some of them may have lied?

Bradbury: I don't know.

Davis: How many prosecutions have been brought based on what those individuals have said.

Bradbury: None.

Davis: That sounds like a completion rate that could be pretty low.

Bradbury: Purpose of program is not to obtain intelligence to be used in criminal prosecutions.

Davis: I assume you don't mean to fashion a program or condone or sanction a program that doesn't yield results. You cannot tell me whether all of these individuals have lied. I add that up and come to one simple conclusion. We can't tell whether this program is working, you won't tell us, we take that position not in the name of protecting terrorists. We take that position in order to get the real terrorists.

Bradbury: I can only rely on what Hayden has said. He has said it has produced thousands of reports that have been useful.

Davis: That's an inherently subjective conclusion. Will he share that information with this committee? If Hayden has quantifiable information about the efficacy of this program, I ask that this be shared with us.

Chris Cannon and James Sensenbrenner are both opposed to contempt because what happens if it doesn't work!?!?!?!?!?

Cannon: We have no evidence that Miers and Bolten were involved, do we?

Conyers: We aren't accusing them of anything, sir.

Cannon: We have no evidence.

John Yarmouth (D-KY) saying that the 2006 election was about giving Democrats control of Congress:

This is what I heard: "We want to return the government to the tenants of the Constitution. We want to return to the ideas that the founding fathers. We want to return to the premise that no one is above the rule of law."

This is about restoring the checks and balances.

If we don't challenge the President on this issue, we will have

Ellison (torture hearing): If an OLC opinion, once written will prevent an investigation of an executive branch felony, the President can violate the law or his oath, and just point to OLC, and if victims try to sue, they will use State Secrets. Isn't that a recipe for unchecked executive power.

Bradbury: No, I don't believe it is. The opinions are reasonable and were appropriately relied upon.

Ellison: How do you know that they were relied upon as you set forth.

Bradbury: That's my understanding.

Ellison: How do you know? Were you present for an instance of waterboarding? You indicated earlier that the waterboarding is nothing like what happened to American soldiers at the hand of the Japanese. Can you describe how this was applied? Have you seen videotapes? How do you know that the advice you've been giving have been relied upon properly.

Bradbury: I have reasons to believe.

Ellison: Are you basing this on statements? How do you know that the advice you've been giving haven't been exceeded?

Bradbury: I believe that is the case.

Ellison: NO. I'm going to ask you to answer my questions that's the way this hearing goes. [Now addressing the notion that torture used in training is torture or not.]

Bradbury: If something is torture in one circumstance, it is torture in another.

Ellison: So if a police officer sells drugs as part of a sting operation.

Bradbury: There are lines that address that.

Ellison: I'm sure you'll provide the citations to the cases.

Bradbury: I'd be happy to.

Ellison: Go ahead. If I just said, Judge there's a case, I'd expect you to cite the case.

Scott: Is there any precedent outside of this Administration that says waterboarding isn't torture?

Bradbury: I'm not aware of any, that's why this job is so hard.

Scott: Penalty for perjury a whole lot less than murder. Is the penalty for destroying the torture tapes a whole lot less than if the contents had been seen? Was your office involved in discussion of whether torture tapes should have been destroyed.

Bradbury: Our office wasn't.

Scott: If we're trying to find out who was involved in destruction of CIA torture tapes, who should we look to? Who would be involved in that discussion in your opinion.

Bradbury: I'd refer you to acting DAG's office.

Scott: There has been no determination that waterboarding would be lawful under current law. Has there been a determination that it would be unlawful under current law?

Bradbury: No, bc there has been no time to do so under current law.

Scott: And we don't have the tapes so we'd know what we'd be talking about. [Lists the prohibitions against torture.] Did the part of the E0 forbidding violations of Convention against Torture, etc, did that change anything?

Bradbury [attempts to filibuster]: No, those statutes under their own terms do apply. One thing the E0 does do ... the program does have to comply with the law.

Scott: Should we be concerned by the term "grave"?

Bradbury: That's used in the war crimes act [I may have the laws in question wrong].

Scott: So breaches of Convention that are not grave are not violations of the war crimes act?

Watt: You say that fewer than 100 have been detained. Those are the people at Gitmo.

Bradbury: The 14, maybe 15 detainees who were transferred there are among those. But the CIA has held others. That's not the sum total of those who have been detained under this program. When the 14 were moved that emptied the overseas facilities.

[Is he implying we're back to holding people overseas again?]

Watt: If I were trying to determine the disposition of one or more of those 350 who have been held. What is the maximum duration they have been held?

Bradbury: January February 2002.

Watt: Have they been formally charged.

Bradbury: Some of them. All of them have had Combatant Status Review.

Watt: If you said waterboarding was illegal, could the President ignore that under Article II. I'd like to know whether in your legal opinion whether the President has the authority to disregard your opinion.

Bradbury: I don't think he'd do it.

Watt: I didn't ask you that, would he have the authority under Article II.

Bradbury: Can I get to that in a second?

Watt: How about answering it now?

[Bradbury is filibustering]

Bradbury: In all cases the President will look to OLC opinions. In theory, the President stands at the top of the executive branch, so every is under the authority of the President, including the AG. It is unsustainable to disregard an opinion of the AG.

Watt: Does the President have the authority to disregard the opinion under Article II.

Nadler: I believe your answer is yes.

Bradbury: You're putting words in my mouth.

Nadler: Yes I am.

Watt: I would have loved to have gotten to my next question if you hadn't rope-a-doped my next question.

Bradbury: General Hayden has said he will not allow his people to do anything that has not been approved by AG.

Watt: So if President has issued order, Hayden will listen to the AG?

Nadler: Will you commit to respond within 30 days.

Bradbury: I will do it as soon as possible and will try to do it within 30 days.

[HJC hearing over]