

CONYERS TO MUKASEY: SO YOU DID SPIN SHAMELESSLY, DIDN'T YOU?

(Updated with selise's YouTube showing Leahy confronting Mukasey on his misrepresentation.)

I really really like this letter Conyers, Nadler, and Scott sent to Attorney General Mukasey on his claim that they could have prevented 9/11 if only FISA hadn't been preventing them. In it, they basically nail DOJ on its non-responsive response to their earlier letter asking about Mukasey's claim. If you recall, the prior letter basically gave Mukasey a few choices: either Mukasey completely misunderstands FISA, the Administration withheld information from the 9/11 Commission, or the Administration screwed up.

These include a public statement by you that appears to suggest a fundamental misunderstanding of the federal government's existing surveillance authority to combat terrorism, as well as possible malfeasance by the government prior to 9/11,

The underlying truth that DOJ won't admit, of course, is that Mukasey misrepresented the incident in an attempt to make a case for FISA that doesn't actually hold up.

In an apparent attempt to avoid admitting Mukasey has been spinning wildly, DOJ wrote a non-responsive response back—it turned the question into a **general** question about FISA legislation, rather than **specific** question about whether Mukasey misrepresented the facts.

We are writing about the April 10, 2008, letter from Brian Benczkowski in response to our letter of April 3, 2008,

concerning disturbing recent revelations about apparent pre-9/11 failures and subsequent abuses of civil liberties by the Administration. While we appreciate the promptness of the April 10 letter, we are extremely concerned about its failure to address several of our specific inquiries.

[snip]

In addition, however, the April 10 letter does not respond to several of our requests. Our letter did not, as you characterize it, generally inquire “why FISA’s emergency provisions were not an adequate substitute for the authorities the Government has obtained under the Protect America Act.” Rather, our inquiry concerned the specific phone call about which you spoke. We asked whether the then-existing emergency provisions would have allowed interception of the specific call at issue, if indeed the foreign portion of the call was a known terrorist location. To the extent that your response set forth an argument for the PAA or the Administration’s preferred version of FISA reform, it was non-responsive to our request for information. Based on the clarifications in the April 10 letter, we understand that the answer to our actual question was that, in fact, then-existing FISA provisions would have allowed the interception and dissemination of the phone call, but that it was NSA’s then-existing narrow interpretation of Executive Order 12333 that was the problem. Please explain promptly if that is not the case.

The Conyers response, then, effectively demands that DOJ specifically answer the question: is it not true that Mukasey misrepresented the facts about this incident to make a case for FISA that does not hold up?

What I particularly like about the letter, aside from the fact that it demands DOJ admit that Mukasey was spinning wildly, is the way it then uses Mukasey's spinning to implicate negotiations on FISA.

Finally, our letter did not, as the April 10 letter suggests, "question the very premise for the joint congressional and executive branch effort over the past year to modernize FISA." To the contrary, we have been deeply involved in that effort, conducting numerous hearings and passing two separate bills in the past six months.

[snip]

The Administration's refusal to engage in meaningful discussions with House Democrats on FISA reform has become untenable. The time has come for meaningful negotiations on this important subject. We remain willing and able to have such discussions, and we urge that you and others in the Administration agree to do so promptly.

It's a subtle move, I guess. But as we get more reports that the Republicans are giving up the FISA fight, we'll be in a position to actually negotiate a real bill. Having gotten both DOJ and DNI to acknowledge that the fear-mongering they used to justify the more expansive FISA in the Senate would put Democrats in a stronger position to negotiate, because it'll pressure Mukasey and McConnell to actually limit their calls to the information they need, rather than the information that David Addington's overheated authoritarian imagination dreamed up a need for.