

# SJC MUKASEY HEARING

I haven't liveblogged in a while, so what the heck. Watch along here or here.

## **Leahy**

Leahy starts by highlighting civil liberties violations, naming Bradbury.

We join together to press for accountability and that led to a change in leadership. Today we continue our efforts to restore DOJ.

[Leahy mentions the torture tapes, but focuses on the CIA's unwillingness to tell the 9/11 Commission.]

Today we will get some kind of indication whether the AG will restore checks and balances. **It is not enough to say that waterboarding is not currently authorized.** Torture has no place in America. Tragically, this Administration has so twisted our values that top officers are instructed by the WH not to say that torture is illegal.

[Lists the people we've prosecuted for waterboarding.]

That is not America.

**Arlen "Scottish Haggis" Specter** [incidentally, the first person I ran into when I walked into Congress on Monday was Specter, just coming off the floor having voted against cloture. I contemplated thanking him for his no vote. But then I doubted that "Scottish Haggis, I appreciate that you finally voted your conscience" would go over very well.]

Scottish Haggis agrees that Bush has pushed Article II. Discussion torture, still focusing on Article II powers.

**Leahy swears Mukasey in.**

**Mukasey's statement.** Suggests Bush's stonewalling just a sign of how well the

Constitution works. [Remind me to tell you about Schumer's comment on Mukasey, an attempt to justify his picking him.]

"Committed to review CIA interrogation program. Carefully reviewed limited set of methods authorized, concluded they are lawful. Aware that you address specifically address waterboarding. I have been authorized to say waterboarding is not among techniques currently used. **Passing on its legality is not among the scope of what I promised to review.**"

ARGH!!

CIA Director would have to ask to use waterboarding, would have to outline its use, the issue would have to go the President.

**Leahy:** First question, brings up Ridge's and McConnell's comments that waterboarding is torture. Mukasey dodges, says he can't say anything because he's AG.

MM: I know that if I address a complex legal question without having concrete circumstances before me, yadda yadda yadda.

Leahy: I think the failure to say something puts some of our people in more danger.

Mukasey: Our military won't be affected by what I say. They're legal soldiers.

[Mukasey's logic here is that we're allowed to torture people who are illegal combatants.]

Leahy: I'm afraid this would put them in more danger.

Leahy: The telecoms cut off their FISA wiretaps when we don't pay the bill. You and the Admin talk about how critical FISA is to national security. So why are we not paying our bill and having this get cut off?

Leahy: What payments were made in the five years prior to it coming under FISA?

MM: If that is not classified I can get it. But whether or not a telecom participated is

classified.

Leahy: CIA torture tapes. Are you looking into question of destruction or conduct shown?

MM: That investigation is going to go fact by fact, witness to witness. If it leads to showing motive, I'm sure it'll lead to showing motive.

Leahy: You were in line to receive monitoring contract. Some of these contracts concern me. Chris Christie directed a multi-million dollar one to Ashcroft. I'm waiting for an answer to the letter I've got. How did you come to be considered?

MM: I was proposed by the company. [Interesting, that. When did they offer.] Deferred prosecution agreements have become more prevalent so corporations can break the law but not be punished for it. [He didn't say that, exactly.] So far as it being a no-bid contract, we're not talking about public money.

**Arlen "Scottish Haggis":** Oops, I missed a bit—but he tried to get MM to admit that Bush had violated the law with his warrantless wiretap program. MM got into some parsing about "electronic communications." I do hope they come back to this.

Haggis: Torture tapes. You told us we would be interfering with political issues. Do you intend to comply with Kennedy's request on the torture tapes.

MM: Considerations underlying declination to provide Congress with information based on fact that ...

Haggis: You say it's not never, it's certainly not now. Pitches his immunity "compromise" again. Courts provide a balance to review executive overstep.

MM: It would continue to make conduct of companies front and center.

[Well, goddamned it, why not let us punish Dick, then??]

Haggis: Why shouldn't it be front and center.  
Why should the courts be foreclosed?

Haggis still pissed Cheney went behind his back.

MM: It puts means and methods in the courts. It casts in doubt the question of whether they acted in good faith. They had every reason to believe they acted in good faith.

[No, they ignored the fact that for some reason Gonzales signed the authorization rather than Comey or Ashcroft.]

Haggis: There's a much greater danger in having Congress bail out the companies.

**Teddy:** I want to thank you for a number of positive steps. [Always start with a positive...] These steps show sensitivity to appearance of conflicts, I'm troubled that you didn't make Durham an independent counsel. Waterboarding, Civil Rights Division and voting.

Waterboarding has become worldwide symbol of America's torture. **Even though you claim to be opposed to torture, you refuse to say anything about what constitutes torture. It's like saying you're opposed to stealing but not sure whether bank robbery would qualify.** [Nice framing, Teddy.] You once again refuse to state the obvious. You refused to discuss that the Administration did use waterboarding and no one is being held accountable. CIA continues to use stress positions, every bit as abusive as waterboarding, illegal and ineffective. Would waterboarding be torture if it were done to you?

MM: I would feel that it was. You're assuming that waterboarding is torture. I point out that this is an issue on which people of equal intelligence and equal good faith have differed. I should not go into bc of the office I have the detailed way in which department would apply general language to particular situation.

[I'm going to nickname this the Michael Mukasey Good Faith show. Note, he dodged the "how do we hold people responsible" issue.]

Teddy: Under what facts and circumstances would it be lawful.

MM: I said I should do this.

Teddy: Are there any interrogation techniques that you would find to me fundamentally illegal.

MM: We may not rape.

[Then why haven't the guys who were filmed raping Iraqi boys and women prosecuted?]

Teddy: Naturalization backlog. Potential US citizens hoping to vote in upcoming elections. Basic fairness dictates that these applications are processed to allow these individuals to vote. Fees have been increased. Lines growing longer. Hundreds of thousands qualified to vote that will note vote.

MM: That's Michael Chertoff's deal. We'll do everything we can to make sure those authorized to vote will vote.

Teddy: What is the department doing to give a sense of urgency to move ahead on this?

MM: I will find out what contacts have been and I will work with you.

**Grassley:** [This is about whistleblowers]  
Unanimous consent, opening statement be part of statement. During confirmation hearing you assured me you'd assist my oversight efforts. Prior to this hearing dept provided requests going back to March 2007, got them on Friday, 4 days to digest 250 pages of answers. Buried in the responses, response to Qs 64-83, answers will be provided separately. They were not. I'm troubled that I get responses stating one thing. When can I expect this response from FBI that I've been waiting for since March 2007. Can I expect them before a full year has passed.

MM: I don't know what the questions are. Will talk to Director.

Grassley: Whistleblowers from FBI, ought to be encouraged to come forward and ought to be protected. Most difficult with Nat Security

security clearances. Can report wrong-doing to supervisors, or can sit silent.

Grassley: Why not report to Congress on whistleblowing.

MM: Partly security clearance, but that cuts off the President.

[He's basically saying the President can prevent whistleblowers to report to Congress on issues that might reflect on Bush's behavior.]

Grassley: if they've got security clearance, they've got security clearance.

MM: Maintaining Executive's right to supervise employees up to and including President.

Grassley: **You've got a problem reconciling chain of command that wants to hide wrong-doing in the first place, you're talking going all the way up to the President, you've got plenty of people that don't want Congress to know if something has gone wrong, because they've got egg on their face.**

**Biden:** You're speaking of torture as if its relative.

MM: Only partly. Heinousness, cruelty balanced against the value.

Biden: Value of what?

MM: The information you get.

Biden: Shocking of conscience relates to purpose. Waterboarding to save humanity v. waterboarding to find out the leader. **I don't think shocking the conscience had to do with basic societal values.** You're the first person I've ever heard saying what you just said. I've never heard that discussion.

Biden went off on violent crime. I was trying to catch up on my email.

Biden: As Ronald Reagan said, if it ain't broke, don't fix it. You guys broke it. [wrt violent crime.]

**Jeff "Mutual Protection Racket" Sessions:** The military never waterboarded, correct? And the CIA only waterboarded a few select people, right?

MM: I can't say that. Abu Ghraib was not torture, it was prison abuse. And they were prosecuted.

[News to me, aside from the bad apples implementing orders.]

MM: DOJ has prosecuted one contractor for prisoner abuse.

"Mutual Protection Racket": Widescale abuse is not true. [This is our new measure, whether we torture a lot or just a little.]

"Mutual Protection Racket": Illegal entry is a crime. Zero tolerance on illegal immigration. And it works.

Zero tolerance zero tolerance zero tolerance zero tolerance zero tolerance.

[LOL! Mutual Protection Racket is complaining that we're spending more money prosecuting corporate bribery than illegal entry. I wonder why he'd prefer prosecution of illegal entry than bribery...??]

MM: The border difficulties are different at different parts of the border.

[MM basically says, "Carol Lam was right."]

"Mutual Protection Racket" interrupts, to stop MM from saying Lam was right: Will you commit to expanding this?

MM: Yes.

Leahy: Letter from a bunch of top JAGs into the record. They all say waterboarding is torture. And a letter sent to you from three of our colleagues, McCain, Graham, Warner, saying they consider it torture.

**Kohl:** Local law enforcement programs.

MM: Funding of targeted programs is certainly a

priority.

Kohl: On Gitmo. Are you ready to add your name to the list of those who want to close Gitmo.

MM: The President wants to close Gitmo if we can do it responsibly. Whether there is some alternative to Habeas that would be sufficient.

Kohl: Court secrecy. Secret settlements in courts. Judges continue to provide court-endorsed secrecy, in many cases has led to injuries that could have been prevented. Should courts be required to take a look at protective orders on public health and safety?

MM: Courts should always take a look at protective order when it involves public safety. I don't know of any case where court sweeping public safety under the rug, I would not want a court to do that.

[MM: how can you say that, answering a hypothetical, when you want do the same with torture?]

Kohl: Should we require judges to consider public safety.

MM: A judge should consider public safety.

**Brownback:** Gitmo. People are talking about moving Gitmo detainees to Leavenworth, and as a Kansan, we're not ready for them to move. I don't think it's prepared for the detainees coming from Gitmo. [Brownback, consider it your version of Yucca Mountain] Beyond that, top military leaders go very closely to Leavenworth.

MM: Practical considerations. No representative from any state would say his state is ready to accept Gitmo detainees. Then there's the legal effect of bringing them state-side.

[Pretending that the lawsuits are about releasing people rather than just getting them a review.]

MM: Before we move Gitmo to Leavenworth, I will come visit Leavenworth.

Brownback: Govt considering in intervening in PLO case. Let US citizens receive their awards from PLO. [interesting, does that mean BushCO are going to do the same thing they've done for Iraq for the PLO, in yet another attempt to prop up the PLO against Hamas??]

Brownback: Human trafficking.

[You know, MM is parsing the Republicans as much as he is the Democrats. He won't commit to do what Brownback and "Mutual Protection Racket" want either]

MM: trying to explain the DC handgun case. Would allow us to continue to enforce federal firearm laws.

Brownback: FISA, substitute ["some people want to substitute"--Is Browback saying this at Dick's behest as well??] I want to thank you for stepping into this job at a hard time. If these are uncomfortable topics, we all look at and rather not deal with it.

MM: Susbtitution, the conduct of the companies will be subject of dispute, would open up their conduct to scrutiny, they can't cooperate without a court order. The overarching point, this is limited immunity, doesn't apply to companies that didn't participate, and only those that did so after a request to President.