

# SJC LIVEBLOG

Christy is starting a liveblog for those watching FISA, this will focus on SJC now.

Leahy back in SJC: Talking about elections and early poll closures.

Leahy: Snooping in passport files. Matter from State to IG in Criminal Div high profile Americans searched 4100 times. Widespread abuse of electronic records. What steps are you taking to make sure this stops.

Mukasey: We will do everything we can to charge someone.

Durbin: In the remaining 6 months. Moving forward, you can let Bush off, or initiate investigations. Allegation that indicates possibility of criminal activity. We have had reports, Taguba, had this to say: "The CIC authorized a systematic regime of torture. There is no longer any doubt as to whether the current Admin committed war crimes. Question whether those who authorized torture will be held responsible." I have written several letters asking if you were going to investigate any criminal wrong-doing by members of this administration. Responses have not been satisfying. No one who relied on department's advice should be subject to investigation. Investigate and explore whether waterboarding authorized. What is OPR doing? February, pending investigation to be released, depending on your approval of its release. Will you follow AG Ashcroft's standard? Authorize this report? Will you step away from things in the past?

Mukasey: Variety of statements. Many investigations. Court martial of people involved in that activity. IG investigation recommended no criminal referrals. FBI's report positive one.

ARGHHHHH.

Shorter Mukasey: the grunts went to jail, so

we've done what we can.

Durbin: Those who authorized the torture?

Mukasey: Same thing—depended on OLC.

Durbin: WHO is ultimately in charge?

Durbin: reading from OLC letter: Because of public interest, with AG approval, we recommend public summary.

Mukasey: If OPR wants released, we'll release.

Biden: Steps to implement Boumediene decision?

Biden: When regime to implement decision.

Mukasey: We're in discussions with court and opposing counsel.

Biden: Aid to local law enforcement. 81% cut under this administration. A cut of \$500 million from last year's budget.

Mukasey: Don't count juvenile justice and violence against women.

Biden: I'm comparing apples to apples.

Mukasey: COPS never permanent support.

Biden: Wrong. I wrote the COPS program with my own little paw. Kickstart community policing. If it worked, reauthorize. It wasn't—and look at language when I wrote it, that if it worked, intention was that it would be reauthorized.

Mukasey: I take your correction, you wrote the legislation.

Biden: If it worked it would continue. It ain't broke don't fix it. Violent crime came down under this program.

Whitehouse; Executive Orders. 12333. Purported to protect Americans when traveling overseas. That one about to be overtaken by FISA. 13440—intended to establish minimum standards for alien detainees. Criticized by JAG for all services, this is what Administration depends on. You and I have had exchange about EOs, you

indicated should an executive order apply to President and he decides it should be modified, he should amend prior order. OLC opinion. EO cannot limit president. There is no constitutional requirement for a President to issue a new EO. Rather than violate an EO, President has modified it.

PIXIE DUST!!

Whitehouse: Is that rule still in place. Can President disregard 13440?

Mukasey: Important to analyze EO. Direction by President that Executive conduct itself. Free to change that order.

Whitehouse: Can he leave one in place and act in derogation of it?

Mukasey: Not a violation of it. I can imagine circumstances, where it would be advisable not to change EO when he finds information to go in different direction. For example, particular country not violative of certain norms. Obligated to reimpose those restrictions. Inadvisable to put them on notice.

Whitehouse: Ever?

Mukasey: Inadvisable.

Whitehouse; Timing considerations.

Mukasey: If there comes a time when it becomes advisable and possible.

Whitehouse: 13440 can give us no assurance that President is actually complying.

Mukasey: Suggests.

Whitehouse: Suggests, but no assurance.

Mukasey: Can change whenever. Uncertainty unwarranted in this situation.

Whitehouse: Question to pin it down, if 13440 doesn't protect us, Congress needs to know.

Leahy: Whether for or against Iraq War, disgrace of contracting abuse in Iraq. Massacre. Sexual

assault. I haven't found any of them held accountable under law. 28 cases of detainee abuses. Niza square killings. Several women testified before Congress, raped by US contractors, nobody's done anything. No criminal prosecutions of Americans breaking the law. Why has DOJ not taken stronger action?

Mukasey: Justice has taken action.

Leahy: Anybody been convicted?

Mukasey: Can I look at my notes?

Leahy: Not aware of anybody.

Mukasey: 13 prosecutions and 8 convictions. Alleged crimes of contractors. As far as particular cases that we refer to. Do not acknowledge ongoing investigations.

Leahy: You will let us know what happens?

Mukasey: Yes. Enormously difficult, particularly when we rely on State or DOD to bring criminal prosecutions.

Leahy: This country has always been able to do it. Do you support bill to extend statute of limitations on criminal fraud.

Mukasey: If that's the reason, I support the bill.

Leahy: Extend MEJA. Board on asylum claims for genital mutilation.

Mukasey: Will take a look at case.

Leahy: You could make it clear where we are on this.

Mukasey: Promise I will consider it.

Leahy: Stephen Hatfill. I have refused to discuss it with the press, some aspects classified. I got an anthrax letter, 2 people died as a result of a letter addressed to me, what happened? The guy who committed the crime went free.

Mukasey: I don't understand what the "has gone

free." Under active investigation. I've got to be very careful not to say anything.

Leahy: You and I should have a private talk about this.

Leahy: You're the one person who has the ability to make sure the laws will apply to every person in this nation.

Mukasey: I take responsibilities seriously.  
Brings me up to standard I ought to adhere to.