



[< Return To Hearing](#)

Statement of

## The Honorable Sheldon Whitehouse

United States Senator  
Rhode Island  
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Opening Statement of Sheldon Whitehouse  
Chairman, Subcommittee on Administrative Oversight and the Courts  
Hearing on "What Went Wrong: Torture and the Office of Legal Counsel in the Bush Administration"  
As Prepared for Delivery

Winston Churchill said, "In wartime, truth is so precious that she should always be attended by a bodyguard of lies." The truth of our country's descent into torture is not precious, it is noxious. But it has also been attended by a bodyguard of lies. This hearing is designed to begin to expose some of those lies, to prepare us to struggle with that noxious truth, and to examine the battlements of legal authority upon which that truth and its bodyguard of lies was constructed.

The lies are legion.

President Bush told us "America does not torture" while authorizing conduct that America has prosecuted – both as crime and war crime – as torture.

Vice President Cheney agreed in an interview that waterboarding was like "a dunk in the water," when it was used as a torture technique by tyrannical regimes from the Spanish Inquisition to Cambodia's Killing Fields.

John Yoo told Esquire Magazine that waterboarding was only done "three times," when public reports now indicate that two detainees were waterboarded 83 and 183 times. About Khalid Sheik Muhammad, reportedly waterboarded 183 times, a former CIA official had told ABC News, "KSM lasted the longest under waterboarding, about a minute and a half, but once he broke it never had to be used again." This, too, was a lie.

We were told that waterboarding was determined to be legal, but were not told how badly the law was ignored, bastardized and manipulated by the Department of Justice's Office of Legal Counsel, nor were we told how furiously government and military lawyers rejected the defective OLC opinions – but were ignored.

We were told we couldn't second-guess the brave CIA officers who did this, and now we hear that the program was led by private contractors with a profit motive and no real interrogation experience.

Former CIA Director Hayden and former Attorney General Mukasey told a particularly meretricious lie: that the Army Field Manual restrains abuse by naïve young soldiers but isn't needed by the experienced experts at the CIA.

The Army Field Manual is a code of honor, as reflected by General Petraeus' May 10, 2007, letter to the troops. Moreover, military and FBI interrogators such as Matthew Alexander, Steve Kleinman and Ali Soufan are the true professionals. We now know that the "experienced interrogators" referenced by Hayden and Mukasey had little to no experience. In fact, the CIA cobbled its program together from techniques used by the SERE program, designed to prepare captured U.S. military personnel for interrogation by tyrant regimes who torture to generate propaganda. To the proud, experienced and successful interrogators of the military and the FBI, I believe Judge Mukasey and General Hayden owe an apology.

Finally, we were told that torturing detainees was justified by American lives saved – saved as a result of actionable intelligence produced on the waterboard. That is far from clear. Nothing I have seen as a Member

of the Intelligence Committee convinces me this was the case. FBI Director Mueller has said he is unaware of any evidence that waterboarding produced actionable information. The example of Zubaydah providing critical intelligence on Khalid Sheikh Mohammed and Jose Padilla, often given, is false, as the information was obtained before waterboarding was even authorized.

And there has been no accounting of wild goose chases our national security personnel may have been sent on by false statements made by torture victims just to end the agony; no accounting of intelligence lost if other sources held back from dealing with us after our descent to what Vice President Cheney refers to as "the dark side"; no accounting of the harm to our national standing or our international goodwill; no accounting of the benefit to our enemies' standing and goodwill – particularly as measured in militant recruitment or fundraising; and not accounting of the impact this program has on information sharing with foreign governments, whose laws prohibit the type of treatment and detention policies the Administration had enacted.

I could relate other lies, a near avalanche of falsehood, on the subject of torture and what I have been told about interrogation techniques, but I suffer a disability: I am a legislator. Legislators have no authority to declassify. Our Senate procedure for declassification is so cumbersome that it has never been used. All of the "declassifiers" in government are executive branch officials. And the Bush Administration knew this. So they spouted their rhetoric, again much of it outright false, and though we knew it to be false we in Congress could not reply. It is intensely frustrating.

We've been told you shouldn't criminalize conduct by prosecuting it. You criminalize conduct by making it a crime under the law of the land at the time the crime was committed. Prosecution doesn't criminalize anything; prosecution vindicates the law in place at the time, based on the facts admissible as evidence.

We've been told you shouldn't prosecute people who followed lawful orders, or relied on proper legal authorities, or in good faith offered their best legal advice. But those are the questions, aren't they, and not the answers?

This is the first of what I hope will be a series of hearings looking into these questions. I hope we will soon be provided the Department of Justice Office of Professional Responsibility's report on its investigation of the Office of Legal Counsel, and hold more thorough hearings in the wake of that.

I'd like to thank Chairman Leahy for allowing me to hold this hearing. I also want to acknowledge the tireless work of Senator Feinstein, my chairman on the Intelligence Committee, who is leading its detailed investigation into the Bush Administration's interrogation and detention program. I applaud her for her efforts to get to the bottom of this shameful period of our country's history.

Today, we will hear from a distinguished panel of witnesses who will help us shed light on this topic. I thank them for their appearance this morning. I want to make one note about our last witness, Ali Soufan. Mr. Soufan interviewed Al Qaida terrorists and went undercover against Al Qaida. Threats against him have been documented. We ask the press to respect the security procedures we have in place and avoid photographing his face.

I'd now like to recognize Senator Graham for any statement he'd like to give.

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