

**MAJOR GENERAL JOHN L. FUGH, USA (RET.)**  
**REAR ADMIRAL DON GUTER, USN (RET.)**  
**REAR ADMIRAL JOHN D. HUTSON, USN (RET.)**  
**BRIGADIER GENERAL DAVID M. BRAHMS, USMC (RET.)**

November 2, 2007

The Honorable Patrick J. Leahy, Chairman  
United States Senate  
Washington D.C. 20510

Dear Chairman Leahy:

In the course of the Senate Judiciary Committee's consideration of President Bush's nominee for the post of Attorney General, there has been much discussion, but little clarity, about the legality of "waterboarding" under United States and international law. We write because this issue above all demands clarity: Waterboarding is inhumane, it is torture, and it is illegal.

In 2006 the Senate Judiciary Committee held hearings on the authority to prosecute terrorists under the war crimes provisions of Title 18 of the U.S. Code. In connection with those hearings the sitting Judge Advocates General of the military services were asked to submit written responses to a series of questions regarding "the use of a wet towel and dripping water to induce the misperception of drowning (*i.e.*, waterboarding) . . ." Major General Scott Black, U.S. Army Judge Advocate General, Major General Jack Rives, U.S. Air Force Judge Advocate General, Rear Admiral Bruce MacDonald, U.S. Navy Judge Advocate General, and Brigadier Gen. Kevin Sandkuhler, Staff Judge Advocate to the Commandant of the U.S. Marine Corps, unanimously and unambiguously agreed that such conduct is inhumane and illegal and would constitute a violation of international law, to include Common Article 3 of the 1949 Geneva Conventions.

We agree with our active duty colleagues. This is a critically important issue – but it is not, and never has been, a complex issue, and even to suggest otherwise does a terrible disservice to this nation. *All* U.S. Government agencies and personnel, and not just America's military forces, must abide by both the spirit and letter of the controlling provisions of international law. Cruelty and torture – no less than wanton killing – is neither justified nor legal in *any* circumstance. It is essential to be clear, specific and unambiguous about this fact – as in fact we have been throughout America's history, at least until the last few years. Abu Ghraib and other notorious examples of detainee abuse have been the product, at least in part, of a self-serving and destructive disregard for the well-established legal principles applicable to this issue. This must end.

The Rule of Law is fundamental to our existence as a civilized nation. The Rule of Law is not a goal which we merely aspire to achieve; it is the floor below which we must not sink. For the Rule of Law to function effectively, however, it must provide actual *rules* that can be followed.

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In this instance, the relevant rule – the *law* – has long been clear: Waterboarding detainees amounts to illegal torture *in all circumstances*. To suggest otherwise – or even to give credence to such a suggestion – represents both an affront to the law and to the core values of our nation.

We respectfully urge you to consider these principles in connection with the nomination of Judge Mukasey.

Sincerely,

Rear Admiral Donald J. Guter, United States Navy (Ret.)  
Judge Advocate General of the Navy, 2000-02

Rear Admiral John D. Hutson, United States Navy (Ret.)  
Judge Advocate General of the Navy, 1997-2000

Major General John L. Fugh, United States Army (Ret.)  
Judge Advocate General of the Army, 1991-93

Brigadier General David M. Brahms, United States Marine Corps (Ret.)  
Staff Judge Advocate to the Commandant, 1985-88