



The Attorney General
Washington, D.C.

January 29, 2008

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

I write in response to your letter of January 23, 2008, concerning interrogation techniques, and in anticipation of my testimony before the Senate Judiciary Committee tomorrow. During my tenure as Attorney General, I have attempted to foster an atmosphere of candor and cooperation with this Committee. This letter is offered in that spirit.

Your letter, which was signed by several of your colleagues, follows up on a request you made to me in a letter dated October 23, 2007. I responded to that inquiry in writing on October 30, 2007, explaining that I could not render an opinion about the legality of any specific techniques because "I have not been briefed on techniques used in any classified interrogation program conducted by any government agency." I assured you, however, that "if confirmed I will review any coercive interrogation techniques currently used by the United States Government and the legal analysis authorizing their use to assess whether such techniques comply with the law. If, after such a review, I determine that any technique is unlawful, I will not hesitate to so advise the President and will rescind or correct any legal opinion of the Department of Justice that supports use of the technique."

Since that time, I have conducted a thorough and careful review of the Department's legal analysis concerning the techniques that are currently authorized for use in the Central Intelligence Agency's program for interrogating high-value al Qaeda terrorists. I have kept the commitment that I made to you and to this Committee, and have concluded that the interrogation techniques currently authorized in the CIA program comply with the law.

Your January 23, 2008, letter also asks if "the use of waterboarding as an interrogation technique [is] illegal under U.S. law, including treaty obligations." When I was asked the same question at my confirmation hearing and in your October 23, 2007, letter, I noted that I had not been provided information concerning any classified interrogation program, and that therefore "there [was] a real issue as to whether the techniques presented and discussed at the hearing and in your letter are even part of any program of questioning detainees."

During the course of my review, I have been briefed on the CIA interrogation program. A limited set of methods is currently authorized for use in that program. I have been authorized to disclose publicly that waterboarding is not among those methods. Accordingly, waterboarding is not, and may not be, used in the current program. There is a defined process by which any new method is proposed for authorization. That process would begin with the CIA Director's determination that the addition of the technique was required for the program. Then, the Attorney General would have to determine that the use of the technique is lawful under the particular conditions and circumstances proposed. Finally, the President would have to approve of the use of the technique as requested by the CIA Director and as deemed lawful by the Attorney General.

I understand that you and some other members of the Committee may feel that I should go further in my review, and answer questions concerning the legality of waterboarding under current law. I understand the strong interest in this question, but I do not think it would be responsible for me, as Attorney General, to provide an answer. As I explained to the Committee during my confirmation process, as a general matter, I do not believe that it is advisable to address difficult legal questions, about which reasonable minds can and do differ, in the absence of concrete facts and circumstances.

The principle that one should refrain from addressing difficult legal questions in the absence of concrete facts and circumstances has even more force as to this question. That is because any answer I give could have the effect of articulating publicly—and to our adversaries—the limits and contours of generally worded laws that define the limits of a highly classified interrogation program. Indeed, I understand that a number of Senators articulated this very concern in the fall of 2006, in the course of defeating an amendment that would have expressly prohibited waterboarding.

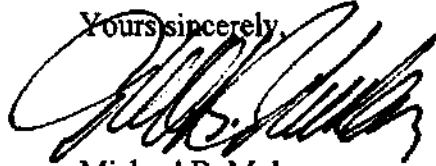
If this were an easy question, I would not be reluctant to offer my views on this subject. But, with respect, I believe it is not an easy question. There are some circumstances where current law would appear clearly to prohibit the use of waterboarding. Other circumstances would present a far closer question.

Reasonable people can disagree, and have disagreed, about these matters. That is not surprising: They involve application of generally worded legal provisions to complex factual situations in an area of the highest national interest. It is precisely because the issue is so important, and the questions so difficult, that I, as the Attorney General, should not provide answers absent a set of circumstances that call for those answers. Those circumstances do not present themselves today, and may never present themselves in the future.

I understand that I will be asked questions by the Committee about this topic tomorrow. I will answer those questions to the best of my ability, within the limits that I have described. I recognize that those limits may make my task today more difficult for me personally. But it is my job as Attorney General to do what I believe the law requires and what is best for the country, not what makes my life easier.

Despite disagreements we may have on this issue, I hope that the Committee will respect my judgment on this matter, and I hope and expect that we will find common ground on many other matters of great importance to this Committee and to the country—including, most importantly, our shared belief in the mission of the Department of Justice and the great work of its employees.

Yours sincerely,

A handwritten signature in black ink, appearing to read "M. B. Mukasey", written in a cursive style.

Michael B. Mukasey

cc: Ranking Member Arlen Specter
All members of the Senate Judiciary Committee