

**THE WHITE HOUSE**

WASHINGTON

**OFFICE OF THE COUNSEL TO THE PRESIDENT**

**FACSIMILE COVER SHEET**

DATE: 12/30/04

TO: The Honorable Patrick Leahy  
(202) 224-3479

FROM: David G. Leitch

PHONE: (202) 456-2632 FAX: (202) 456-6279

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

Comments:

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THE WHITE HOUSE  
WASHINGTON

December 30, 2004

Dear Senator Leahy:

Thank you for your letter of December 21, 2004 to Judge Gonzales. I should have made clear in my earlier correspondence to you that, in light of Judge Gonzales' nomination to be Attorney General, I am responding to your requests for documents and information, and any other correspondence on this issue will be handled by me.

With respect to the specific points raised in your December 21, 2004 letter, I can confirm that the three documents obtained by the press and posted on the Internet are the documents you had requested.

The President has not claimed executive privilege with respect to the two documents you requested that we did not include among the 19 documents that were sent with my December 17, 2004 letter. As you know, however, it is generally not the practice of this or prior Administrations to provide all documents requested by a Member of Congress where those documents contain highly deliberative or Presidential communications. By longstanding practice, no claim of executive privilege is necessary to decline to produce such documents in response to such a request. It is on the basis of this practice, and in light of the nature of the documents at issue, that we respectfully declined to provide two of the documents you requested.

In answer to other questions raised in your earlier letters, I would offer the following.

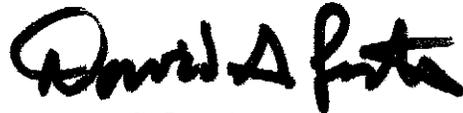
- There are no "orders or directives . . . signed by the President, with respect to the interrogation of detainees, prisoners or combatants." The President has made numerous public statements concerning the Administration's policy against the use of torture. *See, e.g.*, Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167 (July 5, 2004) ("Freedom from torture is an inalienable human right . . ."); Statement on United Nations International Day in Support of Victims of Torture, 39 Weekly Comp. Pres. Doc. 824 (June 30, 2003) ("Torture anywhere is an affront to human dignity everywhere."). In addition, the President's February 7, 2002 memorandum ("Humane Treatment of al Qaeda and Taliban Detainees"), while not specifically addressing interrogations, ordered the armed forces to treat detainees humanely.
- With respect to your inquiry concerning the August 1, 2002 memorandum signed by Jay Bybee, as the statements cited above make clear, the President has repeatedly stated that torture is unacceptable and that it is not the policy of the United States to engage in torture. Judge Gonzales has indicated that certain parts of the analysis in the August 1, 2002 memorandum were unnecessary to support any action taken by the President, and the Department of Justice has indicated that the memorandum has

been withdrawn. My understanding is that the Department will soon be issuing a memorandum to replace the analysis in the August 1, 2002 memorandum.

With respect, I must also note for the record our strong disagreement with the assertion in the press release that accompanied your letter that "the Administration [is] stonewalling on torture policy documents." In fact, since at least June, all documents you have specifically requested that address interrogation policies have been made public. The only arguable exception is a final memorandum from the Counsel to the President to President Bush regarding application of the Geneva Convention to al Qaeda and the Taliban. Our decision not to disclose that document is grounded in well settled and long recognized principles that have been observed by Presidents of both parties. Even in that case, moreover, the Administration's position on the subject at issue was publicly announced on February 7, 2002. It is therefore inaccurate to suggest that the Administration is stonewalling. On the contrary, given the public and Congressional interest in the Administration's policies and practices, the Administration has voluntarily disclosed information to a degree that is, in our view, most accommodating.

We do respect and appreciate your interest in the Administration's legal determinations and policies related to the war on terror. I know Judge Gonzales looks forward to the opportunity to appear before the Senate Judiciary Committee as it considers his nomination to be Attorney General, and to address questions you may have on this and other issues.

Sincerely,



David G. Leitch  
Deputy Counsel to the President

The Honorable Patrick J. Leahy  
Ranking Member  
United States Senate  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

cc: The Honorable Orrin G. Hatch  
The Honorable Arlen Specter