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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

November 7, 2007

Mr. Fred Fielding, Esq.
Counsel to the President
Office of the Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Fielding:

I have not received a reply to the letter I sent to you almost two weeks ago seeking a fuller accounting of this Administration's legal justifications and policies with regard to torture and interrogation. Another copy of my unanswered October 25, 2007, letter is enclosed.

Over the past few days I have read in the press that there may, in fact, be three legal memoranda from the Justice Department's Office of Legal Counsel in 2005, not just two, that have been withheld from us. Apparently, the Administration has conceded the existence of three such memoranda in court filings this week. Without even an accounting from you and the Administration, it is impossible for me to know.

As I have previously noted, the Committee does not yet have a complete picture of the Administration's historic position on the legal basis and standards for detention, transfer, and interrogation in connection with counter-terrorism efforts. It is important that you share with the Senate Judiciary Committee all legal opinions on these issues from the Office of Legal Counsel and elsewhere in the Department of Justice and the Administration. I noted in my previous letter that you have not, despite our repeated requests, provided us with the 2005 memoranda that apparently authorize the use of combinations of cruel and extreme practices. We are fast approaching the one-year anniversary of my November 15, 2006, request for "any and all Department of Justice directives, memoranda, and/or guidance . . . regarding CIA detention and/or interrogation methods."

I regret that you did not take the opportunity created with the announced resignation of Alberto Gonzales to work with us to put these matters to rest. The first step would have been disclosure of the legal memoranda still being kept secret from the Senate Judiciary Committee. That has yet to occur. As you have recently witnessed, without these materials and a shared understanding of what the Administration has been doing, is doing, its justifications, its legal analysis, and its purported basis for overriding our laws and treaty obligations, many Members of the Committee remain very concerned.

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Much of the controversy and discussion surrounding the Committee's consideration of the President's nomination of Michael Mukasey to serve as Attorney General arose from these matters. The Administration's lack of cooperation greatly contributed to the controversy and ultimately to the opposition to that nomination.

Sincerely,



PATRICK LEAHY
Chairman

cc: Hon. Arlen Specter

Encl.

Let's get this done!

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BRUCE A. COHEN, *Chief Counsel and Staff Director*
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October 25, 2007

Mr. Fred Fielding, Esq.
Counsel to the President
Office of the Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Fielding:

I appreciate your providing Senator Specter and me several of the documents we have requested relevant to the treatment and interrogation of detainees. The release of these documents restarts the incremental process of providing necessary information to Congress and to the American people about the Administration's legal justifications and policies with regard to torture and interrogation. I have long called for full disclosure of the Administration's legal opinions in this area and have been frustrated by continued stonewalling. This release represents a step in the right direction.

This is only a first step, however. I remain deeply troubled by the Administration's attempts to justify the use of harsh interrogation techniques and even torture, and I intend to get to the bottom of what this Administration's legal policy has been on this issue, and what it is today. One of the documents you provided this week, per your unclassified cover letter, is a classified March 13, 2003, Memorandum for William J. Haynes, General Counsel, Department of Defense, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel. This memorandum should also be provided in non-classified form as completely as possible consistent with national security requirements. To the extent possible, this document should become part of a frank and public discussion on these crucial issues.

Further, the Committee does not yet have a complete picture of the Administration's historic position on the legal basis and standards for detention, transfer, and interrogation in connection with counter-terrorism efforts. It is important that you share with the Senate Judiciary Committee all other legal opinions on these issues from the Office of Legal Counsel and elsewhere in the Department of Justice and the Administration.

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Finally, and most importantly, these documents aid our understanding only as to the Administration's policy until the beginning of Attorney General Gonzales' tenure in February 2005. You have provided to us some documents demonstrating the Administration's expansive and disturbing position on torture and related issues in 2002 and 2003, as well as documents from 2004 and very early 2005 withdrawing and minimizing those previous positions. However, we have not yet seen the 2005 memoranda recently reported in the *New York Times*, which apparently authorize the use by the Central Intelligence Agency of combinations of cruel and extreme interrogation techniques and indicate that enumerated harsh techniques do not constitute cruel, inhuman, and degrading treatment of detainees. These documents fall squarely within the scope of requests that I and other Senators have made, including my November 15, 2006, request to Attorney General Gonzales for "any and all Department of Justice directives, memoranda, and/or guidance ... regarding CIA detention and/or interrogation methods."

I would ask that you promptly respond to the following questions and document requests, many of which I and others have made on numerous previous occasions:

1. Please produce any and all Department of Justice directives, memoranda, and/or guidance, including any and all attachments to such documents, regarding detention and/or interrogation methods by the Central Intelligence Agency, the military, or any other component of the United States government, including but not limited to the two memoranda identified by the *New York Times* on October 4, 2007, as well as the August 2002 Memorandum from the Department of Justice's Office of Legal Counsel to the CIA General Counsel regarding CIA interrogation methods (the "2nd Bybee memo").
2. Please provide a non-classified version of the March 13, 2003, Memorandum for William J. Haynes, General Counsel, Department of Defense, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, to the extent possible consistent with national security requirements.
3. Please produce any and all documents produced by the Department of Justice regarding the legality of specific interrogation tactics, and the legal basis for detention and transfer of terrorism suspects, and the applicability of federal criminal prohibitions on torture and abuse.
4. Please produce any and all Department of Justice documents that interpret, or advise on, the scope of interrogation practices permitted and prohibited by the Detainee Treatment Act or the Military Commissions Act.

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5. Please state which of the documents produced in accordance with the above requests remain in effect and which have been withdrawn, replaced or modified. Please produce any and all revisions or modifications.
6. Please produce an index of any and all documents relating to investigations and/or reviews conducted by the Department of Justice into detainee abuse by U.S. military or civilian personnel in Guantanamo Bay, Abu Ghraib prison, or elsewhere.

I look forward to your responses.

Sincerely,



PATRICK LEAHY
Chairman

*Thank you - Enjoyed talking
with you today*