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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 21, 2008

The Honorable Michael B. Mukasey  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Mukasey:

After more than five years of requests for information and documents concerning legal analysis and advice from the Department of Justice's Office of Legal Counsel (OLC) related to the administration's detention and interrogation policies, the Senate Judiciary Committee has still only seen a small portion of the documents we have sought. Indeed, we have learned far more about OLC opinions from press accounts and books than we have from the Executive Branch. From the OLC's approval of abusive interrogation techniques in the so-called Bybee, or "torture," memo, through the revelation just last week that the White House issued secret authorizations justifying the CIA's interrogation program, members of this oversight Committee have seen far too many surprises.

This Committee is responsible not only for oversight of OLC, but also for writing the laws on many of the subjects on which OLC has opined. Nonetheless, we only recently received access to redacted versions of OLC legal opinions related to the CIA's interrogation program, and we have been refused other documents that we have repeatedly sought, including something as fundamental as an index of OLC opinions. In another area, the Department only recently posted a June 29, 2007, OLC opinion on its exempting a grant from nondiscrimination provisions of the law.

This administration's stonewalling leaves this Committee without basic facts that are essential to carrying out its oversight responsibilities. On August 19, Senator Specter and I tried again to obtain the administration's cooperation. We sent a letter to Mr. Fielding, the White House counsel, requesting specific documents, as well as an index of OLC opinions. A copy of this request was also sent to you. Our requests were, again, rebuffed, without even a commitment to work with us on providing an index.

After Mr. Fielding referred our requests to the Justice Department, and after receiving an inadequate written response from Mr. Nelson, on September 11, I provided notice that authorization of a subpoena for OLC materials would be on the Committee's business agenda.

The Honorable Michael Mukasey  
October 21, 2008  
Page 2 of 2

On September 18, the Committee discussed the matter, and Senator Kyl requested that the matter be held over for one week. On September 25, after further discussion, the Committee voted to authorize the subpoena. In the intervening time, there has been no effort by the Department to accommodate the Committee's needs. Instead, we have recently learned of previously undisclosed memoranda at the White House and a previously undisclosed OLC opinion from more than 15 months ago.

Attached is a subpoena for documents that constitute OLC's legal analysis and advice from September 11, 2001, to the present concerning the administration's national security practices and policies related to terrorism. The subpoena seeks specific documents as well as any lists, logs or indices of any and all OLC memoranda, opinions or legal advice created during that time period. You may satisfy this subpoena initially by providing a comprehensive and unredacted index of the subpoenaed legal memoranda.

There is no legitimate argument for withholding the requested materials from this Committee. The Executive Branch should not obstruct Congress from conducting its constitutional oversight and lawmaking duties by making sweeping assertions of secrecy and privilege. To the extent necessary, the Committee is willing to accommodate legitimate redactions of operational details in these documents in order to protect national security information. We ask that you segregate any documents containing classified national security information and deliver those separately to the Office of Senate Security in Room SVC-217 of the Capitol, where they will be maintained in compliance with all security laws and regulations. Only Committee members and appropriately cleared staff will then be permitted to review them.

I continue to hope that the administration will cooperate with the Committee. This Committee remains willing to work to with you and accommodate legitimate concerns in connection with your compliance with this subpoena. I look forward to your compliance with the Senate Judiciary Committee's subpoena by the return date of November 18, 2008.

Sincerely,



PATRICK LEAHY  
Chairman