

HOWARD L. BERMAN, California  
RICK BOUCHER, Virginia  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
WILLIAM D. DELAHUNT, Massachusetts  
ROBERT WEXLER, Florida  
LINDA T. SÁNCHEZ, California  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
BETTY SUTTON, Ohio  
LUIS V. GUTIERREZ, Illinois  
BRAD SHERMAN, California  
TAMMY BALDWIN, Wisconsin  
ANTHONY D. WEINER, New York  
ADAM B. SCHIFF, California  
ARTUR DAVIS, Alabama  
DEBBIE WASSERMAN SCHULTZ, Florida  
KEITH ELLISON, Minnesota

ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

December 4, 2008

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
STEVE CHABOT, Ohio  
DANIEL E. LUNGREN, California  
CHRIS CANNON, Utah  
RIC KELLER, Florida  
DARRELL E. ISSA, California  
MIKE PENCE, Indiana  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TOM FEENEY, Florida  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio

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

Dear Mr. Attorney General:

We read with interest your statements to the press yesterday that "[t]here is absolutely no evidence that anybody who rendered a legal opinion either with respect to surveillance or with respect to interrogation policy did so for any reason other than to protect the security of the country and in the belief that he or she was doing something lawful,"<sup>1</sup>

While this statement may well be true regarding many of those in the Department of Justice and the Administration's broader national security apparatus who approved counterterrorism policies and methods, we are troubled by the breadth of your statement and the blanket conclusion that everyone involved in approving these policies believed they were acting within the law. The public record reflects ample warning to Administration officials that its legal approach was overreaching and invalid, such as repeated objections by military lawyers to Department legal opinions on interrogation issues and the stark warning by then-Deputy Attorney General Comey that the Department would be "ashamed" if the world learned of the legal advice it had given on torture issues.<sup>2</sup> Indeed, FBI interrogators were so troubled by some approved interrogation methods that they refused to participate, as the Department's own Inspector General has described.<sup>3</sup> Looked at another way, is it your view that the CIA attorney who reportedly told

---

<sup>1</sup>Vicini, *Mukasey Opposes Prosecutions for Torture Advice*, Reuters, December 4, 2008; Shane, *Mukasey Sees No Necessity for Pardons in the War on Terror*, New York Times, December 4, 2008.

<sup>2</sup>White, *Military Lawyers Fought Policy on Interrogations*, Washington Post, July 15, 2005; Blum, *JAGs Fought DOJ on Torture Memo*, Legal Times, August 1, 2005; Shane, Johnston, and Risen, *Secret U.S. Endorsement of Severe Interrogations*, New York Times, October 4, 2007.

<sup>3</sup>Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, at 88-89 and *passim* (May 2008).

The Honorable Michael B. Mukasey  
Page Two  
December 4, 2008

Guantanamo interrogators that Department legal guidance boiled down to “If the detainee dies, you’re doing it wrong” – or the Department lawyers who advised him – justifiably believed that approach comported with the law?<sup>4</sup>

The much-discussed effort by then White House counsel Alberto Gonzales and others to circumvent Mr. Comey’s authority as Acting Attorney General by confronting John Ashcroft in his hospital bed also indicates serious ethical and legal disagreement within the Department and the Administration on these matters, and leaves room for an ultimate conclusion that some individuals may well have understood that they were circumventing legal or ethical requirements. One Inspector General report has already found that former Attorney General Gonzales mishandled classified documents regarding NSA surveillance programs, and serious questions about that matter remain unanswered and reportedly under investigation.<sup>5</sup>

Our greatest concern, however, is that your statement appears to be pre-judging numerous ongoing investigations. As you know, a Congressionally-mandated review of the NSA’s warrantless surveillance program is currently underway by the Inspectors General of agencies involved, including the Department of Justice.<sup>6</sup> In addition, the Department’s Office of Professional Responsibility is reportedly probing “whether the DOJ attorneys who were involved [in approving NSA surveillance programs] complied with their ethical obligations of providing competent legal advice to their client and of adhering to their duty of candor to the court.”<sup>7</sup> Other reports suggest the existence of other relevant inquiries.<sup>8</sup>

Accordingly, please explain the basis for your blanket conclusion that all Department actors believed their conduct in counterterrorism matters was lawful. If relevant Department probes – or other secret inquiries such as the widely-reported but never published 2004 Special Review by the CIA Inspector General – have been completed and provide the basis for your statement, please state when they have been completed and describe their conclusions and any action you have taken in response. To the extent such reports are classified, we are willing to make arrangements to receive this information in an appropriate fashion. If, on further reflection, you believe that your statement was in any part premature or overly broad, please so indicate.

---

<sup>4</sup>Strobel, *Documents confirm U.S. hid detainees from Red Cross*, McClatchy Newspaper, June 17, 2008.

<sup>5</sup>Lichtblau, *Report Says Gonzales Mishandled Classified Items*, New York Times, September 2, 2008; Wass, *The Case of the Gonzales Notes*, The Atlantic, September 26, 2008.

<sup>6</sup>FISA Amendments Act of 2008, P.L. 110-261, 122 Stat. 2445 (July 10, 2008).

<sup>7</sup>Shane, *Bush Gives Clearances for N.S.A. Inquiry*, New York Times, November 14, 2007.

<sup>8</sup>Wass, *What Did Bush Tell Gonzales?*, The Atlantic, September 26, 2008.

The Honorable Michael B. Mukasey  
Page Three  
December 4, 2008

Thank you very much for your attention to this matter. Please direct your response to the Judiciary Committee office at 2138 Rayburn House Office Building (Tel: 202-225-3951; Fax: 202-225-7680) no later than Friday, December 12, 2008.

Sincerely,



---

John Conyers, Jr.  
Chairman



---

Jerrold Nadler  
Chairman, Subcommittee on the  
Constitution, Civil Rights and  
Civil Liberties

cc: Hon. Lamar S. Smith  
Hon. Trent Franks  
Keith B. Nelson