

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 3, 2013

James B. Comey, Jr.
Columbia University Law School
435 West 116th Street
New York, New York 10027

Dear Mr. Comey:

Congratulations on your nomination to be Director of the Federal Bureau of Investigation. We commend you for your past public service and thank you for your willingness to serve again. We write to you in advance of your confirmation hearing to raise an issue of great importance to our nation: torture.

Torture is un-American and illegal. It is important to our national security and our moral fabric as a nation that America's opposition to torture be clear and unequivocal. When the United States does not explicitly and publicly condemn torture, it is more difficult to argue that enemy forces cannot torture American prisoners. It also makes it less credible for the United States to condemn repressive governments that use torture.

We are particularly concerned about our government's policy regarding the abusive interrogation technique known as waterboarding. Following World War II, the United States prosecuted Japanese military personnel as war criminals for waterboarding U.S. prisoners. The U.S. State Department has long recognized that waterboarding is torture and cruel, inhuman and degrading treatment and has repeatedly criticized other countries for using waterboarding. Senator John McCain, who speaks about the issue of torture with more credibility than any other member of Congress, has said that waterboarding is torture: "In my view, to make someone believe that you are killing him by drowning is no different than holding a pistol to his head and firing a blank. I believe that it is torture, very exquisite torture." During the Bush Administration, the Judge Advocates General, the highest-ranking military lawyers in each of the U.S. Armed Forces' four branches, testified to the Senate Judiciary Committee that waterboarding is illegal and violates Common Article 3 of the Geneva Conventions.

We would like to gain a better understanding of your role in the Bush Administration's use of abusive interrogation techniques, particularly waterboarding. You served as Deputy Attorney General at a time when the U.S. Department of Justice authorized the use of abusive interrogation techniques such as waterboarding. According to publicly released documents, you concurred in Office of Legal Counsel memoranda that authorized the use of waterboarding and other abusive interrogation techniques. At the same time, you expressed serious concerns about some aspects of the Bush Administration's interrogation program.

Your position on torture is especially important because of the agency you will head and the person you will replace if you are confirmed. According to publicly released documents,

under Director Robert Mueller's leadership the FBI both resisted the use of torture and obtained useful information from terrorist detainees with lawful interrogation techniques. The FBI continues to play a central role in interrogation policy and practices, particularly as the lead agency in the High-Value Detainee Interrogation Group (HIG) and in investigating allegations of detainee abuses.

The Obama Administration has set a different course than the Bush Administration. In Executive Order 13491, President Obama barred the use of abusive interrogation techniques on his third day in office. Both President Obama and Attorney General Holder have unequivocally declared that waterboarding is torture. It is important that the Administration speak with one voice on this issue.

Accordingly, we would appreciate your responses to the following questions:

- What was your role in the Justice Department's authorization of enhanced interrogation techniques during the Bush Administration?
- Do you agree with the President and the Attorney General that waterboarding is torture?

Due to your pending confirmation, we would appreciate your prompt response to this letter. We look forward to your hearing next week. Thank you for your time and consideration.

Sincerely,



Richard J. Durbin
United States Senator



Sheldon Whitehouse
United States Senator