



U.S. Department of Justice

Office of Legal Counsel

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Office of the Assistant Attorney General

Washington, D.C. 20530

July 22, 2004

Scott W. Muller, Esq.
General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Scott:

We have been asked whether a certain detainee in the war on terrorism may be subjected to the "waterboard" interrogation technique, consistent with 18 U.S.C. §§ 2340 and 2340A. In connection with this opinion, we would be grateful if you could provide us with a precise description of the technique. As you know, the CIA Office of Inspector General, in its *Special Review: Counterterrorism Detention and Interrogation Activities (September 2001-October 2003)* (May 7, 2004) ("*OIG Review*"), raised several questions about whether the technique, as actually used, conforms to the description in the Memorandum for John A. Rizzo, Acting General Counsel, CIA, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Interrogation of al Qaeda Operative* (Aug. 1, 2002). For example, the *OIG Review* repeatedly disputes that the technique, in practice, matches the technique as used at the U.S. Air Force Survival, Evasion, Resistance, and Escape ("SERE") training program, although our opinion assumed that we were addressing the SERE technique. See *OIG Review* at 21 n.26, 37, 44. It would greatly assist us if you could address the details of the technique, including whether the technique on which we would now opine differs in any respect from the one considered in our earlier memorandum. If there are differences but you believe those differences should not alter our conclusion that the technique is lawful under the statute, we would appreciate receiving an explanation of your view, including any medical or other factual support on which you rely. Finally, we would be grateful if you could provide information about the facts and circumstances of this detainee, including his medical and psychological condition, of the sort provided with respect to the detainee discussed in our earlier opinion. ~~(TS)~~ ~~(NF)~~

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Thank you for your assistance. (U)

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Levin", with a long horizontal flourish extending to the right.

Daniel B. Levin
Acting Assistant Attorney General

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