

my mouth. He said to a Cleveland audience on July 10 of this year:

I mean, people have access to health care in America, after all. You just go to the emergency room.

Mr. President, you cannot understand health care, you cannot understand any of its intricacies, you cannot understand any of its broad overthrows and ever, not even once in your life, make a statement such as that. The last time as a Senator I was in a waiting room in an emergency room with a child was about 1 or 2 years ago, and we waited 9 hours. So that statement, which is hard for me to say, alone, speaks volumes about his less than compassionate intentions.

Yesterday, the President accused Democrats in Congress of going it alone without seeking input from Republicans. There is absolutely nothing that could be further from the truth. We sought input from him, and we were turned down. We have done nothing but work with Republicans. We were working with Republicans 45 minutes ago in an hour, hour and a half long meeting—I don't know how long. I think we are meeting again this afternoon—from the House. We are trying to resolve this, all at the same time understanding that at the end of the day it is probably all going to get vetoed. But we don't care because we do care about children. It is about children. It is about children and their right to have health care, and we are in a position to do it.

I went to a high building in New York at the invitation of somebody, and I walked in and I was greeted very coldly. I sat down. I was stared at very coldly. I became moderately unhappy. So I decided to start out the conversation, which he had asked for.

I said: How much are you going to make this year?

He said: \$183 million.

But he said: If you people on the Finance Committee would do something about deferred compensation, I could make more.

Now, this put me in a real kind of quandary. I didn't want to be impolite—I did want to be impolite, but I didn't want to show it—and so I said to him: How is it that I describe something called the United States of America? How is it that I deal with income disparity? How is it that I come from your \$183 million, plus whatever it is if we did on the Finance Committee would give you more, to the fact that the average working family who pays taxes and works and has children in West Virginia has an income of \$26,600 a year? How do I get from \$26,000 a year to \$183 million-plus a year and still call this the United States of America, which is trying to resolve income disparity and treat people fairly?

I couldn't do it. The conversation was not pleasant, and I got up and walked out. I am happy to say the gentleman was fired a week later.

So we have tried to get the attention of the White House. We have tried to

engage the White House. We have tried to do it not for the sake of just simply crafting a bill, but because we have a passionate belief that goes back to 1996—a passionate belief that we are speaking on behalf of millions of American families who cannot afford something so basic as health care and that we can fix it for them for \$35 million, and that is over a period of years, but we were rebuffed. We were vetoed, and we have actually been vetoed verbally five or six times since.

CHIP is a bipartisan program. The bill passed by the Congress is a bipartisan bill. It does have strong Republican support. There were a lot of Republicans in the House who voted for their version of the bill despite very obvious arm-twisting by the White House. If there is any hope left of enacting a children's health insurance bill this year, it is because there is still a bipartisan group of Senators and Congressmen who are working to keep it together.

But if the President continues to mischaracterize our bill and engage in disinformation, then I would say to my colleagues: Enough is enough. Enough is enough. Either you are for giving kids a healthy start in life or you are not. It is that simple. Money is not the problem. Paying is the problem. Injustice is the problem. Poverty is the problem. Money is not.

Well, the President has made his choice. For him, children evidently don't really need health care. They can just go to the emergency room. It is really a poignantly horrible statement for him to have made. I don't know if he has ever been to an emergency room. I have. He is entitled to his conscience, of course, and he is entitled to his opinion. He is entitled to protecting tobacco over protecting children. That is his right. He is the President. He has the veto pen, and he can sign or veto. He chooses to veto. But let us be very clear: He will have this as his legacy.

As a nation, we have always done what is right by our most vulnerable populations, not sometimes as efficiently or as swiftly as we could, but as we could. Our seniors and our children have always been at the top of that. Now our veterans are sacred. Veterans, when they go to serve our country, are soldiers for their entire lives, and we protect them. If this President won't live up to that ideal, then it is time to get one who will.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Arizona.

Mr. KYL. Might I just inquire now, would we be beginning the Republican time for morning business?

The PRESIDING OFFICER. There is still 9½ minutes remaining on the Democratic time.

Mr. KYL. I understand we have permission to proceed, and I thank the majority for that and would note that when speakers come on their side, then they would be entitled to their time.

The PRESIDING OFFICER. Without objection, the Senator from Arizona is recognized.

NOMINATION OF JUDGE MICHAEL MUKASEY

Mr. KYL. Mr. President, I wish to urge the swift confirmation of Judge Michael Mukasey as Attorney General. It has been 6 weeks now, and the Senate Judiciary Committee has not even taken up the nomination. It is past time to fill this vacancy.

There is no question this nominee is qualified to serve. I don't need to recite his qualifications. They were mentioned by many Members at Judge Mukasey's nomination hearing.

The distinguished majority leader said:

Judge Mukasey has strong professional credentials and a reputation for independence. A man who spent 18 years on the Federal bench surely understands the importance of checks and balances and knows how to say no to the President when he oversteps the Constitution.

There is no question, the Nation would be well served by Judge Mukasey's confirmation. Indeed, in recommending Judge Mukasey to serve on the Supreme Court, Senator SCHUMER noted that Judge Mukasey, and the others he recommended:

... were legally excellent, ideologically moderate, within the mainstream, and have demonstrated a commitment to the rule of law.

Surely, if a man is qualified and independent enough to be on the Supreme Court, we should have far fewer concerns when nominating him to serve the remaining time of about 1 year as Attorney General.

It seems to me that what this debate boils down to is politics. Some Members want more information about his views. I would note that he testified for 2 full days and has answered nearly 500 written questions. The initial reaction from many of my Democratic colleagues was that he was extremely forthcoming and they were pleased with his candidness. But for some Senators, apparently this is not enough. It almost seems to me as if some of my colleagues are willing to hold this nomination hostage until he gives them exactly the answers they want, even when he is unable as a legal matter to do that.

Let me explain why. Judge Mukasey has not been briefed on classified programs, and he will not be briefed on classified programs until he becomes the Attorney General, but some of my colleagues now seem to be saying he should have to make pronouncements about the legalities of those programs even when he doesn't know their details—can't know their details. How is this independent?

I would suggest this: My colleagues don't want an Attorney General who is independent; they want an Attorney General who will kowtow to their views and make pronouncements over

issues on which he is not legally allowed to opine. That is, of course, the opposite of independence.

Since the beginning of this Congress, Democratic Senators have repeatedly called for new leadership at the Department of Justice. They have said the work of the Department is too important to delay confirmation of a new Attorney General. Well, now is the time for them to act.

Before the nomination, Senator SCHUMER said:

Let me say, if the President were to nominate somebody, albeit a conservative, but somebody who put the rule of law first, someone like a Mike Mukasey, my guess is that they would get through the Senate very, very quickly.

Well, my colleague would have guessed wrong. It hasn't been quick. The Senate Judiciary Committee has not moved quickly, and this is all the worse because the average amount of time between nomination and confirmation of the last nine Attorneys General has been 21 days. Already Judge Mukasey has been pending for about twice that period of time—6 weeks—longer than any Attorney General nominee in 20 years. If these delays continue, obviously new records are sure to be broken.

The bottom line here is that President Bush has nominated a distinguished and nonpolitical candidate to be the next Attorney General. The Senate should reciprocate by using the confirmation process not to settle old scores or to politicize the nomination. Independence has to mean something. We do not want an Attorney General who refuses to give his honest legal opinions to the President, and we don't want one who is forced to make commitments to the Senate that are not grounded in facts or law.

The Department of Justice needs an Attorney General with the foresight and experience to resolve the issues the Nation's top law enforcement agency faces and to tackle the difficult challenges especially presented in a post-9/11 world. The qualities and background of Judge Michael Mukasey, combined with his extensive experience in national security and terrorism cases, commend him to serve as Attorney General in these challenging times. It is important for the Senate to move on with this important business of the Nation so that Judge Mukasey can be voted on by the Senate.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I wish to be associated with the remarks of the distinguished Senator from Arizona. I think he summed it up pretty well, but let me just make some comments myself about the Mukasey nomination.

Just when you thought it might be safe to venture back into the confirmation water, the partisan sharks rush in and push you right back onto the beach. Today is 40 days—40 days—since the Senate received the nomination of Judge Michael Mukasey to be Attorney

General of the United States, 40 days in the partisan wilderness for a man who is superbly qualified and widely respected and whose service is desperately needed.

Before addressing what is being done to Judge Mukasey, let me remind my colleagues who he is. Michael Mukasey has spent four decades serving the law and the country. He spent 16 years in private legal practice, 4 years as a Federal prosecutor, and 19 years as a Federal district court judge. He was head of the Official Corruption Unit during his service as assistant U.S. attorney and chief judge during his last 6 years as a U.S. district judge, both in the Southern District of New York.

Judge Mukasey's service in that particular jurisdiction gave him the expertise in national security issues that makes him especially qualified to lead a Justice Department that is being retooled for the war on terrorism and especially since the war on terrorism continues as we stand here on the floor. He presided over the 9-month trial of Omar Abdel Rahman and sentenced him to life in prison for the 1993 plot to blow up the World Trade Center.

When the U.S. Court of Appeals for the Second Circuit affirmed Judge Mukasey's decision, it took the unusual step of commenting on how he handled the trial. These are the appeals court's words. Judge Mukasey:

... presided with extraordinary skill and patience, assuring fairness to the prosecution and to each defendant and helpfulness to the jury. His was an outstanding achievement in the face of challenges far beyond those normally endured by a trial judge.

That was the U.S. Court of Appeals for the Second Circuit on August 16, 1999.

That is a remarkable statement. Appeals courts review district court decisions, but rarely do they comment in this manner on district court judges.

Both generally and specifically, by any reasonable or objective standard, Judge Mukasey is eminently qualified to be our next Attorney General. By the standards set by my Democratic colleagues themselves, Judge Mukasey should by now have become Attorney General Mukasey. My Democratic colleagues have repeatedly said that the Justice Department needs new leadership and needs it now. The Senator from New York, Mr. SCHUMER, whom my colleague from Arizona quoted, is a Judiciary Committee member and a serious one. He has said:

We can't afford to wait because justice is too important.

He is not alone in making that statement among the Democrats. The Democratic mantra is, justice is too important to wait; we need a new Attorney General now. My Democratic colleagues also offered criteria, offered a description of the kind of Attorney General we need right away. The chairman of the Judiciary Committee, Senator LEAHY, said:

We want the best man or woman who can run the place, restore the sense of commit-

ment and restore the sense of integrity to the Department of Justice.

The Senator from New York, Mr. SCHUMER, who knows him well, said the nominee would have to be someone of unimpeachable integrity, experience, and someone who could hit the ground running.

I respectfully say to my Democratic colleagues that Judge Mukasey fits your bill. He can run the place. He is a man of integrity and experience. He certainly can hit the ground running.

It appeared for a short, brief time that my Democratic colleagues thought so too. After a full day of testimony, Chairman LEAHY told Judge Mukasey that his answers showed his independence and his agreement that political influence has no place in law enforcement.

Mr. SCHUMER, the distinguished Senator from New York, said:

The most important qualities we need in an Attorney General right now are independence and integrity, and looking at Judge Mukasey's career and his interviews that we have all had with him, it seems clear that Judge Mukasey possesses these vital attributes.

I ask unanimous consent that these and some other quotes be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. HATCH. We need a new Attorney General now. In fact, we needed him 40 days ago. Justice is too important to wait. Judge Mukasey meets the criteria. He is qualified. He is ready to lead. Then why is Judge Mukasey not already on the job leading the Justice Department to where Americans think it needs to be? Why is his nomination stalled, 40 days into the confirmation process, without even a committee vote?

It is certainly not because this is the way Attorney General nominees have been treated in the past. In my 31 years in this body, we have taken an average of 3 weeks to move an Attorney General nominee from nomination to confirmation. It has already been twice that long—40 days and counting—for Judge Mukasey, and he was only today put on the Judiciary Committee agenda for next week.

Let me rewind the confirmation clock to 1993, the last time a Democratic Senate evaluated a nominee for Attorney General. Janet Reno, the Democratic nominee, received very different treatment than this Republican nominee is receiving today. Miss Reno's nomination went through the entire confirmation process from initial receipt to final confirmation in less time than Judge Mukasey's nomination has been sitting in the Judiciary Committee since this hearing.

While the Judiciary Committee will not vote on Mukasey's nomination until at least next week, the committee did not even wait for a markup to approve the Reno nomination.

I was the ranking member on the Judiciary Committee, and I supported

then-Chairman BIDEN's request to vote on Miss Reno's nomination at the end of the hearing. I knew Janet Reno was very liberal. I knew she didn't agree with most Republican Senators. But she was qualified. She was a decent person. To be honest with you, the Senate unanimously confirmed her the very next day after the hearing, without even a markup.

While Senators gave Judge Mukasey nearly 500 written questions, after 2 days of oral testimony—500 written questions, the answers to which he already has provided, I might add—no Senators gave even a single question to Miss Reno.

What happened? Why such radically different treatment when a Democratic nominee for Attorney General comes up? It is simply because a Republican rather than a Democrat is in the White House and because we have a different approach toward matters.

Most of us believe when a President is elected, that President, he or she, should have the right to the nominees they put up, as long as they are competent and decent.

The need for new Justice Department leadership remains. Judge Mukasey's obvious qualifications are the same. What happened that his nomination is now being obstructed, slowed down, and delayed? The latest excuse is that Judge Mukasey will not state on the fly a legal conclusion for a Justice Department he has not yet led about whether the coercive interrogation technique known as waterboarding constitutes torture. He will not come to legal conclusions before he can apply appropriate legal standards to appropriate facts. I think that is a mark in his favor. He should be praised, not criticized, for taking this approach.

Rather than focusing on his refusal to answer a question that he should not answer, I want to remind my colleagues what Judge Mukasey has said on this subject. Everyone appeared pleasantly surprised when Judge Mukasey denounced torture during his hearing. He went so far as to explain how torture violates not only statutes or treaties but the United States Constitution itself.

Judge Mukasey said if waterboarding properly can be labeled torture, then it too is unconstitutional. In a letter dated yesterday, Judge Mukasey said he considers techniques such as waterboarding personally repugnant. But personal conclusions are not the same as legal conclusions. So Judge Mukasey outlined in detail the kind of analysis he would follow to decide whether such interrogation techniques constitute torture prohibited by the Constitution, or cruel, inhuman, or degrading treatment prohibited by statute and the Geneva Conventions.

I ask unanimous consent that his letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. HATCH. Judge Mukasey wrote:

Legal questions must be answered based solely on the actual facts, circumstances and legal standards presented.

How can he possibly be criticized for making legal judgments by applying legal standards to appropriate facts? What kind of crazy, topsy-turvy confirmation process is this? My Democratic colleagues demanded over and over that, if confirmed, Judge Mukasey must exercise his own independent judgment and that he must answer legal questions on his own; that he must not base advice on political pressure. But now they criticize him for doing precisely what they told him to do. Democrats now criticize Judge Mukasey for saying he will exercise his own independent judgment and answer legal questions on his own, without basing his advice on political pressure. My Democratic colleagues cannot insist that Judge Mukasey be independent toward a Republican President but compliant toward a Democratic Senate. They cannot declare that the Constitution is not whatever President Bush says it is, but demand Judge Mukasey's agreement that the Constitution is whatever Senate Democrats say it is.

We should stop playing partisan political games with this nomination. The Justice Department is too important for this type of stuff. Judge Mukasey is eminently qualified to provide the leadership the Department needs now. His insistence that independent legal judgment rather than emotion or partisan pressure will guide him only enhances his fitness for taking the helm at the Justice Department.

Forty days into the partisan wilderness is more than enough. We should confirm Judge Michael Mukasey without further delay.

I yield the floor.

EXHIBIT 1

DEMOCRATS SAY THE JUSTICE DEPARTMENT NEEDS NEW LEADERSHIP NOW

Senator Chuck Schumer (D-NY): May 24, 2007: "This nation needs a new Attorney General, and it can't afford to wait."; August 27, 2007: "the Justice Department . . . desperately needs new leadership."

Senator Sheldon Whitehouse (D-RI): June 11, 2007: "the U.S. Department of Justice is a precious institution in our democracy . . . and we need to take some action."

DEMOCRATS PRAISE JUDGE MUKASEY

Senator Chuck Schumer (D-NY): May 22, 2007: "If the president were to nominate somebody . . . like a . . . Mike Mukasey, my guess is they would get through the Senate very, very quickly."; October 17, 2007: "The most important qualities we need in an Attorney General right now are independence and integrity. And looking at Judge Mukasey's career and his interviews that we have all had with him, it seems clear that Judge Mukasey possesses these vital attributes."; October 18, 2007: "He could get a unanimous vote out of this committee. . . . It's not a done deal yet. But he could."

Senator Pat Leahy (D-VT): October 16, 2007: "I would expect him to be confirmed."; October 17, 2007: "I appreciate [not only] the

succinctness of your answers but the clarity of them."

Senator Ben Cardin (D-MD): October 17, 2007: "I've been very impressed by the direct answers that you've given to very important questions."

EXHIBIT 2

MICHAEL B. MUKASEY

Hon. PATRICK J. LEAHY, Hon. JOSEPH R. BIDEN, Jr., Hon. DIANNE FEINSTEIN, Hon. CHARLES E. SCHUMER, Hon. BENJAMIN L. CARDIN, Hon. EDWARD M. KENNEDY, Hon. HERB KOHL, Hon. RUSSELL D. FEINGOLD, Hon. RICHARD J. DURBIN, Hon. SHELDON WHITEHOUSE,

DEAR CHAIRMAN LEAHY, SENATORS KENNEDY, BIDEN, KOHL, FEINSTEIN, FEINGOLD, SCHUMER, DURBIN, CARDIN and WHITEHOUSE: Thank you for your letter of October 23, 2007. I well understand the concerns of the Senators who signed this letter that this Country remain true to its ideals, and that includes how we treat even the most brutal terrorists in U.S. custody. I understand also the importance of the U.S. remaining a nation of laws and setting a high standard of respect for human rights. Indeed, I said at the hearing that torture violates the law and the Constitution, and the President may not authorize it as he is no less bound by constitutional restrictions than any other government official.

I was asked at the hearing and in your letter questions about the hypothetical use of certain coercive interrogation techniques. As described in your letter, these techniques seem over the line or, on a personal basis, repugnant to me, and would probably seem the same to many Americans. But hypotheticals are different from real life, and in any legal opinion the actual facts and circumstances are critical. As a judge, I tried to be objective in my decision-making and to put aside even strongly held personal beliefs when assessing a legal question because legal questions must be answered based solely on the actual facts, circumstances, and legal standards presented. A legal opinion based on hypothetical facts and circumstances may be of some limited academic appeal but has scant practical effect or value.

I have said repeatedly, and reiterate here, that no one, including a President, is above the law, and that I would leave office sooner than participate in a violation of law. If confirmed, any legal opinions I offer will reflect that I appreciate the need for the United States to remain a nation of laws and to set the highest standards. I will be mindful also of our shared obligation to ensure that our Nation has the tools it needs, within the law, to protect the American people.

Legal opinions should treat real issues. I have not been briefed on techniques used in any classified interrogation program conducted by any government agency. For me, then, there is a real issue as to whether the techniques presented and discussed at the hearing and in your letter are even part of any program of questioning detainees. Although I have not been cleared into the details of any such program, it is my understanding that some Members of Congress, including those on the intelligence committees, have been so cleared and have been briefed on the specifics of a program run by the Central Intelligence Agency ("CIA"). Those Members know the answer to the question of whether the specific techniques presented to me at the hearing and in your letter are part of the CIA's program. I do not.

I do know, however, that "waterboarding" cannot be used by the United States military because its use by the military would be a clear violation of the Detainee Treatment Act ("DTA"). That is because "water-

boarding” and certain other coercive interrogation techniques are expressly prohibited by the Army Field Manual on Intelligence Interrogation, and Congress specifically legislated in the DTA that no person in the custody or control of the Department of Defense (“DOD”) or held in a DOD facility may be subject to any interrogation techniques not authorized and listed in the Manual.

In the absence of legislation expressly banning certain interrogation techniques in all circumstances, one must consider whether a particular technique complies with relevant legal standards. Below, I provide a summary of the type of analysis that I would undertake, were I presented as Attorney General with the question of whether coercive interrogation techniques, including “waterboarding” as described in your letter, would constitute torture, cruel, inhuman or degrading treatment, or a violation of Common Article 3 of the Geneva Conventions.

The statutory elements of torture are set forth in 18 U.S.C. §2340. By the terms of the statute, whether a particular technique is torture would turn principally on whether it is specifically intended to cause (a) severe physical pain or suffering, or (b) prolonged mental harm resulting from certain specified threats or acts. If, after being briefed, I determine that a particular technique satisfies the elements of section 2340, I would conclude that the technique violated the law.

I note that the Department of Justice published its interpretation of 18 U.S.C. §2340 in a December 30, 2004 memorandum to then-Deputy Attorney General James B. Comey, which superseded the memorandum of August 1, 2002 that I testified was a “mistake.” I understand that the December 30, 2004 memorandum remains the Department’s prevailing interpretation of section 2340. Although the December 30, 2004 memorandum to Mr. Comey does not discuss any specific techniques, it does state that “[w]hile we have identified various disagreements with the August 2002 Memorandum, we have reviewed this Office’s prior opinions addressing issues involving treatment of detainees and do not believe that any of their conclusions would be different under the standards set forth in this memorandum.”

Even if a particular technique did not constitute torture under 18 U.S.C. §2340, I would have to consider also whether it nevertheless would be prohibited as “cruel, inhuman or degrading treatment” as set forth in the DTA and the Military Commissions Act (“MCA”)—enacted after the Department of Justice’s December 30, 2004 memorandum to Mr. Comey—which extended the Convention Against Torture’s prohibition on “cruel, inhuman or degrading treatment” to individuals in United States custody regardless of location or nationality. Congress specified in those statutes, as the Senate had in consenting to the ratification of the Convention Against Torture, that the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution would control our interpretation of the phrase “cruel, inhuman or degrading treatment.”

The Fifth Amendment is likely most relevant to an inquiry under the DTA and MCA into the lawfulness of an interrogation technique used against alien enemy combatants held abroad, and the Supreme Court has established the well-known “shocks the conscience” to determine whether particular government conduct is consistent with the Fifth Amendment’s due process guarantees. See *County of Sacramento v. Lewis*, 523 U.S. 833, 850 (1998); *Rochin v. California*, 342 U.S. 165, 174 (1952). A legal opinion on whether any interrogation technique shocks the conscience such that it constitutes cruel, inhuman or degrading treatment requires an understanding of the relevant facts and cir-

cumstances of the technique’s past or proposed use. This is the test mandated by the Supreme Court itself in *County of Sacramento v. Lewis* in which it wrote that “our concern with preserving the constitutional proportions of substantive due process demands an exact analysis of circumstances before any abuse of power is condemned as conscience shocking.” 523 U.S. 833, 850 (1998) (emphasis added). As the Supreme Court has explained, a court first considers whether the conduct is “arbitrary in the constitutional sense,” a test that asks whether the conduct is proportionate to the governmental interests involved. *Id.* at 847. In addition, the court must conduct an objective inquiry into whether the conduct at issue is “egregious” or “outrageous” in light of “traditional executive behavior and contemporary practices.” *Id.* at 847 n.8. This inquiry requires a review of executive practice so as to determine what the United States has traditionally considered to be out of bounds, and it makes clear that there are some acts that would be prohibited regardless of the surrounding circumstances.

I would have to ensure also that any technique complies with our Nation’s obligations under the Geneva Conventions, including those acts, such as murder, mutilation, rape, and cruel or inhuman treatment, that Congress has forbidden as grave breaches of Common Article 3 under the War Crimes Act. With respect to any coercive interrogation technique, the prohibition on “cruel or inhuman treatment” would be of particular relevance. That statute, similar in structure to 18 U.S.C. §2340, prohibits acts intended (a) to cause serious physical pain or suffering, or (b) serious and non-transitory mental harm resulting from certain specific threats or acts. Also, I would have to consider whether there would be a violation of the additional prohibitions imposed by Executive Order 13440, which includes a prohibition of willful and outrageous personal abuse inflicted for the purpose of humiliating and degrading the detainee.

As I testified, any discussion of coercive interrogation techniques necessarily involves a discussion of and a choice among bad alternatives. I was and remain loath to discuss and opine on any of those alternatives at this stage for the following three principal reasons: First, to repeat, I have not been made aware of the details of any interrogation program to the extent that any such program may be classified, and thus do not know what techniques may be involved in any such program that some may find analogous or comparable to the coercive techniques presented to me at the hearing and in your letter. Second, I would not want any *uninformed* statement of mine made during a confirmation process to present our own professional interrogators in the field, who must perform their duty under the most stressful conditions, or those charged with reviewing their conduct, with a perceived threat that any conduct of theirs, past or present, that was based on authorizations supported by the Department of Justice could place them in personal legal jeopardy. Third, for the reasons that I believe our intelligence community has explained in detail, I would not want any statement of mine to provide our enemies with a window into the limits or contours of any interrogation program we may have in place and thereby assist them in training to resist the techniques we actually may use.

I emphasize in closing this answer that nothing set forth above, or in my testimony, should be read as an approval of the interrogation techniques presented to me at the hearing or in your letter, or any comparable technique. Some of you told me at the hearing or in private meetings that you hoped and expected that, if confirmed, I would ex-

ercise my independent judgment when providing advice to the President, regardless of whether that advice was what the President wanted to hear. I told you that it would be irresponsible for me to do anything less. It would be no less irresponsible for me to seek confirmation by providing an uninformed legal opinion based on hypothetical facts and circumstances.

As I testified, if confirmed I will review any coercive interrogation techniques currently used by the United States Government and the legal analysis authorizing their use to assess whether such techniques comply with the law. If, after such a review, I determine that any technique is unlawful, I will not hesitate to so advise the President and will rescind or correct any legal opinion of the Department of Justice that supports use of the technique. I view this as entirely consistent with my commitment to provide independent judgment on all issues. That is my commitment and pledge to the President, to the Congress, and to the American people. Each and all should expect no less from their Attorney General.

Sincerely,

MICHAEL B. MUKASEY.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, may I inquire how much more time this side of the aisle has in morning business?

The PRESIDING OFFICER. The Senator from Texas would have 12 minutes.

SHIP

Mr. CORNYN. Mr. President, I realize today is Halloween, so millions of children all over the globe will be showing up at our homes, saying “trick or treat.” Unfortunately, Congress has been up to more tricks than treats lately. I say that with a sense of irony but also a sense of great disappointment.

Almost 3 weeks ago, on October 11, I sent a letter to Senator REID, the Senate majority leader, and the Speaker of the House, Congresswoman PELOSI, urging them to work across the aisle with Republicans and Democrats to come up with a sensible compromise on the reauthorization of the State Children’s Health Insurance Program.

Today, as we know, is October 31, Halloween, and we have still not been able to come up with a compromise that is reasonable and fiscally responsible which the President will sign. The families and the children in my State of Texas who are, unfortunately, put on edge and suffering some sense of anxiety wondering whether this important program will continue to serve the needs of low-income children are being unfortunately taken advantage of and disadvantaged.

Why in the world would Congress play this kind of game and make those who are the most vulnerable among us the most anxious about their future and whether they will be able to get the health care which everyone in Congress believes low-income children ought to receive?

Instead of negotiating and trying to come up with a sensible compromise,