Madam President, I am happy to respond to my colleague

from Texas about an issue which is in this morning's paper and on the

minds of many Americans and people around the world. In today's

Washington Post, there are two major front-page stories related in an

unusual way. Here is the photo of the parents of the South Korean who

was beheaded in Iraq--another heinous, barbaric crime committed by

terrorist extremists. Next to it, we have an article entitled ``Memo on

Interrogation Tactics Is Disavowed.''

In this article about the interrogation tactics we learn President

Bush's White House is now disavowing an opinion from the Department of

Justice issued in August of 2002 relative to interrogation tactics that

could be used by the U.S. Armed Forces. It appears now that this memo

has become public, the White House has found it necessary to publicly

disavow this statement by the Department of Justice and Attorney

General Ashcroft. Why?

Well, I think it is obvious.

For a lengthy period of time the Bush administration and the

Department of Justice of Attorney General Ashcroft have been involved

in a fierce, protracted debate about acceptable interrogation

techniques and the definition of torture, a debate which relates to

issues resolved over a hundred years ago, in many cases, by the

Government of the United States of America when we made it our express

policy to disavow torture. When we later entered into a Geneva

convention after the Nazi war crimes, when we later had a convention on

torture, brought to Congress by President Ronald Reagan, this series of

treaties enacted by the United States making them the law of the land

said we as a Nation stood with civilized nations around the world in

condemning and prohibiting torture, cruel and inhumane and degrading

treatment of prisoners. Our statements were unequivocal. We stated that

for the world.

Why? Frankly, because we believed the United States of America and

the values we represent on the floor of the Senate are different than

some. There may be some in this country who will argue we should answer

the beheading of innocent people, like this South Korean, with similar

violence. Thank God, their voices are few and ignored by most. We have

said from the beginning we will not stoop to this level.

If there is anybody who believes that is acceptable conduct, it is

not the United States of America. That is a statement of values and

principles, made first by President Abraham Lincoln during the bloody

Civil War, and by Presidents of both political parties for decades

thereafter. We know, however, that this administration, once engaged in

the war on terror, decided to engage in a new debate on the definition

of torture.

Two weeks ago, the Attorney General of the United States came to the

Senate Judiciary Committee and said to us unequivocally twice that it

was not his job, nor the job of this administration, to define torture.

He said that on the record. It was broadcast across America and around

the world. The very moment he said that, major news organizations were

releasing a memo from Attorney General Ashcroft's Department of

Justice, which defied his statement to the Senate Judiciary Committee,

this memo of August 1, 2002, by Assistant Attorney General Bybee, a

memorandum sent to Alberto Gonzales, counsel to President George W.

Bush. According to Attorney General Ashcroft, this memo should not

exist. He told us in open session it was not his job or the job of this

administration to define torture. He said Congress has done that, and

the laws do that.

Look at this memo of August 1, 2002. Turn to this infamous page 13

and read what Attorney General Ashcroft's Department of Justice said

about torture:

You will not find these words in any treaty the United States has

entered into, certainly not in our Constitution, nor in the laws of the

land. You will find this in the memo from Attorney General Ashcroft's

Justice Department. It is their definition of torture, sent to the

President of the United States General Counsel, Mr. Gonzales.

For the Attorney General to tell us he is not in the business of

defining torture, frankly, doesn't square with the reality of this

official memo from his own Department. If that were the only thing in

this memo, it would be bad enough. But there is more. Because in this

memo, you will find a rationalization to suggest that the President, as

Commander in Chief, is not bound by the laws of the land. That is a

statement to which most people will say, I am sure they didn't say

that. Let me read to you from a section about Section 2340A, the

statute that makes torture a crime:

Sadly, it went further. I read from the same memo:

In other words, this memo from the Ashcroft Department of Justice to

Mr. Gonzales and the White House went beyond the definition of torture.

It created an escape hatch for this President to say, as Commander in

Chief: I am not bound by the laws of the land when it comes to torture

and the interrogation of witnesses.

There are some who come to the floor and wonder why we are raising

this issue.

What is the importance of this issue? The importance of this issue

will be obvious to anyone who reads this memorandum now available on

the Internet. This administration engaged in a fierce and protracted

debate about whether they could redefine torture for the war on

terrorism and whether this President, as Commander in Chief, was above

the law.

For those of us in this Chamber who have sworn to uphold the

Constitution of the United States, a solemn oath which each of us,

including the President, must take, this is, indeed, an extremely

serious situation: That this administration would think this President

and those acting under his authority as Commander in Chief would not be

bound by treaties, by the Constitution, or by the laws of the land.

Can any inquiry be more serious when the question, which must be

asked by this Chamber of the Chief Executive of the United States, is

whether he has gone too far, violating the law of the land?

So what will come before us in a short time is an effort to say to

Attorney General Ashcroft: It is not enough that we have to rely on

leaked memos released on the Internet. We demand of you the disclosure

of relevant documents which will give us a better picture and a better

understanding of this debate within the Bush administration about

torture because, in the context of where we are today, this is not an

academic issue. Because of Abu Ghraib and the shameless conduct of the

men and women in that prison, which has been captured in photographs

released around the world, the United States is being tested. We are

being asked not only within our own borders, but around the world,

whether in the war on terrorism, we have abandoned a commitment of over

a century that says we will not engage in torture, that we are

committed to the humane treatment of prisoners.

It is, unfortunately, a timely and legitimate question which we

cannot duck; we cannot avoid. In order to answer that question, we

understand we have to be open and transparent. We have to not only say

to the world that we are the same country we were before 9/11. After

Abu Ghraib, we have to show them proof, and the proof will be in the

documents which the Attorney General has refused to disclose.

The Attorney General and the President have several legal options

when Congress legitimately asks for documents. The President can assert

his executive privilege. That was done by President Nixon during the

Watergate scandal. It was contested in court all the way to the Supreme

Court, but it is something a President can assert. Only the Court can

ultimately resolve the dispute then between Congress and the President.

President Bush has not asserted executive privilege when it comes to

these memos of Attorney General Ashcroft. Or the Attorney General can

say: There is a statutory privilege that allows me to withhold these

documents.

The request for information that we are going to put in amendment

form allows classified material to be treated separately so it would

not in any way endanger the troops who are defending this country and

defending themselves in Iraq and Afghanistan.

When asked point-blank by myself and others in the Senate Judiciary

Committee, Attorney General Ashcroft said: I cannot give you a legal

authority for the reason I am not going to release these documents. He

said: I just personally believe it is not the right thing to do.

I reminded the Attorney General--and it is worth repeating now--as

important as his personal beliefs may be, they are not the law. If this

Department of Justice and this Attorney General and this President

cannot produce a legal reason for failing to disclose these documents,

then they are asking to be above the law. No President, no Attorney

General, no Senator, none of us serving this country or in this

Congress are above the law and certainly not on an issue of this

magnitude.

Some critics have come to the floor and said this request by Members

of the Senate of the Attorney General to produce these important

documents is the product of ``an irresistible impulse to score cheap

political points.'' I quote a colleague of mine who said those words

just moments ago, ``cheap political points.''

I remind my colleagues and all others, this White House, just

yesterday, decided this memorandum from Attorney General Ashcroft is so

bad, so wrong that they are now disavowing the very memo which was sent

to the chief counsel at the White House almost 2 years ago.

This is not about some political exercise. This is about truth and

transparency and a disclosure which is needed to restore the confidence

in the core values of America not only for the American people but for

people around the world.

Yesterday, in a transparent effort to stop the pressure for full

disclosure, the administration provided Congress with a two-inch stack

of documents. But a cursory review of these documents reveals that the

administration is withholding a lot of crucial information.

If anything, the documents that were released yesterday make it even

more clear that we need complete disclosure from the administration. As

the Chicago Tribune reported today:

What do the documents that were released show? We now know that the

Justice Department memo sent to Mr. Gonzales was the basis for the

Defense Department's decision to approve the use of coercive

interrogation techniques at Guantanamo Bay.

The Department of Defense and the Department of Justice were asking

questions which are almost impossible for me to articulate on the floor

of the Senate, but I must. They asked: How far can our interrogators go

before they may be charged with a war crime? How far can they go before

they might face a war crime tribunal?

That is the serious nature of this internal debate within the

Department of Defense and the Department of Justice. That debate went

on before Abu Ghraib. That debate went on before those horrendous

photographs became part of the history of our occupation of Iraq.

Is it any wonder that Members of the Senate are coming to the floor

today and saying we have an obligation to require this administration

to completely disclose all of the documents and be open and honest

about the dialogue which went on between the White House and the

agencies of our Government?

To do less, sadly, is to create a question, an unanswered question,

about whether the United States has changed.

Let me tell you for a moment some of the issues at hand. One of my

colleagues came to the floor and dismissed some of the criticism of

interrogation tactics as he said, frankly, tying the hands of

interrogators who are only trying to protect us. We have learned

something about interrogation tactics. We have learned that if you use

torture--physical and mental torture--the person being interrogated

will say almost anything, truthful or not, to make it stop.

We know torture and the types of treatment, techniques,

and interrogation tactics which have been prohibited by law in this

country for many years are counterproductive. The Attorney General said

as much before us. Torture does not work. People will lie for the pain

to stop, and that is one of the reasons we do not engage in torture.

Secondly, my colleague, Senator Biden of Delaware, made a point and

made it clearly. He said, in his words: The reason the United States

does not engage in torture is to protect Senator Biden's son, who is a

member of the military, and other members of the military from being

subjected to torture.

We establish standards of humane and civilized conduct not only for

ourselves but to demand them of the rest of the world. Will there be

terrorists who ignore them? Of course. But who will argue with 140,000

American lives on the line in Iraq that we should somehow stoop to

inhumane and barbaric conduct in this war against terrorism, subjecting

all of our soldiers and many other innocent Americans to the same

possibility? We have rejected that, and we should continue to reject

that.

I close by saying this is a very serious issue for our Nation. The

world is indeed watching us. They are asking us whether the United

States will stand

behind its treaties in the age of terrorism. The Senate has an

obligation to the Constitution and to the American people to answer

these questions. Those who vote to table this amendment want to keep

this conversation muted and these memoranda hidden from the American

people. That is wrong. That is wrong for this government or any

government. The American people have the right to know in what their

government is involved. Transparency is critically important.

I urge my colleagues, and I hope a few of my Republican colleagues

will join those of us on this side of the aisle, to stand up for the

rule of law, a rule of law which has guided Presidents from Abraham

Lincoln's time in the Civil War through President Reagan, through every

President. There is no reason this President should be treated

differently.

When it is offered, I urge my colleagues to support the Leahy

amendment.