OFFICE OF THE VICE PRESIDENT

WASHINGTON

June 23, 2008

The Honorable Jerrold Nadler, Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary, House of Representatives
Washington, D.C. 20515

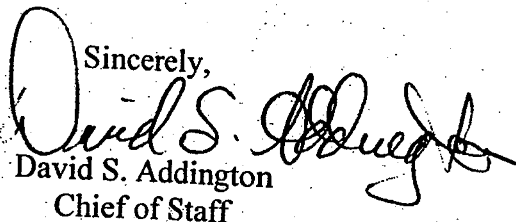
Dear Mr. Chairman:

With regard to my scheduled appearance at a hearing of your Subcommittee on June 26, 2008 at 10 a.m., I ask that you enter into the record of the hearing the following enclosed documents as exhibits:

Exhibit No.	Description of Exhibit
DSA 1	Letter from House Judiciary Committee Chairman John Conyers to Chief of Staff to the Vice President David S. Addington, dated April 11, 2008
DSA 2	Letter from Counsel to the Vice President Kathryn L. Wheelbarger to House Judiciary Committee Chief of Staff and Counsel Perry Apelbaum, dated April 18, 2008
DSA 3	Letter from House Judiciary Committee Chairman John Conyers to Chief of Staff to the Vice President David S. Addington, dated April 28, 2008
DSA 4	Letter from Counsel to the Vice President Kathryn L. Wheelbarger to House Judiciary Committee Chief of Staff and Counsel Perry Apelbaum, dated May 1, 2008
DSA 5	Fax Cover Sheet, Letter and Subpoena from House Judiciary Committee Chairman John Conyers to Chief of Staff to the Vice President David S. Addington, each dated May 7, 2008
DSA 6	Acceptance of Service of Subpoena, from Chief of Staff to the Vice President David S. Addington to House Judiciary Committee, Attn: Mr. Perry Apelbaum, dated May 7, 2008, 4:42 p.m., eastern time
DSA 7	Opinion of the Office of Legal Counsel, Department of Justice, "Immunity of Former Counsel to the President from Compelled Congressional Testimony," dated July 10, 2007 (from OLC public website)
DSA 8	Presidential Memorandum, "Humane Treatment of al Qaeda and Taliban Detainees," dated February 7, 2002 (declassified)
DSA 9	Remarks By the President on the Global War on Terror, The East Room, The White House, September 6, 2006 (Office of the Press Secretary released transcript)
DSA 10	Executive Order 13440, "Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency" (July 20, 2007)

Thank you for your assistance.

Sincerely,



David S. Addington
Chief of Staff

DSA 1

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Congress of the United States

House of Representatives

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JIM JORDAN, Ohio

April 11, 2008

By Fax and U.S. Mail

Mr. David S. Addington
Chief of Staff to the Vice President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Addington:

I write to invite you to appear before the Committee on the Judiciary at our May 6 hearing scheduled to explore issues regarding the nature and scope of Presidential power in time of war and the Administration's approach to these questions under U.S. and international law. Given your personal knowledge of key historical facts, as well as your professional expertise and long engagement with these issues, your testimony would be invaluable to the Committee.

Among the subjects likely to be explored at the hearing are United States policies regarding interrogation of persons in the custody of the nation's intelligence services and armed forces, issues on which you appear to have played an important role. As early as 2004, written reports described you as "a principal author of the White House memo justifying torture of terrorism suspects."[1] Other sources describe you as participating in the preparation of the key legal memorandum concluding that the protections of the Geneva Conventions are "obsolete" when considered against the exigencies of the struggle against global terrorism.[2]

While many of the individuals involved in the development and legal review of the Administration's programs and policies related to such matters have either testified or commented in public, your views have not been significantly heard outside the executive branch. In consideration of the abiding interest of all Americans in these matters, and the unique

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[1] Milbank, *In Cheney's Shadow, Counsel Pushes the Conservative Cause*, Washington Post, Oct. 11, 2004.

[2] Sands, *The Green Light*, Vanity Fair, May 2008.

information and perspective that you bring to the issues, I therefore hope that you will agree to testify at our scheduled hearing. If the date of May 6 poses a particular scheduling problem, please contact my staff as described below and we will be happy to discuss reasonable alternatives. Should you decline to testify on a cooperative basis, however, the Committee must of course proceed with its investigation and will be left with no option but compulsory process.

Thank you for your careful consideration of this invitation. So that we may plan accordingly, please contact Committee staff at (202) 225-3951 as soon as possible and no later than the close of business on Monday, April 21, 2008, to discuss the details of your appearance. Any further responses and questions should similarly be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951, fax: 202-225-7680).

Sincerely,

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Hon. Brian A. Benczkowski
Ms. Margaret Stewart

DSA 2

OFFICE OF THE VICE PRESIDENT

WASHINGTON

April 18, 2008

Mr. Perry Apelbaum
Chief of Staff and Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Apelbaum:

The letter of April 11, 2008 from the Chairman of the Committee on the Judiciary of the House of Representatives ("Committee request") informed the Office of the Vice President that the Committee plans to hold a hearing on May 6 to explore: (1) "issues regarding the nature and scope of Presidential power in a time of war;" (2) "the Administration's approach to these questions under U.S. and international law;" and (3) "United States policies regarding interrogation of persons in the custody of the nation's intelligence services and armed forces." The letter invited the Chief of Staff to the Vice President to appear at the hearing.

The Committee request seeks authoritative representation on the three subjects identified in the Committee request. The Chief of Staff to the Vice President is an employee of the Vice President, and not the President, and therefore is not in a position to speak on behalf of the President. With respect to Presidential power in wartime and related issues under U.S. and international law, the Attorney General or his designee would be the appropriate witness. Regarding interrogation of persons by U.S. intelligence agencies or the armed forces, the Director of National Intelligence or his designee and the Secretary of Defense or his designee, respectively, would be the appropriate witness. You may wish to invite the appropriate subordinates of the President in lieu of your invitation to the Chief of Staff to the Vice President.

As the U.S. Supreme Court made clear in Barenblatt v. United States, 360 U.S. 109 (1959), the power of Congress under the Constitution to inquire (which Members of Congress and congressional employees often refer to by the term "oversight") is coextensive with its power to legislate. The power of Congress to legislate is not limitless and therefore neither is the power to inquire. For example, Congress lacks the constitutional power to regulate by a law what a Vice President communicates in the performance of the Vice President's official duties, or what a Vice President recommends that a President communicate in the President's performance of official duties, and therefore those matters are not within the Committee's power of inquiry. In addition to a constitutional basis for a House inquiry, a particular committee of the House also

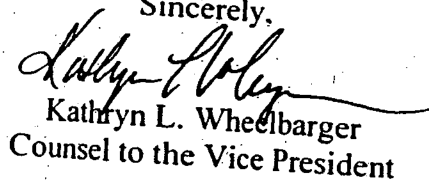
needs jurisdiction assigned by the House for the inquiry. It would be helpful to know from the Committee the scope of the Committee's inquiry and the legal basis for it.

Finally, even if, separate from any question of immunity from testimony, a case were to arise in which a voluntary appearance might be appropriate under the law, questions of privilege may arise with respect to information sought by questions, such as with respect to privileges protecting state secrets, attorney-client communications, deliberations, and communications among Presidents, Vice Presidents, and their advisers. For example, the amount of useful information a Committee of Congress would be likely to receive from a person who served as Counsel to the Vice President and then Chief of Staff to the Vice President concerning official duties is quite limited, given that a principal function of such a person is engaging in privileged communications, such as the giving of privileged advice. Also, inquiry by a House Committee concerning the Senate functions of the Vice President would not, in any event, be appropriate.

The Committee may wish to hold the Committee request in abeyance while it exhausts other sources for the kinds of information the Committee seeks, or the Committee may wish to forgo the Committee request altogether. If, however, the Committee wishes to pursue the Committee request, please advise of the time for which you have invited the Chief of Staff to the Vice President, and of the legal basis for the request under the Constitution and the House Rules. We look forward to receiving such information from the Committee to enable us to further evaluate the request and communicate with you. Please direct to me (Tel. (202) 456-9089, Fax (202) 456-0387) any further communications to the Office of the Vice President on this matter.

This letter is provided as a matter of comity, with respect for the constitutional role of the House of Representatives, and reserving all legal authorities and privileges that may apply.

Sincerely,



Kathryn L. Wheelbarger
Counsel to the Vice President

cc: Mr. Sean McLaughlin
Minority Chief Counsel
Committee on the Judiciary

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COMMITTEE ON THE JUDICIARY

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April 11, 2008

By Fax and U.S. Mail

Mr. David S. Addington
Chief of Staff to the Vice President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Addington:

I write to invite you to appear before the Committee on the Judiciary at our May 6 hearing scheduled to explore issues regarding the nature and scope of Presidential power in time of war and the Administration's approach to these questions under U.S. and international law. Given your personal knowledge of key historical facts, as well as your professional expertise and long engagement with these issues, your testimony would be invaluable to the Committee.

Among the subjects likely to be explored at the hearing are United States policies regarding interrogation of persons in the custody of the nation's intelligence services and armed forces, issues on which you appear to have played an important role. As early as 2004, written reports described you as "a principal author of the White House memo justifying torture of terrorism suspects."[1] Other sources describe you as participating in the preparation of the key legal memorandum concluding that the protections of the Geneva Conventions are "obsolete" when considered against the exigencies of the struggle against global terrorism.[2]

While many of the individuals involved in the development and legal review of the Administration's programs and policies related to such matters have either testified or commented in public, your views have not been significantly heard outside the executive branch. In consideration of the abiding interest of all Americans in these matters, and the unique

---

[1]Milbank, *In Cheney's Shadow, Counsel Pushes the Conservative Cause*, Washington Post, Oct. 11, 2004.

[2]Sands, *The Green Light*, Vanity Fair, May 2008.

information and perspective that you bring to the issues, I therefore hope that you will agree to testify at our scheduled hearing. If the date of May 6 poses a particular scheduling problem, please contact my staff as described below and we will be happy to discuss reasonable alternatives. Should you decline to testify on a cooperative basis, however, the Committee must of course proceed with its investigation and will be left with no option but compulsory process.

Thank you for your careful consideration of this invitation. So that we may plan accordingly, please contact Committee staff at (202) 225-3951 as soon as possible and no later than the close of business on Monday, April 21, 2008, to discuss the details of your appearance. Any further responses and questions should similarly be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951, fax: 202-225-7680).

Sincerely,

John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Hon. Brian A. Benczkowski
Ms. Margaret Stewart

DSA 3

JOHN CONYERS, JR., Michigan
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ONE HUNDRED TENTH CONGRESS

Congress of the United States

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COMMITTEE ON THE JUDICIARY

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TRENT FRANKS, Arizona
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JIM JORDAN, Ohio

April 28, 2008

By Fax and U.S. Mail

Mr. David S. Addington
Chief of Staff to the Vice President
Office of the Vice President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Addington:

I am in receipt of the April 18, 2008, letter from counsel to the Vice President responding to my invitation for your voluntarily appearance before the Committee. I was disappointed to receive such a legalistic and argumentative response to my invitation. I address counsel's particular concerns below, but let me first state once again that my invitation for your voluntary appearance remains open. I continue to hope that you will accept this opportunity to present your views and explain your actions to the public that you serve. As discussed below, counsel's letter has not identified any meaningful obstacles to your appearance, which I hope we can readily arrange without even considering the need for formal process. If I we are not able to reach such an accommodation sometime this week, however, I will have no choice but to consider the use of compulsory process.

Reason for the Invitation

Counsel's letter recites three broad quotations from the invitation letter describing the general scope of the hearing and states "[t]he Committee request seeks authoritative representation on the three subjects identified in the Committee request."[1] The letter further cautions that "[t]he Chief of Staff to the Vice President is an employee of the Vice President, and not the President, and therefore is not in a position to speak on behalf of the President,"[2]

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[1]April 18, 2008, Letter from Kathryn L. Wheelbarger to Perry Apelbaum.

[2]April 18, 2008, Letter from Kathryn L. Wheelbarger to Perry Apelbaum.

apparently believing that you have been invited to testify as a policy representative of the President. Finally, counsel suggests a series of potential witnesses that she believes would be "appropriate" to call "in lieu of [the] invitation to the Chief of Staff to the Vice President."[3]

These comments appear to reflect a serious misreading of my prior letter. Nowhere does that letter ask for "authoritative representation" on the quoted subjects, nor does it request any statement on behalf of the President. Instead, the letter quite directly asks you to share your "personal knowledge of key historical facts" and "professional expertise" with the Committee.[4] Furthermore, while counsel has selected several quotations describing the broad subject matter of the proposed hearing to quote in the response letter, she has simply ignored the careful description of specific issues on which you have unique, personal knowledge about which the Committee would like to hear testimony. For example, the letter simply omits the central statement that "[a]s early as 2004, written reports described you as 'a principal author of the White House memo justifying torture of terrorism suspects.' Other sources describe you as participating in the preparation of the key legal memorandum concluding that the protections of the Geneva Conventions are 'obsolete' when considered against the exigencies of the struggle against global terrorism."[5] In my view, there clearly is ample reason for inviting you to testify.

Power of Congress to Conduct Oversight

I appreciate counsel's citation to Barenblatt v. United States, 360 U.S. 109 (1959), a case in which the Supreme Court upheld the power of Congress to conduct the oversight at issue and affirmed the petitioner's conviction for contempt of Congress based on his refusal to answer questions put by a Congressional committee. However, while counsel cites Barenblatt for the principle that some limits do exist on the oversight power, she seems to overlook the more fundamental description of the scope and breadth of the oversight power in the opinion. As explained by Justice Harlan:

> The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power

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[3] April 18, 2008, Letter from Kathryn L. Wheelbarger to Perry Apelbaum.

[4] April 11, 2008, Letter from John Conyers, Jr. to David S. Addington.

[5] April 11, 2008, Letter from John Conyers, Jr. to David S. Addington (footnotes omitted).

of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.[6]

On the issue of legislative authority, counsel's discussion of the Committee's purported lack of power "to regulate by a law what a Vice President communicates in the performance of the Vice President's official duties or what a Vice President recommends that a President communicate in the President's performance of official duties" simply has no bearing on the issues at hand. It is hard to know what aspect of the invitation has given rise to concern that the Committee might seek to regulate the Vice President's recommendations to the President. Especially since far more obvious potential subjects of legislation are plentiful, such as, at a minimum, revisions to U.S. law on torture and treatment of detainees -- including the federal torture statue,[7] the federal War Crimes Act,[8] and the Detainee Treatment Act of 2005,[9] – and possible revisions to the organization and functions of the Department of Justice, its Office of Legal Counsel,[10] or other executive departments.

Counsel's letter asks for the basis under the Constitution and the House Rules for the Committee's inquiry. The constitutional basis for such oversight is discussed in McGrain v. Daugherty, 273 U.S. 135 (1927), and its progeny, including Barenblatt, and the Committee's authority to proceed is reflected in Rules X(1)(k), X(2), and XI of the Rules of the House of Representatives (110th Congress).

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[6] Barenblatt v. United States, 360 U,S, 109, 111 (1959). This quotation also makes clear that counsel's statement that "the power of Congress under the Constitution to inquire (which Members of Congress and congressional employees often refer to by the term 'oversight') is coextensive with its power to legislate" is incomplete, as it omits the equally important constitutional foundation for oversight of the appropriations power. While the Judiciary Committee is not a direct appropriator, counsel's comment speaks broadly to the power of Congress. Congress of course provides funding for the Executive Branch, including Office of the Vice President, and could adjust that funding if it concluded, for example, that a Vice Presidential employee was improperly interfering with operations of other government agencies or for any other appropriate policy reason. The appropriations power thus should not be overlooked when considering Congressional authority.

[7] 18 U.S.C. § 2340 et seq.

[8] 18 U.S.C. § 2441.

[9] Pub. L. No. 109-148, §§ 1001–1006 (2005).

[10] 28 U.S.C. § 510 et seq.

Concerns About Privilege and Immunity

Finally, counsel raises concern that your testimony would not be useful to the Committee because it might be constrained by various privileges, and also refers briefly to the "question of immunity from testimony."[11] As to immunity, Vice Presidential staff have previously testified before Congress and I am aware of no authority – and counsel's letter cites none – for the proposition that such staff could be immune from testimony before Congress. While the issue of the immunity of senior advisors *to the President* is currently under litigation, there has been no suggestion that such immunity, even if recognized, would reach to the *Vice President's* office, an entity that, as you well know, is constitutionally quite different from the Office of the President. As to privilege, such concerns are traditionally and appropriately raised in response to specific questions and not as a threshold reason to decline a Congressional Committee's invitation to appear. I note that the sitting head of the Office of Legal Counsel Steven Bradbury recently testified before a Judiciary Subcommittee on issues related to Administration interrogation policy, so I have no doubt we can accommodate the concerns that counsel has raised. Given the scope of your reported actions and the subject of our inquiry, such as claims that you may have interacted with individuals in the Justice Department and the Department of Defense, including field military officers at Guantanamo Bay, it seems clear that many relevant questions exist that do not implicate executive privilege.

* * * * *

Despite the tenor of counsel's letter, senior White House officials, including White House Counsels and Chiefs of Staff, and even the Chief of Staff to the Vice President, have previously testified before committees of Congress.[12] On October 17, 1974, I was present when President Ford himself testified before a House Judiciary subcommittee on issues related to the Nixon pardon. The invitation to appear is thus based on a long tradition of comity between the branches and our shared recognition that public officials ultimately serve and should be accountable to the American people. These principles have served our nation well, and I trust that you will not turn your back on them now.

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[11] April 18, 2008, Letter from Kathryn L. Wheelbarger to Perry Apelbaum. While the main privilege issues are addressed above, I assume that counsel's citation to the "state secrets" privilege was an oversight as that is a judge-made litigation privilege that has no application before a Committee of Congress. Similarly, counsel's stated concern that "inquiry by a House Committee concerning the Senate functions of the Vice President would not, in any event, be appropriate" seems especially out of place given the subject matter of the proposed hearing and the nature of the invitation to you.

[12] For example, White House Counsels Nussbaum, Cutler, Quinn, and Ruff, and Chiefs of Staff McLarty, Bowles, Podesta, and Neel all provided sworn testimony to the Congress during the 1990s. See, e.g., March 21, 2007, Letter from Chairman Henry A. Waxman to Chairman Patrick Leahy and Chairman John Conyers, Jr.

Today we face a severe national challenge over charges related to the allegedly harsh treatment of detainees in U.S. custody, reportedly done with legal authorization of the Department of Justice and explicit approval from the highest officials in our government. These are serious matters that substantially impact our national security, the safety and well-being of our troops around the world, and our nation's legal and moral standing. As referenced in the invitation letter, multiple sources place you at the center of these momentous events. Thus:

- You are reported to have "assisted in the drafting" of the now-withdrawn August 1, 2002, interrogation memorandum issued by Jay Bybee and John Yoo in the Department of Justice Office of Legal Counsel.[13] Another source states that you "helped shape" this memorandum.[14]

- You are "believed to have been written" a January 25, 2002, memorandum issued by White House counsel Alberto Gonzales that advised President Bush that the fight against terrorism "renders obsolete Geneva's strict limitation on questioning of enemy prisoners and renders some of its provisions quaint."[15]

- Reports state that some in the Justice Department complained that you improperly maintained a "private legal channel" to John Yoo at the Office of Legal Counsel.[16]

- Reports indicate that you participated in a "war council" along with the White House Counsel, the General Counsel to the Defense Department, and OLC Deputy John Yoo that shaped the "most important legal-policy decisions in the war on terror" outside of normal channels and "sometimes to the exclusion of the intragency process altogether ".[17]

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[13]Sands, *The Green Light*, Vanity Fair, May 2008; See also *Gelman and Becker, Pushing the Envelope on Presidential Power*, Washington Post, June 25, 2007 ("In an interview, Yoo said that Addington, as well as Gonzales and deputy White House counsel Timothy E. Flanigan, contributed to the analysis.").

[14]Ragavan, *Cheney's Guy*, US News and World Report, May 21, 2006.

[15]Sands, *The Green Light*, Vanity Fair, May 2008; Mayer, *The Hidden Power*, The New Yorker, July 3, 2006.

[16]Gelman and Becker, *Pushing the Envelope on Presidential Power*, Washington Post, June 25, 2007.

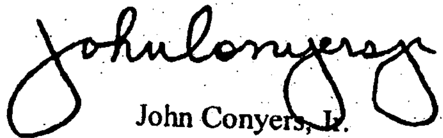
[17]Goldsmith, *The Terror Presidency* at 22 (2007); Rosen, *Conscience of a Conservative*, New York Times, Sept 9, 2007.

- Military officials have stated that you took the lead during a September 2002 visit of high ranking administration lawyers to the detention facility at Guantanamo Bay, Cuba that "brought ideas" on interrogation methods from Washington sources to the facility.[18]
- According to one former high-ranking Administration lawyer who worked extensively on national-security issues, "the Administration's legal positions were, to a remarkable degree, 'all Addington.'"[19]

These reports describe an extraordinary change in the traditional lines of legal authority between the Department of Justice, the White House Counsel, and the President, placing you at the center of the Administration's legal policy process on this most sensitive of national issues. Presumably, you believe that whatever actions you took were necessary and comported with the law; in such circumstances, I cannot imagine why you would decline to appear and set the record straight. The American people deserve no less.

We are certainly willing to accommodate your schedule and I hope that we can work together to arrange a specific time and date for this appearance if May 6 is not convenient. Please have your counsel contact the Judiciary Committee staff at (202) 225-3951 as soon as possible and no later than the close of business on Friday, May 2, 2008, to make these arrangements. Any further responses and questions should similarly be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,



John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Ms. Kathryn L. Wheelbarger

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[18] Sands, *The Green Light*, Vanity Fair, May 2008.

[19] Mayer, *The Hidden Power*, The New Yorker, July 3, 2006.

DSA 4

OFFICE OF THE VICE PRESIDENT

WASHINGTON

May 1, 2008

Mr. Perry Apelbaum
Chief of Staff and Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Apelbaum:

This letter follows up on the letter from the Committee on the Judiciary of the House of Representatives ("Committee") to the Chief of Staff to the Vice President ("Chief of Staff") of April 11, 2008, my letter to the Committee of April 18, 2008, and the Committee's letter to the Chief of Staff of April 28, 2008. The legal views of the Office of the Vice President regarding your request for the Chief of Staff's attendance at the investigative hearing you propose for May 6, 2008 remain as stated in my letter of April 18 and this letter.

The Office of the Vice President remains of the view that the courts, to protect the institution of the Vice Presidency under the Constitution from encroachment by committees of Congress, would recognize that a chief of staff or counsel to the Vice President is immune from compulsion to appear before committees of Congress to testify concerning official duties performed for the Vice President.

In deciding whether to invoke that immunity in this particular case, the Office of the Vice President has taken account of the Committee letter of April 28, 2008, which confirmed that the Committee proposal to ask questions of the Chief of Staff is substantially narrower in scope than first appeared from the Committee's letter of April 11, 2008. The Committee letter of April 28, 2008 made clear, with respect to the proposed questioning, that:

-- first, the Committee recognizes that the Chief of Staff is not in a position to provide authoritative representation of the President on issues regarding "the nature and scope of Presidential power in time of war," "the Administration's approach to these questions under U.S. and international law," or "United States policies regarding interrogation of persons in the custody of the nation's intelligence services and armed forces" (Page Two of Committee Letter of April 28, 2008; quotations from Page One of Committee Letter of April 11, 2008);

-- second, the Committee questions to the Chief of Staff would seek only "personal knowledge of key historical facts" relating to the three subjects quoted above (Page Two of Committee Letter of April 28, 2008);

-- third, the Committee does not seek information relating to Vice Presidential communications or to Vice Presidential recommendations to the President (Page Three of Committee Letter of April 28, 2008);

-- fourth, the Committee does not seek information relating to the Senate functions of the Vice Presidency (Footnote 11 of Committee Letter of April 28, 2008); and

-- fifth, applicable legal privileges may be invoked in response to questions (Page Four of Committee Letter of April 28, 2008).

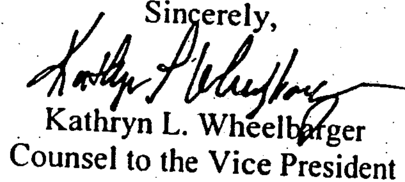
The Committee letter of April 28 refers vaguely to asking questions in response to which the Committee would expect the Chief of Staff to share "professional expertise" with the Committee. Because the Chief of Staff's profession is that of an attorney, we assume that the practice of law is the profession to which you refer. To avoid any misunderstanding or surprise, please be clear that the Committee is not the Chief of Staff's client and the Chief of Staff is not in a position to render legal advice, opinions or services to the Committee.

The Office of the Vice President notes that the Committee has not, by the general citation to "McGrain v. Daugherty, 273 U.S. 135 (1927), and its progeny," met its burden of demonstrating a satisfactory constitutional basis under the principles set forth in Barenblatt v. United States, 360 U.S. 109 (1959) for inquiry by the House of Representatives of the Office of the Vice President. Further, the Committee has not, by the general citations to "Rules X(1)(k), X(2), and XI" of the House of Representatives for the 110th Congress, met its burden of demonstrating that, if the House had a constitutional basis for such inquiry, the House has assigned jurisdiction of the matter to the Committee on the Judiciary.

For the reasons stated in my letter of April 18 and above, the Committee may wish to hold the Committee request for testimony in abeyance while it exhausts other sources for the kinds of information the Committee seeks, or the Committee may wish to forgo the request altogether. If, however, the Committee wishes to pursue its request, then -- as a matter of comity, relying on the representations in your letters of April 11 and 28, including especially the five points set forth above, and reserving all legal authorities, immunities, questions and privileges, including with respect to the lawfulness of the inquiry under the Constitution and House rules -- the Chief of Staff to the Vice President is prepared to accept timely service of a Committee subpoena for testimony for a hearing on May 6, 2008.

We hope and expect that the Committee will recognize the importance of protecting the institution of the Vice Presidency under the Constitution, so that present and future Vice Presidents can continue to serve America effectively.

Sincerely,



Kathryn L. Wheelbarger
Counsel to the Vice President

cc: Mr. Sean McLaughlin
Minority Chief Counsel
Committee on the Judiciary

DSA 5

JOHN CONYERS, JR. Michigan
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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

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JIM JORDAN, Ohio

FAX COVER SHEET

DATE: May 7, 2008

TO: David S. Addington c/o Kathryn Wheelbarger

FAX NO.: (202) 456-6429

FROM: Chairman Conyers **Fax No.:** (202) 225-4423

NUMBER OF PAGES IN THIS TRANSMISSION: 4 (including cover)

COMMENTS: Please contact Andrea Culebras with any questions

PLEASE CALL IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION
(202) 225-3951

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JIM JORDAN, Ohio

May 7, 2008

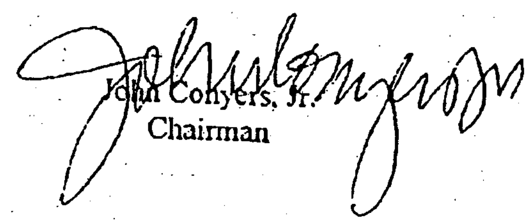
By Fax

Mr. David S. Addington
Assistant to the President and
Chief of Staff to the Vice President and Counsel
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Addington:

As discussed with Counsel to the Vice President Kathryn Wheelbarger, enclosed is a subpoena for your testimony at a hearing before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee on June 26, 2008. We appreciate very much the cooperation of you and Ms. Wheelbarger in agreeing to accept service by fax and on the June 26 date for the hearing, and we look forward to your testimony. If you have any questions, problems, or concerns, please direct them to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951, fax: 202-225-7680).

Sincerely,



John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Jerrold Nadler
Hon. Trent Franks
Kathryn L. Wheelbarger

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To David S. Addington, Assistant to the President and Chief of Staff to the Vice President and Counsel

You are hereby commanded to be and appear before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House of Representatives of the United States at the place, date and time specified below.

☑ **to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.**

Place of testimony: 2141 Rayburn House Office Building, Washington, DC 20515

Date: June 26, 2008

Time: 10:00 a.m.

☐ **to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.**

Place of production: ________

Date: ________

Time: ________

To Any authorized Committee staff to accomplish by fax to 202-456-6429 pursuant to the authorization of Kathryn Wheelbarger, Counsel to the Vice President, on behalf of Mr. Addington to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 7th day of May, 2008.

Attest: [signature]
Clerk

[signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for David S. Addington, Assistant to the President and Chief of Staff to the Vice President and Counsel

Address The White House, 1600 Pennsylvania Ave., NW, Washington, DC 20500

before the Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

U.S. House of Representatives
110th Congress

Served by (print name) Andrea Culebras

Title Professional Staff Member

Manner of service Faxing to (202)456-6429 to David Addington c/o Kathryn Wheelbarger

Date May 7, 2008

Signature of Server Andrea Culebras

Address Committee on the Judiciary, 2138 Rayburn House Office Building, Washington, DC 20515

DSA 6

*************** -COMM. .. JAL- ******************** DATE MAY-07-200. *** TIME 17:44 ********

MODE = MEMORY TRANSMISSION START=MAY-07 17:43 END=MAY-07 17:44

FILE NO.=581

STN NO.	COMM.	ONE-TOUCH ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
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-OVPCOS

*********************************** - - ***** - 2024566429- ********

VIA FAX TO 202-225-7702

TO: COMMITTEE ON THE JUDICIARY
ATTN: MR. PERRY APELBAUM
Service accepted per the Counsel to the Vice President's letter to the Committee of May 1, 2008.
David S. Addington
May 7, 2008
442 pm, ET

SUBPOENA

By Authority of the House of Representatives of the Congress of the United States of America

---

To David S. Addington, Assistant to the President and Chief of Staff to the Vice President and Counsel

You are hereby commanded to be and appear before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House of Representatives of the United States at the place, date and time specified below.

☑ to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2141 Rayburn House Office Building, Washington, DC 20515

Date: June 26, 2008 Time: 10:00 a.m.

☐ to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: ________

Date: ________ Time: ________

To Any authorized Committee staff to accomplish by fax to 202-456-6429 pursuant to the authorization of Kathryn Wheelbarger, Counsel to the Vice President, on behalf of Mr. Addington to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 7th day of May, 2008.

[signature]
Chairman or Authorized Member

Attest: [signature]
Clerk

VIA FAX TO 202-225-4423

TO: COMMITTEE ON THE JUDICIARY
ATTN: MR. PERRY APELBAUM

Service accepted per the Counsel to the Vice President's letter to the Committee of May 1, 2008.

David S. Addington
May 7, 2008
4:42 pm, ET

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To David S. Addington, Assistant to the President and Chief of Staff to the Vice President and Counsel

You are hereby commanded to be and appear before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House of Representatives of the United States at the place, date and time specified below.

☑ **to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2141 Rayburn House Office Building, Washington, DC 20515

Date: June 26, 2008

Time: 10:00 a.m.

☐ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production:

Date:

Time:

To Any authorized Committee staff to accomplish by fax to 202-456-6429 pursuant to the authorization of Kathryn Wheelbarger, Counsel to the Vice President, on behalf of Mr. Addington to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 7th day of May, 2008.

Attest: Lorraine C. Miller
Clerk

Chairman or Authorized Member

MAY-07-2008 17:30

DSA 7

IMMUNITY OF FORMER COUNSEL TO THE PRESIDENT FROM COMPELLED CONGRESSIONAL TESTIMONY

The former Counsel to the President is immune from compelled congressional testimony about matters that arose during her tenure as Counsel to the President and that relate to her official duties in that capacity and is not required to appear in response to a subpoena to testify about such matters.

July 10, 2007

MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

You have asked whether Harriet Miers, the former Counsel to the President, is legally required to appear and provide testimony in response to a subpoena issued by the Committee on the Judiciary of the House of Representatives. The Committee, we understand, seeks testimony from Ms. Miers about matters arising during her tenure as Counsel to the President and relating to her official duties in that capacity. Specifically, the Committee wishes to ask Ms. Miers about the decision of the Justice Department to request the resignations of several United States Attorneys in 2006. *See* Letter for Harriet E. Miers from the Hon. John Conyers, Jr., Chairman, House Committee on the Judiciary (June 13, 2007). For the reasons discussed below, we believe that Ms. Miers is immune from compulsion to testify before the Committee on this matter and, therefore, is not required to appear to testify about this subject.

Since at least the 1940s, Administrations of both political parties have taken the position that "'the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee.'" *Assertion of Executive Privilege With Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno) (quoting Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, *Re: Executive Privilege* at 5 (May 23, 1977)). This immunity "is absolute and may not be overborne by competing congressional interests." *Id.*

Assistant Attorney General William Rehnquist succinctly explained this position in a 1971 memorandum:

> The President and his immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis—should be deemed absolutely immune from testimonial compulsion by a congressional committee. They not only may not be examined with respect to their official duties, but they may not even be compelled to appear before a congressional committee.

Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb. 5, 1971) ("*Rehnquist Memo*"). In a 1999 opinion for President Clinton, Attorney General Reno concluded that the Counsel to the President "serves as an immediate adviser to the President and is therefore immune from compelled congressional testimony." *Assertion of Executive Privilege*, 23 Op. O.L.C. at 4.

The rationale for the immunity is plain. The President is the head of one of the independent Branches of the federal Government. If a congressional committee could force the President's appearance, fundamental separation of powers principles—including the President's independence and autonomy from Congress—would be threatened. As the Office of Legal Counsel has explained, "[t]he President is a separate branch of government. He may not compel congressmen to appear before him. As a matter of separation of powers, Congress may not compel him to appear before it." Memorandum for Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 2 (July 29, 1982) ("*Olson Memorandum*").

The same separation of powers principles that protect a President from compelled congressional testimony also apply to senior presidential advisers. Given the numerous demands of his office, the President must rely upon senior advisers. As Attorney General Reno explained, "in many respects, a senior advisor to the President functions as the President's alter ego, assisting him on a daily basis in the formulation of executive policy and resolution of matters affecting the military, foreign affairs, and national security and other aspects of his discharge of his constitutional responsibilities." *Assertion of Executive Privilege*, 23 Op. O.L.C. at 5.[1] Thus, "[s]ubjecting a senior presidential advisor to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters relating to the performance of his constitutionally assigned functions." *Id.*; *see also Olson Memorandum* at 2 ("The President's close advisors are an extension of the President.").[2]

The fact that Ms. Miers is a former Counsel to the President does not alter the analysis. Separation of powers principles dictate that former Presidents and former senior presidential advisers remain immune from compelled congressional testimony about official matters that occurred during their time as President or senior presidential advisers. Former President Truman explained the need for continuing immunity in November 1953, when he refused to comply with a subpoena directing him to appear before the House Committee on Un-American Activities. In a letter to that committee, he warned that "if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President." *Texts of Truman Letter and Velde Reply*, N.Y. Times, Nov. 13, 1953, at 14 (reprinting November 12, 1953 letter by President Truman). "The doctrine

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[1] In an analogous context, the Supreme Court held that the immunity provided by the Speech or Debate Clause of the Constitution to Members of Congress also applies to congressional aides, even though the Clause refers only to "Senators and Representatives." U.S. Const. art I, § 6, cl. 1. In justifying expanding the immunity, the Supreme Court reasoned that "the day to day work of such aides is so critical to the Members' performance that they must be treated as the latter's alter egos." *Gravel v. United States*, 408 U.S. 606, 616-17 (1972). Any other approach, the Court warned, would cause the constitutional immunity to be "inevitably . . . diminished and frustrated." *Id.* at 617.

[2] *See also History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress*, 6 Op. O.L.C. 751, 771-72 (1982) (documenting how President Truman directed Assistant to the President John Steelman not to respond to a congressional subpoena seeking information about confidential communications between the President and one of his "principal aides").

would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes." *Id.* In a radio speech to the Nation, former President Truman further stressed that it "is just as important to the independence of the Executive that the actions of the President should not be subjected to the questioning by the Congress after he has completed his term of office as that his actions should not be questioned while he is serving as President." *Text of Address by Truman Explaining to Nation His Actions in the White Case*, N.Y. Times, Nov. 17, 1953, at 26.

Because a presidential adviser's immunity is derivative of the President's, former President Truman's rationale directly applies to former presidential advisers. We have previously opined that because an "immediate assistant to the President may be said to serve as his alter ego . . . . the same considerations that were persuasive to former President Truman would apply to justify a refusal to appear [before a congressional committee] by . . . a former [senior presidential adviser], if the scope of his testimony is to be limited to his activities while serving in that capacity." Memorandum for the Counsel to the President from Roger C. Cramton, Assistant Attorney General, Office of Legal Counsel, *Re: Availability of Executive Privilege Where Congressional Committee Seeks Testimony of Former White House Official on Advice Given President on Official Matters* at 6 (Dec. 21, 1972).

Accordingly, we conclude that Ms. Miers is immune from compelled congressional testimony about matters, such as the U.S. Attorney resignations, that arose during her tenure as Counsel to the President and that relate to her official duties in that capacity, and therefore she is not required to appear in response to a subpoena to testify about such matters.

/s/

STEVEN G. BRADBURY
Principal Deputy Assistant Attorney General

DSA 8

THE WHITE HOUSE

WASHINGTON

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.

2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:

   a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.

   b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to

NSC DECLASSIFICATION REVIEW [E.O. 12958 as amended]
DECLASSIFIED IN FULL ON 6/17/2004
by R.Soubers

Reason: 1.5 (d)
Declassify on: 02/07/12

exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character."

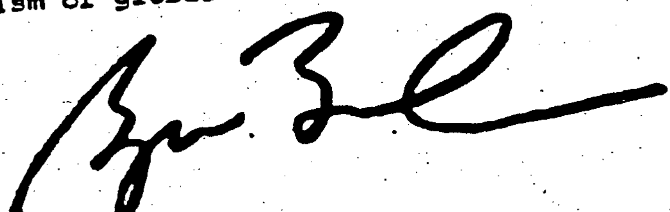
d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.

3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.

5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.



DSA 9

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 6, 2006

REMARKS BY THE PRESIDENT
ON THE GLOBAL WAR ON TERROR

The East Room

1:45 P.M. EDT

THE PRESIDENT: Thank you. Thanks for the warm welcome. Welcome to the White House. Mr. Vice President, Secretary Rice, Attorney General Gonzales, Ambassador Negroponte, General Hayden, members of the United States Congress, families who lost loved ones in the terrorist attacks on our nation, and my fellow citizens: Thanks for coming.

On the morning of September the 11th, 2001, our nation awoke to a nightmare attack. Nineteen men, armed with box cutters, took control of airplanes and turned them into missiles. They used them to kill nearly 3,000 innocent people. We watched the Twin Towers collapse before our eyes -- and it became instantly clear that we'd entered a new world, and a dangerous new war.

The attacks of September the 11th horrified our nation. And amid the grief came new fears and urgent questions: Who had attacked us? What did they want? And what else were they planning? Americans saw the destruction the terrorists had caused in New York, and Washington, and Pennsylvania, and they wondered if there were other terrorist cells in our midst poised to strike; they wondered if there was a second wave of attacks still to come.

With the Twin Towers and the Pentagon still smoldering, our country on edge, and a stream of intelligence coming in about potential new attacks, my administration faced immediate challenges: We had to respond to the attack on our country. We had to wage an unprecedented war against an enemy unlike any we had fought before. We had to find the terrorists hiding in America and across the world, before they were able to strike

our country again. So in the early days and weeks after 9/11, I directed our government's senior national security officials to do everything in their power, within our laws, to prevent another attack.

Nearly five years have passed since these -- those initial days of shock and sadness -- and we are thankful that the terrorists have not succeeded in launching another attack on our soil. This is not for the lack of desire or determination on the part of the enemy. As the recently foiled plot in London shows, the terrorists are still active, and they're still trying to strike America, and they're still trying to kill our people. One reason the terrorists have not succeeded is because of the hard work of thousands of dedicated men and women in our government, who have toiled day and night, along with our allies, to stop the enemy from carrying out their plans. And we are grateful for these hardworking citizens of ours.

Another reason the terrorists have not succeeded is because our government has changed its policies -- and given our military, intelligence, and law enforcement personnel the tools they need to fight this enemy and protect our people and preserve our freedoms.

The terrorists who declared war on America represent no nation, they defend no territory, and they wear no uniform. They do not mass armies on borders, or flotillas of warships on the high seas. They operate in the shadows of society; they send small teams of operatives to infiltrate free nations; they live quietly among their victims; they conspire in secret, and then they strike without warning. In this new war, the most important source of information on where the terrorists are hiding and what they are planning is the terrorists, themselves. Captured terrorists have unique knowledge about how terrorist networks operate. They have knowledge of where their operatives are deployed, and knowledge about what plots are underway. This intelligence -- this is intelligence that cannot be found any other place. And our security depends on getting this kind of information. To win the war on terror, we must be able to detain, question, and, when appropriate, prosecute terrorists captured here in America, and on the battlefields around the world.

After the 9/11 attacks, our coalition launched operations across the world to remove terrorist safe havens, and capture or kill terrorist operatives and leaders. Working with our allies, we've captured and detained thousands of terrorists and enemy

fighters in Afghanistan, in Iraq, and other fronts of this war on terror. These enemy -- these are enemy combatants, who were waging war on our nation. We have a right under the laws of war, and we have an obligation to the American people, to detain these enemies and stop them from rejoining the battle.

Most of the enemy combatants we capture are held in Afghanistan or in Iraq, where they're questioned by our military personnel. Many are released after questioning, or turned over to local authorities -- if we determine that they do not pose a continuing threat and no longer have significant intelligence value. Others remain in American custody near the battlefield, to ensure that they don't return to the fight.

In some cases, we determine that individuals we have captured pose a significant threat, or may have intelligence that we and our allies need to have to prevent new attacks. Many are al Qaeda operatives or Taliban fighters trying to conceal their identities, and they withhold information that could save American lives. In these cases, it has been necessary to move these individuals to an environment where they can be held secretly [sic], questioned by experts, and -- when appropriate -- prosecuted for terrorist acts.

Some of these individuals are taken to the United States Naval Base at Guantanamo Bay, Cuba. It's important for Americans and others across the world to understand the kind of people held at Guantanamo. These aren't common criminals, or bystanders accidentally swept up on the battlefield -- we have in place a rigorous process to ensure those held at Guantanamo Bay belong at Guantanamo. Those held at Guantanamo include suspected bomb makers, terrorist trainers, recruiters and facilitators, and potential suicide bombers. They are in our custody so they cannot murder our people. One detainee held at Guantanamo told a questioner questioning him -- he said this: "I'll never forget your face. I will kill you, your brothers, your mother, and sisters."

In addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency. This group includes individuals believed to be the key architects of the September the 11th attacks, and attacks on the USS Cole, an operative involved in the bombings of our embassies in Kenya and Tanzania, and individuals involved in other attacks that have taken the lives of innocent civilians

across the world. These are dangerous men with unparalleled knowledge about terrorist networks and their plans for new attacks. The security of our nation and the lives of our citizens depend on our ability to learn what these terrorists know.

Many specifics of this program, including where these detainees have been held and the details of their confinement, cannot be divulged. Doing so would provide our enemies with information they could use to take retribution against our allies and harm our country. I can say that questioning the detainees in this program has given us information that has saved innocent lives by helping us stop new attacks -- here in the United States and across the world. Today, I'm going to share with you some of the examples provided by our intelligence community of how this program has saved lives; why it remains vital to the security of the United States, and our friends and allies; and why it deserves the support of the United States Congress and the American people.

Within months of September the 11th, 2001, we captured a man known as Abu Zubaydah. We believe that Zubaydah was a senior terrorist leader and a trusted associate of Osama bin Laden. Our intelligence community believes he had run a terrorist camp in Afghanistan where some of the 9/11 hijackers trained, and that he helped smuggle al Qaeda leaders out of Afghanistan after coalition forces arrived to liberate that country. Zubaydah was severely wounded during the firefight that brought him into custody -- and he survived only because of the medical care arranged by the CIA.

After he recovered, Zubaydah was defiant and evasive. He declared his hatred of America. During questioning, he at first disclosed what he thought was nominal information -- and then stopped all cooperation. Well, in fact, the "nominal" information he gave us turned out to be quite important. For example, Zubaydah disclosed Khalid Sheikh Mohammed -- or KSM -- was the mastermind behind the 9/11 attacks, and used the alias "Muktar." This was a vital piece of the puzzle that helped our intelligence community pursue KSM. Abu Zubaydah also provided information that helped stop a terrorist attack being planned for inside the United States -- an attack about which we had no previous information. Zubaydah told us that al Qaeda operatives were planning to launch an attack in the U.S., and provided physical descriptions of the operatives and information on their general location. Based on the information he provided, the

operatives were detained -- one while traveling to the United States.

We knew that Zubaydah had more information that could save innocent lives, but he stopped talking. As his questioning proceeded, it became clear that he had received training on how to resist interrogation. And so the CIA used an alternative set of procedures. These procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful. I cannot describe the specific methods used -- I think you understand why -- if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were tough, and they were safe, and lawful, and necessary.

Zubaydah was questioned using these procedures, and soon he began to provide information on key al Qaeda operatives, including information that helped us find and capture more of those responsible for the attacks on September the 11th. For example, Zubaydah identified one of KSM's accomplices in the 9/11 attacks -- a terrorist named Ramzi bin al Shibh. The information Zubaydah provided helped lead to the capture of bin al Shibh. And together these two terrorists provided information that helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed.

Once in our custody, KSM was questioned by the CIA using these procedures, and he soon provided information that helped us stop another planned attack on the United States. During questioning, KSM told us about another al Qaeda operative he knew was in CIA custody -- a terrorist named Majid Khan. KSM revealed that Khan had been told to deliver $50,000 to individuals working for a suspected terrorist leader named Hambali, the leader of al Qaeda's Southeast Asian affiliate known as "J-I". CIA officers confronted Khan with this information. Khan confirmed that the money had been delivered to an operative named Zubair, and provided both a physical description and contact number for this operative.

Based on that information, Zubair was captured in June of 2003, and he soon provided information that helped lead to the capture of Hambali. After Hambali's arrest, KSM was questioned again. He identified Hambali's brother as the leader of a "J-I" cell, and Hambali's conduit for communications with al Qaeda.

Hambali's brother was soon captured in Pakistan, and, in turn, led us to a cell of 17 Southeast Asian "J-I" operatives. When confronted with the news that his terror cell had been broken up, Hambali admitted that the operatives were being groomed at KSM's request for attacks inside the United States -- probably [sic] using airplanes.

During questioning, KSM also provided many details of other plots to kill innocent Americans. For example, he described the design of planned attacks on buildings inside the United States, and how operatives were directed to carry them out. He told us the operatives had been instructed to ensure that the explosives went off at a point that was high enough to prevent the people trapped above from escaping out the windows.

KSM also provided vital information on al Qaeda's efforts to obtain biological weapons. During questioning, KSM admitted that he had met three individuals involved in al Qaeda's efforts to produce anthrax, a deadly biological agent -- and he identified one of the individuals as a terrorist named Yazid. KSM apparently believed we already had this information, because Yazid had been captured and taken into foreign custody before KSM's arrest. In fact, we did not know about Yazid's role in al Qaeda's anthrax program. Information from Yazid then helped lead to the capture of his two principal assistants in the anthrax program. Without the information provided by KSM and Yazid, we might not have uncovered this al Qaeda biological weapons program, or stopped this al Qaeda cell from developing anthrax for attacks against the United States.

These are some of the plots that have been stopped because of the information of this vital program. Terrorists held in CIA custody have also provided information that helped stop a planned strike on U.S. Marines at Camp Lemonier in Djibouti -- they were going to use an explosive laden water tanker. They helped stop a planned attack on the U.S. consulate in Karachi using car bombs and motorcycle bombs, and they helped stop a plot to hijack passenger planes and fly them into Heathrow or the Canary Wharf in London.

We're getting vital information necessary to do our jobs, and that's to protect the American people and our allies.

Information from the terrorists in this program has helped us to identify individuals that al Qaeda deemed suitable for Western operations, many of whom we had never heard about before. They include terrorists who were set to case targets

inside the United States, including financial buildings in major cities on the East Coast. Information from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaeda member or associate detained by the U.S. and its allies since this program began. By providing everything from initial leads to photo identifications, to precise locations of where terrorists were hiding, this program has helped us to take potential mass murderers off the streets before they were able to kill.

This program has also played a critical role in helping us understand the enemy we face in this war. Terrorists in this program have painted a picture of al Qaeda's structure and financing, and communications and logistics. They identified al Qaeda's travel routes and safe havens, and explained how al Qaeda's senior leadership communicates with its operatives in places like Iraq. They provided information that allows us -- that has allowed us to make sense of documents and computer records that we have seized in terrorist raids. They've identified voices in recordings of intercepted calls, and helped us understand the meaning of potentially critical terrorist communications.

The information we get from these detainees is corroborated by intelligence, and we've received -- that we've received from other sources -- and together this intelligence has helped us connect the dots and stop attacks before they occur. Information from the terrorists questioned in this program helped unravel plots and terrorist cells in Europe and in other places. It's helped our allies protect their people from deadly enemies. This program has been, and remains, one of the most vital tools in our war against the terrorists. It is invaluable to America and to our allies. Were it not for this program, our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this program has saved innocent lives.

This program has been subject to multiple legal reviews by the Department of Justice and CIA lawyers; they've determined it complied with our laws. This program has received strict oversight by the CIA's Inspector General. A small number of key leaders from both political parties on Capitol Hill were briefed about this program. All those involved in the questioning of the terrorists are carefully chosen and they're screened from a pool of experienced CIA officers. Those selected to conduct the

most sensitive questioning had to complete more than 250 additional hours of specialized training before they are allowed to have contact with a captured terrorist.

I want to be absolutely clear with our people, and the world: The United States does not torture. It's against our laws, and it's against our values. I have not authorized it -- and I will not authorize it. Last year, my administration worked with Senator John McCain, and I signed into law the Detainee Treatment Act, which established the legal standard for treatment of detainees wherever they are held. I support this act. And as we implement this law, our government will continue to use every lawful method to obtain intelligence that can protect innocent people, and stop another attack like the one we experienced on September the 11th, 2001.

The CIA program has detained only a limited number of terrorists at any given time -- and once we've determined that the terrorists held by the CIA have little or no additional intelligence value, many of them have been returned to their home countries for prosecution or detention by their governments. Others have been accused of terrible crimes against the American people, and we have a duty to bring those responsible for these crimes to justice. So we intend to prosecute these men, as appropriate, for their crimes.

Soon after the war on terror began, I authorized a system of military commissions to try foreign terrorists accused of war crimes. Military commissions have been used by Presidents from George Washington to Franklin Roosevelt to prosecute war criminals, because the rules for trying enemy combatants in a time of conflict must be different from those for trying common criminals or members of our own military. One of the first suspected terrorists to be put on trial by military commission was one of Osama bin Laden's bodyguards -- a man named Hamdan. His lawyers challenged the legality of the military commission system. It took more than two years for this case to make its way through the courts. The Court of Appeals for the District of Columbia Circuit upheld the military commissions we had designed, but this past June, the Supreme Court overturned that decision. The Supreme Court determined that military commissions are an appropriate venue for trying terrorists, but ruled that military commissions needed to be explicitly authorized by the United States Congress.

So today, I'm sending Congress legislation to specifically authorize the creation of military commissions to try terrorists

for war crimes. My administration has been working with members of both parties in the House and Senate on this legislation. We put forward a bill that ensures these commissions are established in a way that protects our national security, and ensures a full and fair trial for those accused. The procedures in the bill I am sending to Congress today reflect the reality that we are a nation at war, and that it's essential for us to use all reliable evidence to bring these people to justice.

We're now approaching the five-year anniversary of the 9/11 attacks -- and the families of those murdered that day have waited patiently for justice. Some of the families are with us today -- they should have to wait no longer. So I'm announcing today that Khalid Sheikh Mohammed, Abu Zubaydah, Ramzi bin al-Shibh, and 11 other terrorists in CIA custody have been transferred to the United States Naval Base at Guantanamo Bay. (Applause.) They are being held in the custody of the Department of Defense. As soon as Congress acts to authorize the military commissions I have proposed, the men our intelligence officials believe orchestrated the deaths of nearly 3,000 Americans on September the 11th, 2001, can face justice. (Applause.)

We'll also seek to prosecute those believed to be responsible for the attack on the USS Cole, and an operative believed to be involved in the bombings of the American embassies in Kenya and Tanzania. With these prosecutions, we will send a clear message to those who kill Americans: No longer -- how long it takes, we will find you and we will bring you to justice. (Applause.)

These men will be held in a high-security facility at Guantanamo. The International Committee of the Red Cross is being advised of their detention, and will have the opportunity to meet with them. Those charged with crimes will be given access to attorneys who will help them prepare their defense -- and they will be presumed innocent. While at Guantanamo, they will have access to the same food, clothing, medical care, and opportunities for worship as other detainees. They will be questioned subject to the new U.S. Army Field Manual, which the Department of Defense is issuing today. And they will continue to be treated with the humanity that they denied others.

As we move forward with the prosecutions, we will continue to urge nations across the world to take back their nationals at Guantanamo who will not be prosecuted by our military commissions. America has no interest in being the world's

jailer. But one of the reasons we have not been able to close Guantanamo is that many countries have refused to take back their nationals held at the facility. Other countries have not provided adequate assurances that their nationals will not be mistreated -- or they will not return to the battlefield, as more than a dozen people released from Guantanamo already have. We will continue working to transfer individuals held at Guantanamo, and ask other countries to work with us in this process. And we will move toward the day when we can eventually close the detention facility at Guantanamo Bay.

I know Americans have heard conflicting information about Guantanamo. Let me give you some facts. Of the thousands of terrorists captured across the world, only about 770 have ever been sent to Guantanamo. Of these, about 315 have been returned to other countries so far -- and about 455 remain in our custody. They are provided the same quality of medical care as the American service members who guard them. The International Committee of the Red Cross has the opportunity to meet privately with all who are held there. The facility has been visited by government officials from more than 30 countries, and delegations from international organizations, as well. After the Organization for Security and Cooperation in Europe came to visit, one of its delegation members called Guantanamo "a model prison" where people are treated better than in prisons in his own country. Our troops can take great pride in the work they do at Guantanamo Bay -- and so can the American people.

As we prosecute suspected terrorist leaders and operatives who have now been transferred to Guantanamo, we'll continue searching for those who have stepped forward to take their places. This nation is going to stay on the offense to protect the American people. We will continue to bring the world's most dangerous terrorists to justice -- and we will continue working to collect the vital intelligence we need to protect our country. The current transfers mean that there are now no terrorists in the CIA program. But as more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical -- and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information.

Some may ask: Why are you acknowledging this program now? There are two reasons why I'm making these limited disclosures today. First, we have largely completed our questioning of the men -- and to start the process for bringing them to trial, we must bring them into the open. Second, the Supreme Court's

recent decision has impaired our ability to prosecute terrorists through military commissions, and has put in question the future of the CIA program. In its ruling on military commissions, the Court determined that a provision of the Geneva Conventions known as "Common Article Three" applies to our war with al Qaeda. This article includes provisions that prohibit "outrages upon personal dignity" and "humiliating and degrading treatment." The problem is that these and other provisions of Common Article Three are vague and undefined, and each could be interpreted in different ways by American or foreign judges. And some believe our military and intelligence personnel involved in capturing and questioning terrorists could now be at risk of prosecution under the War Crimes Act -- simply for doing their jobs in a thorough and professional way.

This is unacceptable. Our military and intelligence personnel go face to face with the world's most dangerous men every day. They have risked their lives to capture some of the most brutal terrorists on Earth. And they have worked day and night to find out what the terrorists know so we can stop new attacks. America owes our brave men and women some things in return. We owe them their thanks for saving lives and keeping America safe. And we owe them clear rules, so they can continue to do their jobs and protect our people.

So today, I'm asking Congress to pass legislation that will clarify the rules for our personnel fighting the war on terror. First, I'm asking Congress to list the specific, recognizable offenses that would be considered crimes under the War Crimes Act -- so our personnel can know clearly what is prohibited in the handling of terrorist enemies. Second, I'm asking that Congress make explicit that by following the standards of the Detainee Treatment Act our personnel are fulfilling America's obligations under Common Article Three of the Geneva Conventions. Third, I'm asking that Congress make it clear that captured terrorists cannot use the Geneva Conventions as a basis to sue our personnel in courts -- in U.S. courts. The men and women who protect us should not have to fear lawsuits filed by terrorists because they're doing their jobs.

The need for this legislation is urgent. We need to ensure that those questioning terrorists can continue to do everything within the limits of the law to get information that can save American lives. My administration will continue to work with the Congress to get this legislation enacted -- but time is of the essence. Congress is in session just for a few more weeks,

and passing this legislation ought to be the top priority. (Applause.)

As we work with Congress to pass a good bill, we will also consult with congressional leaders on how to ensure that the CIA program goes forward in a way that follows the law, that meets the national security needs of our country, and protects the brave men and women we ask to obtain information that will save innocent lives. For the sake of our security, Congress needs to act, and update our laws to meet the threats of this new era. And I know they will.

We're engaged in a global struggle -- and the entire civilized world has a stake in its outcome. America is a nation of law. And as I work with Congress to strengthen and clarify our laws here at home, I will continue to work with members of the international community who have been our partners in this struggle. I've spoken with leaders of foreign governments, and worked with them to address their concerns about Guantanamo and our detention policies. I'll continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms.

Free nations have faced new enemies and adjusted to new threats before -- and we have prevailed. Like the struggles of the last century, today's war on terror is, above all, a struggle for freedom and liberty. The adversaries are different, but the stakes in this war are the same: We're fighting for our way of life, and our ability to live in freedom. We're fighting for the cause of humanity, against those who seek to impose the darkness of tyranny and terror upon the entire world. And we're fighting for a peaceful future for our children and our grandchildren.

May God bless you all. (Applause.)

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Presidential Documents

Title 3—

The President

Executive Order 13440 of July 20, 2007

Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency

By the authority vested in me as President and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107–40), the Military Commissions Act of 2006 (Public Law 109–366), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *General Determinations.* (a) The United States is engaged in an armed conflict with al Qaeda, the Taliban, and associated forces. Members of al Qaeda were responsible for the attacks on the United States of September 11, 2001, and for many other terrorist attacks, including against the United States, its personnel, and its allies throughout the world. These forces continue to fight the United States and its allies in Afghanistan, Iraq, and elsewhere, and they continue to plan additional acts of terror throughout the world. On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby reaffirm that determination.

(b) The Military Commissions Act defines certain prohibitions of Common Article 3 for United States law, and it reaffirms and reinforces the authority of the President to interpret the meaning and application of the Geneva Conventions.

Sec. 2. *Definitions.* As used in this order:

(a) "Common Article 3" means Article 3 of the Geneva Conventions.

(b) "Geneva Conventions" means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(c) "Cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

Sec. 3. *Compliance of a Central Intelligence Agency Detention and Interrogation Program with Common Article 3.* (a) Pursuant to the authority of the President under the Constitution and the laws of the United States, including the Military Commissions Act of 2006, this order interprets the meaning and application of the text of Common Article 3 with respect to certain detentions and interrogations, and shall be treated as authoritative for all

purposes as a matter of United States law, including satisfaction of the international obligations of the United States. I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section. The requirements set forth in this section shall be applied with respect to detainees in such program without adverse distinction as to their race, color, religion or faith, sex, birth, or wealth.

(b) I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:

(i) the conditions of confinement and interrogation practices of the program do not include:

(A) torture, as defined in section 2340 of title 18, United States Code;

(B) any of the acts prohibited by section 2441(d) of title 18, United States Code, including murder, torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, taking of hostages, or performing of biological experiments;

(C) other acts of violence serious enough to be considered comparable to murder, torture, mutilation, and cruel or inhuman treatment, as defined in section 2441(d) of title 18, United States Code;

(D) any other acts of cruel, inhuman, or degrading treatment or punishment prohibited by the Military Commissions Act (subsection 6(c) of Public Law 109–366) and the Detainee Treatment Act of 2005 (section 1003 of Public Law 109–148 and section 1403 of Public Law 109–163);

(E) willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or

(F) acts intended to denigrate the religion, religious practices, or religious objects of the individual;

(ii) the conditions of confinement and interrogation practices are to be used with an alien detainee who is determined by the Director of the Central Intelligence Agency:

(A) to be a member or part of or supporting al Qaeda, the Taliban, or associated organizations; and

(B) likely to be in possession of information that:

(1) could assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or

(2) could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces;

(iii) the interrogation practices are determined by the Director of the Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee with whom they are used; and

(iv) detainees in the program receive the basic necessities of life, including adequate food and water, shelter from the elements, necessary clothing, protection from extremes of heat and cold, and essential medical care.

(c) The Director of the Central Intelligence Agency shall issue written policies to govern the program, including guidelines for Central Intelligence Agency personnel that implement paragraphs (i)(C), (E), and (F) of subsection 3(b) of this order, and including requirements to ensure:

(i) safe and professional operation of the program;

(ii) the development of an approved plan of interrogation tailored for each detainee in the program to be interrogated, consistent with subsection 3(b)(iv) of this order;

(iii) appropriate training for interrogators and all personnel operating the program;

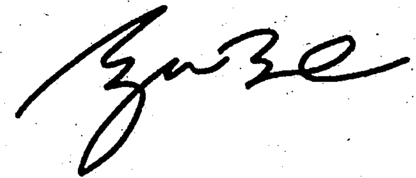
(iv) effective monitoring of the program, including with respect to medical matters, to ensure the safety of those in the program; and

(v) compliance with applicable law and this order.

Sec. 4. *Assignment of Function.* With respect to the program addressed in this order, the function of the President under section 6(c)(3) of the Military Commissions Act of 2006 is assigned to the Director of National Intelligence.

Sec. 5. *General Provisions.* (a) Subject to subsection (b) of this section, this order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(b) Nothing in this order shall be construed to prevent or limit reliance upon this order in a civil, criminal, or administrative proceeding, or otherwise, by the Central Intelligence Agency or by any individual acting on behalf of the Central Intelligence Agency in connection with the program addressed in this order.



THE WHITE HOUSE,
July 20, 2007.

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