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# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

August 19, 2008

Mr. Fred Fielding, Esq.  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Fielding:

We write regarding numerous outstanding requests for information and documents concerning legal analysis and advice from the Department of Justice's Office of Legal Counsel related to the Administration's detention and interrogation policies. The Office of Legal Counsel ("OLC") plays a critical role within the Department of Justice ("DOJ"). It is the office that provides legal advice to the rest of the Executive Branch. The job of OLC is to provide principled, neutral assessments of the law to guide the Executive Branch and its opinions traditionally carry great weight. This Committee has jurisdiction over OLC and has for years raised concerns about the process and substance of the work of that office.

To assist our oversight, Senator Specter and I, and other members of this Committee have sought on dozens of occasions to review legal advice from OLC on significant and controversial administration policies. After more than 5 years of requests, we have only recently received access to redacted versions of OLC legal opinions related to the CIA's interrogation program. The failure to provide other documents that we have sought repeatedly, however, leaves us without basic facts that are essential to this Committee's ability to conduct its oversight responsibilities.

In fact, I have been stonewalled even in my repeated request for something as simple as an index of OLC opinions. On June 16, 2003, I sent then Attorney General John Ashcroft a letter requesting an index of all memoranda and opinions rendered by the OLC since January 2001. I reiterated that request on May 12, 2004 and again directly to Attorney General Mukasey at an oversight hearing this July. We have never received this information. Nor were we ever provided with an explanation as to why the information was withheld. Examining the role of this Justice Department office in authorizing controversial activities is squarely within the oversight responsibilities of this Committee; in carrying out that responsibility we are entitled, at the very least, to know the subjects on which OLC has provided final legal advice. That after more than five years this Committee has been refused even this simple request is unacceptable.

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Senator Specter and I, and other Senators on this Committee, have asked repeatedly for OLC legal advice concerning Administration practices. In addition to the requests mentioned above, there were written requests for OLC documents sent on June 15, 2004, October 29, 2004, December 21, 2004, January 4, 2005, November 16, 2006, and October 25, 2007. Furthermore, you and I have had several discussions and I received assurances from you that I would receive these materials at the time the Committee proceeded to consider the nomination of Attorney General Mukasey.

Therefore, we are requesting that, no later than Friday, August 29, at 10:00 a.m., you provide this Committee with:

(1) A comprehensive index of all legal memoranda, letters, or opinions that were issued by the OLC between September 11, 2001, and the present, to provide legal advice to the White House or any department or agency of the executive branch (including the Department of Justice and its components).

This list shall:

- (a) Identify the agency or official who requested the legal advice from the OLC;
- (b) Identify the recipient of each legal opinion, letter, or memorandum;
- (c) Identify the title of each memorandum, letter, or opinion;
- (d) Identify the DOJ or OLC official who signed the opinion, memorandum, or letter;
- (e) Include a brief description of the legal issues addressed by the opinion, memorandum, or letter;

(2) The section entitled "DOJ analysis" from the Central Intelligence Agency's May 7, 2004 classified Inspector General Report ("CIA IG Report"). According to a redacted version of the report, given to the American Civil Liberties Union in response to a Freedom of Information Act lawsuit, it contains a section entitled "DOJ Analysis". Any review by the CIA of OLC's legal reasoning or conclusions regarding detainees or interrogation issues is pertinent to this Committee's oversight responsibilities.

(3) Memorandum for Alberto R. Gonzales, Counsel to the President, *Re: "Protected Persons" in Occupied Iraq* (March 18, 2004).

(4) Any final OLC memorandum or written legal advice concerning applicability of the Fourth Geneva Convention in Iraq, including but not limited to Article 49.

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According to press reports, Jack Goldsmith III, Assistant Attorney General, OLC, drafted a March 19, 2004 memorandum, at the request of the CIA, Re: Applicability of the Fourth Geneva Convention in Iraq, including but not limited to Article 49. Press reports suggest that legal advice from the OLC on this subject was finalized in 2004.

(5) Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel, Department of Defense (“DOD”), from John C. Yoo, Deputy Assistant Attorney General, OLC, *Re: Authority for Use of Military Force to Combat Terrorist Activities Within the United States* (Oct. 17, 2001).

(6) Memorandum for Daniel Bryant, Assistant Attorney General, Office of Legislative Affairs, from John Yoo, Deputy Assistant Attorney General, OLC, *Re: Applicability of 18 U.S.C. § 4001(a) to Military Detention of United States Citizens* (June 27, 2002).

(7) Memorandum for William J. Haynes II, General Counsel, DOD, from Jay S. Bybee, Assistant Attorney General, OLC, *Re: The President’s Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations* (March 13, 2002).

(8) Memorandum from the Department of Justice, Re: Liability of interrogators under the Convention Against Torture and the Anti-Torture Act when a prisoner is not in U.S. custody. This document has been referred to in several press reports but no specific date for the memorandum has yet been determined.

(9) Memorandum for John Yoo, Deputy Assistant Attorney General, OLC, from James C. Ho, Attorney-Advisor, OLC, Re: Possible Interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (Feb. 1, 2002), or any other finalized memoranda or opinions provided by the OLC regarding the interpretation of Common Article 3 of the 1949 Geneva Convention relating to the treatment of prisoners of war.

(10) Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, OLC, *Re: Legality of the use of military commissions to try terrorists* (Nov. 6, 2001).

Finally, we have now reviewed the classified OLC documents you have provided us. The information redacted from these documents leaves us unable to understand how statutes within this Committee’s jurisdiction are being interpreted, as well as whether the advice OLC provided is commensurate with the high standards that we have come to expect from an office with such a great responsibility to provide careful and independent legal advice to the Executive branch.

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We therefore request unredacted versions of all of these documents. The unredacted documents will be available only to personnel with the appropriate security clearances.

To the extent necessary, the Administration may provide documents requested in this letter in classified form and the Committee will handle them consistent with all appropriate security measures.

Thank you very much for your prompt attention to this important issue.

Sincerely,



PATRICK LEAHY  
Chairman



ARLEN SPECTER  
Ranking Member

cc: The Honorable Michael B. Mukasey  
The Honorable J. Michael McConnell