

THE WHITE HOUSE

WASHINGTON

March 30, 2004

Thomas H. Kean, Chairman  
Lee H. Hamilton, Vice Chairman  
National Commission on Terrorist Attacks Upon the United States  
2100 K St. N.W.  
Washington, D.C. 20037

Dear Chairman Kean and Vice Chairman Hamilton:

As we discussed last night, the President is prepared, subject to the conditions set forth below, to agree to the request of the National Commission on Terrorist Attacks Upon the United States for public testimony, under oath, by the Assistant to the President for National Security Affairs, Dr. Condoleezza Rice.

The President has consistently stated a policy of strong support for the Commission and instructed the Executive Branch to provide unprecedented and extraordinary access to the Commission. To my knowledge, the Executive Branch has provided access to documents or information in response to each of the requests issued by the Commission to date, including many highly classified and extremely sensitive documents that have seldom, if ever, been made available outside the Executive Branch.

As an additional accommodation, the Executive Office of the President has made available more than 20 EOP officials, including the National Security Advisor, for private meetings with the Commission. As you know, based on principles underlying the Constitutional separation of powers, Presidents of both parties have long taken the position that White House advisors and staff are not subject to the jurisdiction of legislative bodies and do not provide testimony – even on a voluntary basis – on policy matters discussed within the White House or advice given to the President. Indeed, I am not aware of any instance of a *sitting* National Security Advisor testifying in public to a legislative body (such as the Commission) concerning policy matters.

We continue to believe, as I advised you by letter dated March 25, 2004, that the principles underlying the Constitutional separation of powers counsel strongly against such public testimony, and that Dr. Rice's testimony before the Commission can occur only with recognition that the events of September 11, 2001 present the most extraordinary and unique circumstances, and with conditions and assurances designed to limit harm to the ability of future Presidents to receive candid advice.

Nevertheless, the President recognizes the truly unique and extraordinary circumstances underlying the Commission's responsibility to prepare a detailed report on the facts and circumstances of the horrific attacks on September 11, 2001. Furthermore, we have now received assurances from the Speaker of the House and the Majority Leader of the Senate that, in their view, Dr. Rice's public testimony in connection with the extraordinary events of September 11, 2001 does not set, and should not be cited as, a precedent for future requests for a National Security Advisor or any other White House official to testify before a legislative body. In light

of the unique nature of the Commission and these additional assurances, the President has determined that, although he retains the legal authority to decline to make Dr. Rice available to testify in public, he will agree, as a matter of comity and subject to the conditions set forth below, to the Commission's request for Dr. Rice to testify publicly regarding matters within the Commission's statutory mandate.

The necessary conditions are as follows. First, the Commission must agree in writing that Dr. Rice's testimony before the Commission does not set any precedent for future Commission requests, or requests in any other context, for testimony by a National Security Advisor or any other White House official.

Second, the Commission must agree in writing that it will not request additional public testimony from any White House official, including Dr. Rice. The National Security Advisor is uniquely situated to provide the Commission with information necessary to fulfill its statutory mandate. Indeed, it is for this reason that Dr. Rice privately met with the Commission for more than four hours on February 7, fully answered every question posed to her, and offered additional private meetings as necessary. Despite the fact that the Commission will therefore have access to all information of which Dr. Rice is aware, the Commission has nevertheless urged that public confidence in the work of the Commission would be enhanced by Dr. Rice appearing publicly before the Commission. Other White House officials with information relevant to the Commission's inquiry do not come within the scope of the Commission's rationale for seeking public testimony from Dr. Rice. These officials will continue to provide the Commission with information through private meetings, briefings, and documents, consistent with our previous practice.

I greatly appreciate the strong support you expressed to me last night for an agreement to the conditions on which we are proposing this extraordinary accommodation and your commitment to strongly advocate for the full support of the Commission. If the Commission accepts the terms of this agreement, I hope that we can schedule a time as soon as possible for such a public appearance by Dr. Rice. I want to reiterate once again, however, that Dr. Rice would be made available to the Commission with due regard for the Constitutional separation of powers and reserving all legal authorities, privileges, and objections that may apply, including with respect to other governmental entities or private parties.

I would also like to take this occasion to offer an accommodation on another issue on which we have not yet reached an agreement - Commission access to the President and Vice President. I am authorized to advise you that the President and Vice President have agreed to one joint private session with all 10 Commissioners, with one Commission staff member present to take notes of the session.

I look forward to continuing to work with the Commission to help it obtain the information it needs to fulfill its statutory mandate.

Sincerely,



Alberto R. Gonzales  
Counsel to the President