




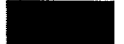
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THE WHITE HOUSE  
WASHINGTON  
February 7, 2002

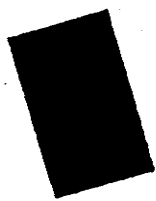
-- please make sure  
John Rizzo/ AND  
DDO/ CTC everyone  
who may know  
are informed.

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

OK  
D/CTC DD/CTC  
   
 

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

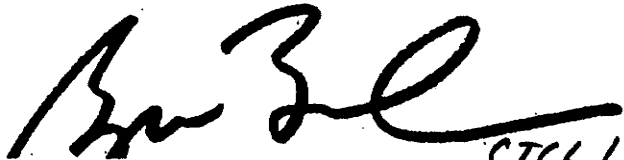


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exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

- 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.



CTCL 141-2

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

February 7, 2002

FACT SHEET

Status of Detainees at Guantanamo

United States Policy.

- The United States is treating and will continue to treat all of the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949.
- The President has determined that the Geneva Convention applies to the Taliban detainees, but not to the al-Qaida detainees.
- Al-Qaida is not a state party to the Geneva Convention; it is a foreign terrorist group. As such, its members are not entitled to POW status.
- Although we never recognized the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention. Under the terms of the Geneva Convention, however, the Taliban detainees do not qualify as POWs.
- Therefore, neither the Taliban nor al-Qaida detainees are entitled to POW status.
- Even though the detainees are not entitled to POW privileges, they will be provided many POW privileges as a matter of policy.

All detainees at Guantanamo are being provided:

- three meals a day that meet Muslim dietary laws
- water
- medical care
- clothing and shoes
- shelter
- showers
- soap and toilet articles

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- foam sleeping pads and blankets
- towels and washcloths
- the opportunity to worship
- correspondence materials, and the means to send mail
- the ability to receive packages of food and clothing, subject to security screening

The detainees will not be subjected to physical or mental abuse or cruel treatment. The International Committee of the Red Cross has visited and will continue to be able to visit the detainees privately. The detainees will be permitted to raise concerns about their conditions and we will attempt to address those concerns consistent with security.

Housing. We are building facilities in Guantanamo more appropriate for housing the detainees on a long-term basis. The detainees now at Guantanamo are being housed in temporary open-air shelters until these more long-term facilities can be arranged. Their current shelters are reasonable in light of the serious security risk posed by these detainees and the mild climate of Cuba.

POW Privileges the Detainees will not receive. The detainees will receive much of the treatment normally afforded to POWs by the Third Geneva Convention. However, the detainees will not receive some of the specific privileges afforded to POWs, including:

- access to a canteen to purchase food, soap, and tobacco
- a monthly advance of pay
- the ability to have and consult personal financial accounts
- the ability to receive scientific equipment, musical instruments, or sports outfits

Many detainees at Guantanamo pose a severe security risk to those responsible for guarding them and to each other. Some of these individuals demonstrated how dangerous they are in uprisings at Mazar-e-Sharif and in Pakistan. The United States must take into account the need for security in establishing the conditions for detention at Guantanamo.

Background on Geneva Conventions. The Third Geneva Convention of 1949 is an international treaty designed to protect prisoners of war from inhumane treatment at the hands of their captors in conflicts covered by the Convention. It is among four treaties

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concluded in the wake of WWII to reduce the human suffering caused by war. These four treaties provide protections for four different classes of people: the military wounded and sick in land conflicts; the military wounded, sick and shipwrecked in conflicts at sea; military persons and civilians accompanying the armed forces in the field who are captured and qualify as prisoners of war; and civilian non-combatants who are interned or otherwise found in the hands of a party (e.g. in a military occupation) during an armed conflict.

# # #

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# FILED GUIDANCE

## STATUS AND TREATMENT OF DETAINEES AT GUANTANAMO

February 7, 2002

### 1. What has the President decided about the legal status of the prisoners at Guantanamo? Are they prisoners of war?

Neither Taliban nor al-Qaida detainees are entitled to POW status.

The President has decided that the Geneva Convention applies to the Taliban detainees, but not to the al-Qaida detainees.

### 2. What's the basis for the President's decision?

Al-Qaida is not a state party to the Geneva Convention; it is a foreign terrorist group. Its members are therefore not entitled to the protections of the Geneva Convention.

In contrast, Afghanistan is a party to the Geneva Convention. Although there are grounds to conclude that Afghanistan was a failed nation state at the outset of the conflict, the President has declined to determine that the Taliban are not covered by the treaty. However, the Taliban detainees are not entitled to POW status under the terms of the Convention.

### 3. Why don't the Taliban detainees qualify as POWs under the Convention?

The Geneva Convention on Prisoners of War was intended to protect only those people who qualify as prisoners of war -- hence its name. Article 4 of the Convention specifies the categories of people who fall into the hands of the enemy who are entitled to be treated as POWs. The Commentary to the Geneva Convention explains that "Article 4 is in a sense the key to the Convention, since it defines the people entitled to be treated as prisoners of war." The Taliban detainees do not fit into any of these categories.

They are not the regular armed forces of any government. Rather they are an armed group of militants who have oppressed and terrorized the people of Afghanistan and have been financed by, and in turn supported, a global terrorist

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network. They do not meet the criteria under which members of militias can receive POW status either. To qualify as POWs, militia must satisfy four conditions: they must be part of a military hierarchy; they must wear uniforms or other distinctive signs visible at a distance; they must carry arms openly; and they must conduct their operations in accordance with the laws and customs of war. The Taliban have not effectively distinguished themselves from the civilian population of Afghanistan. Moreover, they have not conducted their operations in accordance with the laws and customs of war; instead, they have knowingly adopted and provided support to the unlawful terrorist objectives of al-Qaida.

The Taliban do not qualify under Article 4(a)(3) which covers "members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power" because the Convention applies only to regular armed forces who possess the attributes of regular armed forces, i.e. distinguish themselves from the civilian population and conduct their operations in accordance with the laws and customs of war.

**4. Is there a precedent in our history for this decision?**

In the Vietnam War, the U.S. concluded that the Viet Cong were not entitled to POW status because they did not have the attributes of a regular armed force or militia group covered by Article 4 of the Convention. The U.S. did treat the Viet Cong as POWs as a matter of policy.

**5. Why has this decision taken so long? What is the legal complication?**

The Geneva Convention on Prisoners of War is a very important treaty to the United States. The war on terrorism is a conflict unique in recent history. Careful, thoughtful analysis was required to sort out the issues as to how the treaty applies in the current conflict. This is a new kind of war not envisioned in 1949. It is neither a large-scale conflict between two nation-states nor a civil war between a nation-state and an insurgent group. Global terrorists who transcend national boundaries, owe no loyalties to any country, and intentionally target innocent civilians were not contemplated when the Convention was adopted more than 50 years ago. And the situation in Afghanistan and the role the Taliban has played within that country is complicated as well.

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**6. Are you saying that the Geneva Convention is outdated for modern conflicts? Is the Administration abandoning it?**

No. The United States remains fully committed to the Geneva Convention and recognizes the critical role it plays in securing basic protections for prisoners of war. At the same time, the Convention by its terms simply does not cover every situation in which people may be captured or detained by military forces, as we see today in Afghanistan. The President's decision makes clear that the treaty does not apply to international armed conflicts with foreign terrorist organizations, which would not respect the rules regarding treatment of POWs in any event. The treaty does apply to conflicts with nation-states, but even there, groups may not be entitled to invoke POW protections if they adopt unlawful objectives, do not act like regular armed forces, and do not respect the laws and customs of war.

**7. What's the practical effect of the President's decision? Will the detainees be treated any differently as a result of this decision? Will the Taliban detainees be treated differently from the al-Qaida detainees?**

No. As we have said all along, we have decided as a matter of policy to treat all of the detainees at Guantanamo humanely and consistent with the principles of the Geneva Convention. We are even providing many of the things provided to POWs under the Convention, to the extent appropriate and consistent with security and the temporary nature of the facilities in Guantanamo.

This means that all detainees will continue to receive three appropriate meals a day, medical care, clothing, shelter, showers, and the opportunity to worship. The detainees will not be subjected to physical or mental abuse. The International Committee of the Red Cross is being allowed to visit each detainee privately, which is something to which only POWs are entitled. We are building long-term facilities to house the detainees. None of this has changed or will change.

Other than the fact that the detainees are in detention, their material living conditions are substantially better than they were before they were captured.

**8. Why not treat all the detainees as POWs? Who cares?**

Several reasons. First, there is an important principle at stake. The Geneva Convention has established criteria for POW status. One of the reasons it does is

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to ensure that only members of legitimate armed forces receive POW privileges, not other groups who take up arms unlawfully and do not observe the laws and customs of war. If all captured combatants were provided POW privileges, that would eliminate one disincentive to terrorism or other types of unlawful combat.

Second, we want to incentivize the armed forces of other countries to conduct themselves so as to be eligible for POW status. This means wearing uniforms that distinguish themselves from civilians and requiring them not to involve the civilian population in a conflict in ways that subject civilians to risk. Insisting that the criteria for POW status are met protects civilians by maintaining a sharp distinction between combatants and non-combatants.

Third, we take our treaty obligations seriously and we believe in applying the terms of the Convention. The Geneva Convention for good reason clearly differentiates between those entitled to POW status and those who are not.

Finally, many privileges given to POWs under the Convention are simply inappropriate in the current situation. Some of the specific treatment conditions provided to POWs by the Geneva Convention were suitable for regular soldiers in 1949 but are not appropriate for terrorists in 2002. Some treatment conditions are not compatible with the extraordinary security risk posed by these detainees, who are extremely violent and dangerous and pose a threat to the U.S. forces who are guarding them and to each other.

For example, we do not plan to install canteens where detainees may purchase food, soap, and tobacco. We will not be giving the detainees at Guantanamo a monthly advance of pay, or allow them to have and consult personal financial accounts. Detainees will not be allowed to receive scientific equipment, musical instruments, or sports outfits.

**9. Will there be tribunals to establish whether any of the detainees are POWs, as provided in the Geneva Convention?**

The Geneva Convention requires that a tribunal make a determination as to whether a person qualifies as a POW only if there is "any doubt." The Convention does not require review by a tribunal in every circumstance. There is no doubt that the al-Qaida and Taliban detainees are not POWs.

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That said, we do have a careful process in place to screen the people taken to Guantanamo. They were screened at least twice before they were transferred. They were screened by U.S. Armed Forces before they were taken to Kandahar, and they were interviewed a second time in Kandahar. Although we believe that each detainee is an appropriate candidate for detention, we are prepared to review individual cases should any doubt arise.

**10. Doesn't the President's decision undermine the Geneva Convention and adversely affect treatment of U.S. forces in future operations or conflicts?**

No. The United States remains deeply committed to the Geneva Convention and has a proud history of complying with the Convention since it entered into force more than 50 years ago. The United States has been one of the leaders in the development of law of war doctrines and played a major role in the development of the Geneva Convention.

In this conflict, we have adopted a policy of treating the detainees humanely and consistent with the principles of the Convention, as we have in the past. The President's decision that, as a legal matter, the treaty does not afford POW protections to terrorist groups -- or others who adopt their objectives and fail to meet the standards of a regular armed force -- is fully consistent with the treaty. The decision should have no legal or practical effect on U.S. Armed Forces, which are a regular armed force that complies with the laws and customs of war. We expect other countries to treat our armed forces in accordance with the Geneva Convention.

**11. Does this decision mean that any country that is a state sponsor of terrorism is not entitled to the protections of the Geneva Convention in the event of an armed conflict?**

I am not going to speculate on the application of the treaty to other hypothetical armed conflicts. Each case has to be resolved on its own facts.

**12. You say that the Geneva Convention doesn't fit this new kind of war very well. Would the U.S. support negotiation of a new treaty or Protocol to the Geneva Convention that would apply to conflicts with terrorists or others not covered by the Geneva Convention?**

*CTCL 141-10*

We think it might be appropriate to consider a new instrument to cover the treatment of detained persons in conflicts not envisioned in 1949, and we are open to discussing this possibility with other nations.

**13. How was this decision made? Who did the President hear from?**

The President chaired two meetings of the NSC. The Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, the Chairman of the Joint Chiefs, the Director of Central Intelligence, the White House Counsel, and the National Security Advisor all participated in advising the President on this matter. These are difficult issues and the President wanted to hear the legal and policy views of all of his advisors.

**14. What did the President decide on January 18?**

The President decided on January 18 that none of the Taliban or al-Qaida detainees are entitled to POW status.

**15. Did the President "consider" or "re-consider" the issue of whether the Geneva Convention applied?**

I'm not going to comment on the procedural posture. Because this is a new kind of conflict that does not fall squarely within the Geneva Convention, President Bush asked for the views of his national security advisors on whether the Geneva Convention applies or should apply to cover the Taliban and al-Qaida.

*CTCL 141-11*

## LEGAL AUTHORITIES

### *Properly conducted and authorized interrogations:*

- Do not violate the **federal anti-torture statute, 18 U.S.C. 2340-2340A**
- Do not violate the **Constitution**. They do not “shock the conscience” under the **5<sup>th</sup> and 14<sup>th</sup> Amendments**. The **8<sup>th</sup> Amendment** prohibition on cruel and unusual “punishment” is inapplicable.
- Do not constitute “cruel, inhumane and degrading treatment or punishment” under the **Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment** because, under U.S. law, those terms are limited to U.S. constitutional requirements.

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CIA/OCA/FRONT OFFICE/ [REDACTED]

OCA 2007-00342

S:\DCI\OCA\FRONTOCA\2007 Correspondence/Markey Response

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CIA 3-002

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Central Intelligence Agency

OCH 7/10/07



Washington, D.C. 20505

14 June 2007

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Document Tracking Unit

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Office of Records Management  
The White House  
Washington, D.C. 20500

Dear [REDACTED]

(U) This is in response to Representatives Markey, Delahunt, and Nadler's 24 May 2007 letter addressed to the President in which they expressed concern about the origin of claims made by the President and his Administration before the March 2003 invasion of Iraq. The Members also requested answers to seven related questions. The Central Intelligence Agency has reviewed these questions and is unable to answer them because each is either a policy question requiring response by the White House or the National Security Council or pertains to operational issues that are not briefed to non-oversight Members of Congress.

(S) If you have any questions regarding this letter or require additional information, please do not hesitate to contact [REDACTED] of my staff at [REDACTED]

Sincerely,

[REDACTED]  
Christopher J. Walker  
Director of Congressional Affairs

Enclosure:  
White House Office Referral

[REDACTED]  
~~CONFIDENTIAL~~//20320614

CIA 3-002

ENCLOSURE

THE WHITE HOUSE OFFICE  
REFERRAL

June 01, 2007

TO: CENTRAL INTELLIGENCE AGENCY

ACTION REQUESTED: APPROPRIATE ACTION

DESCRIPTION OF INCOMING:

ID: 726801

MEDIA: FAX

DOCUMENT DATE: MAY 24, 2007

TO: PRESIDENT BUSH

FROM: ED MARKEY  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

SUBJECT: EXPRESSES CONCERN ABOUT THE ORIGIN OF CERTAIN CLAIMS  
MADE BY THE PRESIDENT AND MEMBERS OF HIS  
ADMINISTRATION BEFORE THE MAR 03 INVASION OF IRAQ  
AND REQUEST ANSWERS TO THE QUESTIONS LISTED IN THIS  
LETTER

COMMENTS:

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PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9  
WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE  
UNDERSIGNED AT [REDACTED] [REDACTED]

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT)  
TO: DOCUMENT TRACKING UNIT, [REDACTED] OFFICE OF RECORDS MANAGEMENT - THE WHITE  
HOUSE, 20500

CIA 3-002



**THE WHITE HOUSE  
DOCUMENT MANAGEMENT AND TRACKING  
WORKSHEET**



DATE RECEIVED: 6/1/2007

CASE ID: 726801

NAME OF CORRESPONDENT: THE HONORABLE ED MARKEY

**SUBJECT:** EXPRESSES CONCERN ABOUT THE ORIGIN OF CERTAIN CLAIMS MADE BY THE PRESIDENT AND MEMBERS OF HIS ADMINISTRATION BEFORE THE MAR 03 INVASION OF IRAQ AND REQUEST ANSWERS TO THE QUESTIONS LISTED IN THIS LETTER

ROUTE TO: AGENCY/OFFICE (STAFF NAME)	ACTION		DISPOSITION	
	CODE	DATE	TYPE RESPONSE	CODE COMPLETED
LEGISLATIVE AFFAIRS	ORG	6/1/2007		
ACTION COMMENTS:				
CENTRAL INTELLIGENCE AGENCY	A	6/1/2007		
ACTION COMMENTS:				
DEPARTMENT OF STATE	I	6/1/2007		C
ACTION COMMENTS:				
DEPARTMENT OF DEFENSE	I	6/1/2007		C
ACTION COMMENTS:				
NATIONAL SECURITY COUNCIL	STEVE HADLEY	I	6/1/2007	C
ACTION COMMENTS:				

COMMENTS:

MEDIA: FAX

USER CODE: 2 ADDL  
SIGNED

SCANNED  
BY  
ORM

ACTION CODES:	TYPE	DISPOSITION	COMPLETED DATE:
A - APPROPRIATE ACTION	RESPONSE:	CODES:	
B - RESEARCH AND REPORT BACK	TYPE RESPONSE =	A - ANSWERED/	COMPLETED = DATE OF
D - DRAFT RESPONSE			
I - INFO COPY/NO ACT NECESSARY			

R - DIRECT REPLY W/ COPY

INITIALS OF SIGNER  
NRN = NO RESPONSE  
NEEDED

ACKNOWLEDGED  
C - CLOSED  
X - INTERIM REPLY

ACKNOWLEDGEMENT OR CLOSE-  
OUT DATE (MM/DD/YY)

REFER QUESTIONS AND ROUTING UPDATES TO DOCUMENT TRACKING UNIT (ROOM 437, EEOB) EXT-62590 KEEP  
THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO  
OFFICE OF RECORDS MANAGEMENT

Congress of the United States  
Washington, DC 20515

726801

May 24, 2007

President George Bush  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C.

Dear President Bush:

We are writing to express our deep concern about the origin of certain claims made by yourself and members of your Administration before the March 2003 invasion of Iraq, specifically that Iraq had provided training in the use of chemical and biological weapons to al-Qaeda. It now appears that this claim rested entirely upon the interrogation by a foreign intelligence service, possibly under torture or threat of torture, of the detainee Ibn al-Shaykh al-Libi. This raises serious questions about the decision making process which concluded with custody of al-Libi being transferred by the United States to a foreign government, and about the U.S. Government's decision to subsequently utilize statements made under torture to inform national policy.

The false information provided by al-Libi, potentially under torture by a foreign intelligence service, was cited repeatedly by your Administration as a *casus belli* prior to the invasion of Iraq. In an October 7, 2002 speech in Cincinnati, you said, "We've learned that Iraq has trained al-Qaeda members in bomb making and poisons and deadly gases." In his February 5, 2003, presentation before the United Nations Security Council, then-Secretary of State Colin Powell referenced the interrogation of al-Libi, stating: "I can trace the story of a senior terrorist operative telling how Iraq provided training in these [chemical and biological] weapons to al-Qaeda. Fortunately, this operative is now detained, and he has told his story."

It now appears that the interrogation of al-Libi constituted a totality of the evidence suggesting that Iraq had provided training in the use of chemical and biological weapons to al-Qaeda. According to a September 2006 report by the Senate Select Committee on Intelligence, "the CIA relied heavily on the information obtained from the debriefing of detainee Ibn al-Shaykh al-Libi, a senior al-Qa'ida operational planner, to assess Iraq's potential CBW training of al-Qa'ida."<sup>1</sup> The same report stated that, "the other reports of possible al-Qa'ida CBW training from Iraq were never considered credible by the Intelligence Community. No other information has been uncovered in Iraq or from detainees that confirms this reporting."<sup>2</sup>

According to the September 2006 Senate Select Committee on Intelligence report, in January 2004 al-Libi recanted the information that he had provided under the foreign intelligence

<sup>1</sup> Senate Select Committee on Intelligence, "Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments," September 8, 2006, pg. 76.

<sup>2</sup> Senate Select Committee on Intelligence, "Postwar Findings," pg. 82.

service's interrogation, claiming to the CIA that he had lied so that he would not be tortured. The report states:

After his transfer to a foreign government [redacted], al-Libi claimed that during his initial debriefings "he lied to the [foreign government service] [redacted] about future operations to avoid torture." Al-Libi told the CIA that the foreign government service [redacted] explained to him that a "long list of methods could be used against him which were extreme" and that "he would confess because three thousand individuals had been in the chair before him and that each had confessed."<sup>3</sup>

When al-Libi first claimed to the foreign intelligence service that Iraq had provided chemical and biological weapons training to al-Qaeda, the U.S. Defense Intelligence Agency issued a report cautioning that al-Libi was most likely fabricating the information. That report stated that, "...he lacks specific details on the Iraqi's involvement, the CBRN materials associated with the assistance, and the location where the training occurred. It is possible he does not know any further details; it is more likely this individual is intentionally misleading the debriefers. Ibn al-Shaykh has been undergoing debriefs for several weeks and may be describing scenarios to the debriefers that he knows will retain their interest."<sup>4</sup> Such behavior would be expected if a detainee were subject to torture. Your Administration never mentioned this important Defense Intelligence Agency dissent to al-Libi's claims under interrogation when speaking to the American people.

Unfortunately, our intelligence operatives could not conduct an independent verification to allay the concerns of the Defense Intelligence Agency because the United States had relinquished custody of al-Libi to a foreign government. A July 9, 2004 report by the Senate Select Committee on Intelligence concluded that, "Due to the lack of unilateral sources on Iraq's links to terrorist groups like al-Qaida [redacted], the Intelligence Community (IC) relied too heavily on foreign government service reporting and sources to whom it did not have direct access to determine the relationship between Iraq and [redacted] terrorist groups."<sup>5</sup>

We are deeply concerned that an important facet of your Administration's case that Saddam Hussein posed an imminent threat to the United States, which has been demonstrated as false, rested upon information extracted through torture by a foreign intelligence service. As a rule, custody of high-value detainees should not be transferred to foreign governments, as to do so will result in the loss of United States control over the detainee and his interrogation, and a concomitant loss of confidence in any intelligence obtained through the interrogation. Furthermore, under U.S. and international law, it is forbidden to transfer anyone to "a country where there are substantial grounds for believing the person would be in danger of being subjected to torture."

<sup>3</sup> Senate Select Committee on Intelligence, "Postwar Findings," pgs. 80-81, quoting CIA operational cable, February 5, 2004.

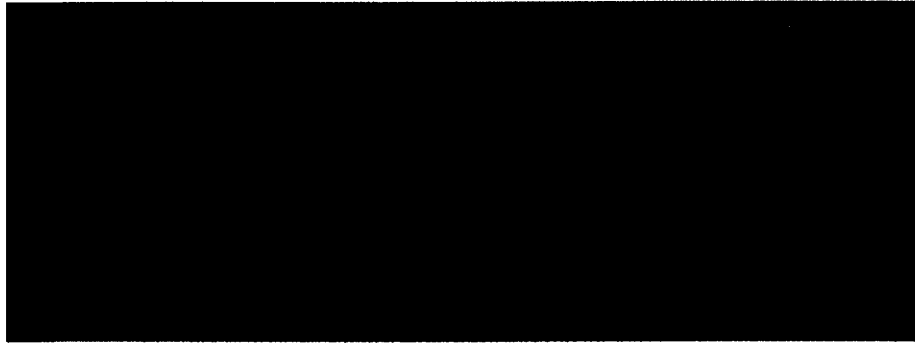
<sup>4</sup> Defense Intelligence Agency, Defense Intelligence Terrorism Summary, February 22, 2002.

<sup>5</sup> Senate Select Committee on Intelligence, "Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq," July 9, 2004, pg. 34.

We request that you provide us with answers to the following questions:

1. Please describe in detail the decision making process which concluded with al-Libi being transferred to a foreign government. Who made the decision to transfer custody of al-Libi to a foreign government? On what basis was this decision made? Was there consideration of the consequences of interrupting the ongoing and successful interrogation of al-Libi by agents of the Federal Bureau of Investigation? Did the Federal Bureau of Investigation express a view on transferring custody of al-Libi? Please provide any information, including physical and electronic documents, relating to this decision making process.
2. Does the United States have a uniform policy regarding the transfer of an individual into the custody of a state that appears on the list of states that engage in torture in the Country Reports on Human Rights Practices submitted to the Congress by the Department of State pursuant to sections 116(d) and 502(b) of the Foreign Assistance Act of 1961, as amended, and section 504 of the Trade Act of 1974, as amended? If so, what is that policy, and how was it applied in the case of al-Libi?
3. Was there thought given to the possibility that under the custody of a foreign government al-Libi might be tortured, especially if the foreign government which received custody of al-Libi had been cited by the Department of State's annual Country Reports on Human Rights Practices for torture or abuse of prisoners and detainees? If so, did the United States seek, and did the United States receive, assurances that al-Libi would be treated humanely and in accordance with international law? Were such assurances verbal or written? What steps were taken to ensure that any such assurances were met, and to ensure strict compliance with our obligations under domestic and international law with respect to the transfer of persons?
4. Central Intelligence Agency operational cables from February 2004, as quoted by the Senate Select Committee on Intelligence, contain many references to allegations by al-Libi that he was tortured by the foreign intelligence service. When did the United States first become aware that al-Libi alleged he had been tortured by the foreign intelligence service? What actions did your Administration take once it knew of these allegations? What actions were taken to assess the validity of al-Libi's claims of torture? Were his claims judged to be accurate?
5. After transferring custody of al-Libi to a foreign government, were United States personnel involved in the interrogation of al-Libi, or was his interrogation performed purely by a foreign intelligence service? If United States personnel were involved in al-Libi's interrogation after his transfer to a foreign government, please describe their role in his interrogation.
6. Please describe in detail the judgments your Administration made as to the veracity of the information obtained from al-Libi under interrogation by the foreign intelligence service. What steps were taken to confirm this information? Did anyone in your Administration have concerns about the veracity of information obtained under torture or threat of torture? Did anyone assess the concerns raised by the Defense Intelligence Agency about the veracity of the information? To whom, and in what form, were these concerns raised? Who was aware of these concerns? What action, if any, was taken in response to these concerns?

7.



We appreciate your prompt response to this request.

Sincerely,

*Edward J. Markey*  
Edward J. Markey

*William D. Delahunt*  
William D. Delahunt

*Arnold Nadler*  
Arnold Nadler

CC:  
Secretary of State Condoleezza Rice  
Secretary of Defense Robert Gates  
Director of National Intelligence Mike McConnell  
Director, Central Intelligence Agency Gen. Michael V. Hayden  
Director, Federal Bureau of Investigations Robert S. Mueller, III

~~TOP SECRET~~

~~NOFORN//MR~~

US Classification//Non-NS//SCI//Codeword//FGI//Dissem Controls//Non-Intel//Declass (as appropriate)

# EXECUTIVE CORRESPONDENCE ROUTING SHEET

1. Origination Office

2. Date

General Counsel

Name

Room No. and Building

Phone

Scott W. Muller

4. Subject

Reaffirmation of CIA Interrogation Program

5. Originating Office Control #

6a. Response to DAC # (Originating Office to Complete)

5b. DAC Control # (DAC Use Only)

6. Justification / Summary (Required for Immediate and Priority Actions)

Routine

Priority

Immediate

7. Coordination

This memo follows General Counsel discussion with the NSC and agreement on the need to seek reaffirmation from the NSC.

~~TOP SECRET~~ ~~NOFORN//MR~~

TITLE DAC	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
SIGNATURE		
TITLE EXTDIR	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	5/26/04
SIGNATURE		per my comments
TITLE DDCI	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	6/26/04
SIGNATURE		6/26/04
TITLE DCI	<input checked="" type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	6/4/04
SIGNATURE		
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SIGNATURE		
TITLE	<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
SIGNATURE		

CK93-3

FORM 04-00 4468

~~TOP SECRET~~

~~NOFORN//MR~~

CL BY: 2286605  
CL REASON: 1.5 1.4(c)

CIA 3-012

~~TOP SECRET~~ [REDACTED]

~~/NOFORN//MR~~

SUBJECT: ~~(TS)~~ [REDACTED] Review of CIA Interrogation Program

DCI/OGC/JARizzo [REDACTED] (24 May 04)

[REDACTED]

[REDACTED]

Distribution:

- Orig - Addressee
- 1 - DCI
- 1 - DDCI
- 1 - EXDIR
- 1 - DAC
- 1 - GC
- 1 - SDGC
- 1 - AGC/OD
- 1 - CTC/LGL

~~TOP SECRET~~ [REDACTED]

~~/NOFORN//MR~~

CK93-1



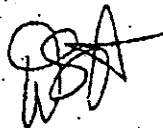
OFFICE OF THE VICE PRESIDENT  
Washington, D.C. 20501

FACSIMILE TRANSMISSION

FOR OFFICIAL USE ONLY

TO: [REDACTED] Chief of Staff to the Director of Central Intelligence,  
Fax [REDACTED]

FROM: David S. Addington, Counsel to the Vice President  
[REDACTED]



DATE: January 16, 2004

PAGES: 6 pages (including this page)

NOTE:

[REDACTED]

) Attached is the one-pager tripartite letter (Rumsfeld-Ashcroft-Tenet) proposed as a response to the incoming Zelikow note from the 9/11 Commission (copy also attached). The DCI wanted an opportunity to run it by the operators.

As I mentioned to the DCI, Andy Card, Al Gonzales, and Condi Rice have cleared the attached text. (Obviously, the signers need to be pleased with it, too, if they are signing it.)

Please call me as soon as you can this afternoon with word on whether or not the DCI's signature is good to go.

54

**Department of Defense**

Washington, D.C. 20301

**Department of Justice**

Washington, D.C. 20530

**Central Intelligence Agency**

Washington, D.C. 20505

January 16, 2004

**CLOSE HOLD**

The Honorable Thomas H. Kean, Chairman  
The Honorable Lee H. Hamilton, Vice Chairman  
National Commission on Terrorist Attacks  
Upon the United States  
Washington, D.C. 20407

Gentlemen:

Your staff has advised us that the Commission seeks to participate in the questioning of certain enemy combatants detained in the war against terrorists of global reach. Such action by the Commission would substantially interfere with the ability of the United States to perform its law enforcement, defense and intelligence functions in the protection of the American people.

Your legislative commission has had extraordinary -- indeed, unprecedented in the annals of American history -- access to many of the Nation's most sensitive secrets in the conduct of its work, including detainee information. In response to the Commission's expansive requests for access to secrets, the executive branch has provided such access in full cooperation. There is, however, a line that the Commission should not cross -- the line separating the Commission's proper inquiry into the September 11, 2001 attacks from interference with the Government's ability to safeguard the national security, including protection of Americans from future terrorist attacks. The Commission staff's proposed participation in questioning of detainees would cross that line.

As the officers of the United States responsible for the law enforcement, defense and intelligence functions of the Government, we urge your Commission not to further pursue the proposed request to participate in the questioning of detainees.

Respectfully,

John Ashcroft  
Attorney General

Donald H. Rumsfeld  
Secretary of Defense

George J. Tenet  
Director of Central Intelligence

CIA 4-007



James H. Keen  
JH

January 15, 2004.

Lee H. Hamilton  
VICE CHAIR

MEMORANDUM

Richard Ben Venise

To: Alberto Gonzales  
Scott Muller  
Steve Cambone

Fred F. Fielding

Jamie S. Gorelick

From: Philip Zelikow *PZ*

Stacy Gorton

Bob Kerrey

John F. Lehman

Timothy J. Roemer

James R. Thompson

Philip D. Zelikow  
EXECUTIVE DIRECTOR

The Commission has asked me to forward the attached draft letter to each of you. If the administration's position remains unchanged, the Commission has decided to send and release the final letter next week. Our fundamental concern is substantive. We believe the current circumstances significantly limit our ability to understand the pre-9/11 activities of the conspirators and the development of the plot to attack America.

We remain ready to work creatively with you on any option that can allow us to aid the intelligence community in cross-examining the conspirators on many critical details, clarify for us what the conspirators are actually saying, and allow us to evaluate the credibility of these replies.

TEL (202) 331-4660  
FAX (202) 296-5555  
www.911commission.gov

JAN-15-2004 19:00

96%

P.02

CIA 4-007

DRAFT

January 14, 2004

The Honorable Donald H. Rumsfeld  
Secretary of Defense  
1010 Defense Pentagon  
Washington, DC 20301-1010

The Honorable George J. Tenet  
Director of Central Intelligence  
Central Intelligence Agency  
Washington, DC 20505

Dear Secretary Rumsfeld and Director Tenet:

With your assistance, the Commission has made good progress on many aspects of our work. Yet we need to raise an issue on which we still have a significant point of difference: Commission participation in the questioning of core conspirators in the 9/11 plot who -- above all others now under U.S. control -- helped conceive, organize, supervise, finance, and carry out these attacks.

While we have evaluated reports from more than one hundred detained individuals, we are limiting our request only to seven of particular interest by reason of their involvement in the 9/11 plot. We have provided your staffs with the identity of those seven core conspirators.

When we met with Director Tenet, he explained on behalf of the intelligence community that he could not reveal the location of these conspirators to Commission representatives. He expressed concern that efforts to obtain current intelligence would be impeded by the introduction of new interrogators into the process.

We want to assure you that we will agree to procedures that can adequately protect the security interests of the United States and the location of these individuals. We are prepared to work with you on procedures which will not supplant the role of the familiar interrogators, but which will allow our staff members to observe questioning in real time and then to put forward to the interrogators immediate, essential follow-up questioning with the opportunity

January 14, 2004

Page 2

to independently evaluate the replies. We believe that one-way glass, adjoining rooms or similar techniques can accommodate our mutual concerns.

We are mindful of the importance of continuing to question these key conspirators about current intelligence, just as we are sure you understand our statutory mandate to provide a "full and complete accounting" of the 9/11 attacks. Our request concerns participation in questioning only with respect to our mandate, not your ongoing mission.

We appreciate Director Tenet's offer to do everything possible to take our questions and try to get them answered by other officials. Even so, we believe the Commission needs to participate in questioning of these seven individuals in the limited manner we have proposed, in order to fulfill our mandate by the deadline specified by law. We ask you to consider the following:

- The Commission has developed considerable expertise on the 9/11 plot that may well exceed the knowledge base of current interrogators. Our participation can help in the evaluation of conspirators' statements that are incomplete or conflict directly with other evidence.
- The procedure offered does not meet the Commission's compressed deadline for completion of its work. In October we provided two memoranda detailing many specific anomalies and gaps in the reports, and listing certain questions we asked to be posed to the conspirators. The intelligence community answered as best it could in November, but only a few of our submitted questions have been addressed. The various substantive problems remain after analyzing even the most recent information we have received. We cannot detail these problems in this unclassified letter.
- The time elapsed in this process also persuades us that the Commission needs to participate in the limited manner we have proposed in order to conduct immediate follow-up.

The procedures we have proposed will enable the Commission to form its own independent evaluation of the credibility of the conspirators' statements. We welcome the opportunity to meet with you and your staff on this issue again to try to come to agreement; we believe a failure to reach agreement would inevitably invite public and congressional scrutiny.

Because we are sensitive to national security concerns about the protection of information and the way it is collected, we have limited our request only to those individuals who are at the very center of the plot. We have been charged to investigate. The Commission respectfully, and unanimously, asks you to

The Honorable Donald H. Rumsfeld and the Honorable George J. Mitchell

January 14, 2004

Page 2

consider favorably our request for participation in the questioning process in the limited manner we have proposed.

Sincerely,

Thomas H. Kean  
Chair

Lee H. Hamilton  
Vice Chair

JAN-16-2004 15:01

96%

F.05

TOTAL P.06

CIA 4-007

~~SECRET~~

**DCI ACTION CENTER  
ROUTING SLIP**



**SUSPENSE DATE:** 11 December 2003

**DOCUMENT NO:** [REDACTED]

**Action Officer:** [REDACTED]

**COORDINATION/ROUTING:**

[REDACTED] Group to coordinate with ADCI/AP re DOCEX. All congressional correspondence must be coordinated with OCA to complete tasking. OCA Point of Contact is [REDACTED]

**SUMMARY:**

Memorandum from David Shedd, NSC, regarding 25 November 2003 letter from Senator Chambliss to Condoleezza Rice, Assistant to the President for National Security Affairs and Secretary of Defense, Donald Rumsfeld, regarding several issues related to Iraq. [REDACTED]

**Date:** 10 December 2003

**Received in DAC:** 10 December 2003

PO-LIAIS 08110 1025 P 03

~~SECRET~~

CIA 2-049



DEC. 10. 2003 12:54PM

NO. 960 P. 1

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

NATIONAL  
SECURITY  
COUNCIL

17th & Penn, N.W.  
Washington, D.C.  
20504

Did you get a complete,  
clear transmission? If not,  
please call:

From: David Shedd

To: Stan Moskowitz

Agency: CIA/D/DCI

Fax Number: [REDACTED]

Date/Time: 12/10/03

No. of pages to follow: 5

Message: Chambliss Letter

CIA 2-049



DEC. 10. 2003 12:55PM

NO. 968 P. 2

~~SECRET~~

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

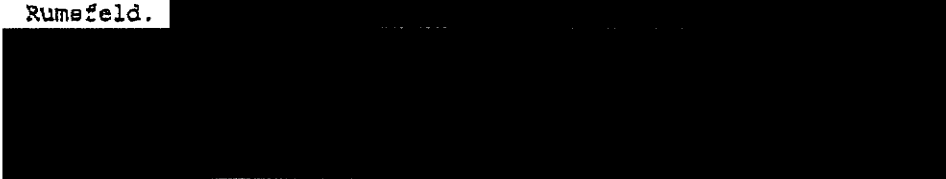
December 10, 2003

TO: Stan Moskowitz, D/OCA  


FROM: David Shedd, NSC/Intel

SUBJECT: Chambliss Letter

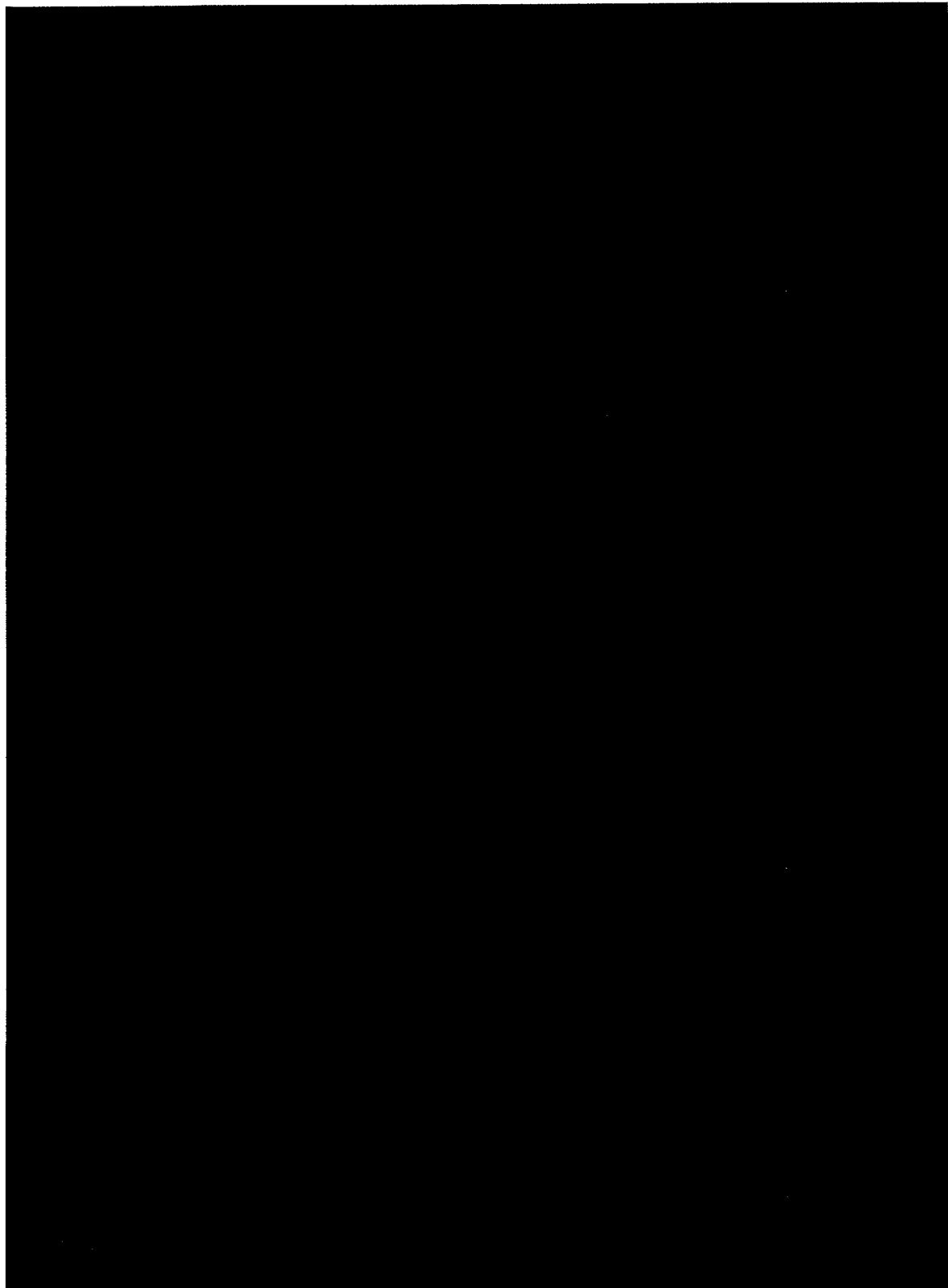
Please see attached letters. The incoming November 25 letter from Senator Chambliss is directed to Dr. Rice and SecDef Rumsfeld.

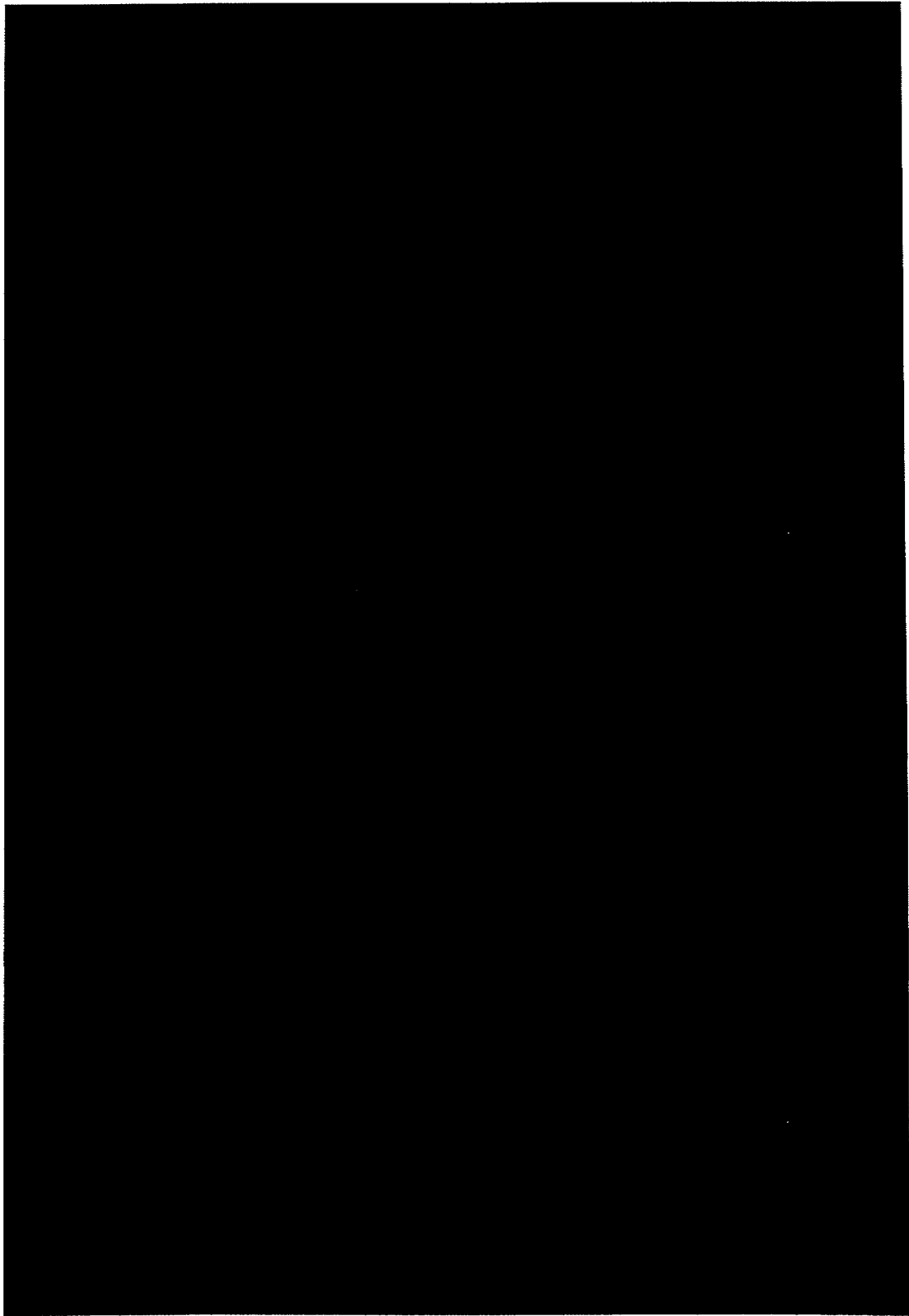


  
David R. Shedd, NSC/Intel

~~SECRET~~

CIA 2-049





11-2003 DEC. 10. 2003 12:56PM  
16:23 SEN CHAMBLISS

202 224 7953 NO. 9602 P. 5

107-99

CHAMBLISS  
GEORGIA

SENSITIVE UNCLASSIFIED - HANDLE AS CLASSIFIED

United States Senate

WASHINGTON, DC 20510-1007

November 25, 2003

IN CULTURE  
ED SERVICES  
LLIGENCE  
IDIARY  
RULES

518 ALABAMA SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1007  
PHONE: (202) 224-3121

100 CALLENA PARKWAY, STE. 1040  
ATLANTA, GA 30328  
PHONE: (770) 782-8000

1501 PEACE ROAD, BLDG. 690  
MARIETTA, GA 30156  
PHONE: (478) 878-0766

P.O. BOX 1217  
MARIETTA, GA 30175  
PHONE: (770) 596-3112

TOLL FREE NUMBER  
1 800 334-4206

Dr. Condoleezza Rice  
Assistant to the President for National Security Affairs  
National Security Council  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

The Honorable Donald Rumsfeld  
Secretary of Defense  
1000 Defense Pentagon  
Washington DC, 20301-1000

Dear Dr. Rice and Secretary Rumsfeld:

I am writing today to express my deep and growing concern about several issues related to our important work in Iraq that have recently come to my attention outside the context of my classified work on the armed services and intelligence oversight committees. This letter is unclassified, but it has not been drafted as such in anticipation of it being released. It is simply an effort to advise you of what I am hearing that is increasingly worrisome to me personally.

The first issue regards the alleged lateness of a supposed very recent decision to reestablish an indigenous intelligence capability in Iraq that can be used to more effectively penetrate pro-Saddam forces. If true, it would be worrisome if not negligent that such a concept has taken so long to come to fruition. Now that the decision may have finally been made to move forward, it will understandably take more valuable time - which is in short supply - to develop and execute the operations that had previously been beyond our capabilities. The question of why our core HUMINT collectors have allegedly been focused on tactical force protection requirements rather than strategic penetration operations is a matter best discussed within the confines of the intelligence committee. It is worth noting, however, that penetrating guerilla leadership at a level sufficient to glean plans and intentions is the only way to guarantee force protection.

What concerns me even more than the aforementioned are suggestions recently made to me that the enormous effort being put into debriefing Iraqi detainees in-country at multiple debriefing centers has been undermined by systemic procedural and management shortcomings resulting in classic information sharing breakdowns that we should have addressed by now. For example, I have heard that Iraqi detainees are often debriefed multiple times at multiple locations often without our debriefers being aware of the fact of previous debriefings and the information previously provided. Useful

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CIA 2-049

SENSITIVE UNCLASSIFIED - HANDLE AS CLASSIFIED

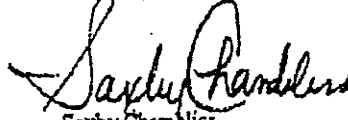
information, when it is acquired, allegedly is often not properly shared in a centralized system that ensures timely dissemination to all consumers with a "need to know." As you may know, I have particular interest and experience in information sharing issues from having coauthored the Information Sharing Act of 2002, along with my intelligence and homeland security-related oversight work in both the House and Senate. If such allegations are true, and I have reason to believe they may be, I fail to comprehend why we haven't done more to correct such glaring deficiencies sooner, especially given our experience with complex information sharing obstacles related to counterterrorism in the run up to the 9-11 attacks.

Finally, it is my understanding that we are making little if any headway in addressing the massive document exploitation backlog related to Iraq, and that there still is no coherent system in place on Iraq documents like the "DOCEX" program that was designed and honed after 9-11 to cover non-Iraq related terrorist threat information. While the magnitude of the job and the lack of cleared and properly trained linguists may make much of what we ultimately learn from these Iraqi documents more useful to historians than to war-fighters and the Intelligence Community, we should have a more rational system in place by now to do processing, exploitation, and dissemination.

In an effort to better understand the aforementioned issues and what we have done (and haven't yet done) to address them, I intend to engage more fully my colleagues on the armed services and intelligence committees, and to ask more direct questions of executive branch departments and agencies. In the meantime, however, I believe the dangerous, fluid, and increasingly challenging security situation in Iraq requires me to bring this information and my resulting concerns to your attention without delay.

Thank you for your consideration and for the extraordinary job you are both doing to keep Americans safe at home and around the world in the face of terrorism, proliferation, and other pressing and complex threats to our national security. As always, I stand ready to do all I can to assist you in these crucial endeavors.

Very truly yours,

  
Saxby Chambliss  
United States Senator

SC:jj  
CC: Senate Majority Leader Bill Frist  
Senator John Warner  
Senator Pat Roberts

SENSITIVE UNCLASSIFIED - HANDLE AS CLASSIFIED

2  
TOTAL P. 83

CIA 2-049

UNCLASSIFIED

DIRECTORS ACTION CENTER  
ROUTING SLIP

Record Number	[REDACTED]	
Document Number	[REDACTED]	
Action Number	[REDACTED]	
File Code	[REDACTED]	
Lead Office	[REDACTED]	
Release Office	[REDACTED]	
Action	Coordination	Information
		DCIA
		DDCIA
		[REDACTED]
		DI
		DNCS
		[REDACTED]
		CFD
		OCA
		[REDACTED]
		GC
		EXSEC
		DAC
Suspense Date	[REDACTED]	
Action Officer	[REDACTED]	
Action Officer's Secure Phone	[REDACTED]	
Coordination and Routing	N/A	
Document Summary	Fax from Stephen Hadley, Assistant to the President for National Security Affairs, The White House, forwarding a copy of his response to Senator Warner, Senator McCain, and Senator Graham regarding the Executive Order that addresses Common Article 3.	
Document Date	07/21/2007	
Date Received in DAC	07/23/2007	

As of: 23 Jul 2007 10:19 AM

UNCLASSIFIED

TIME OF TRANSMISSION:

TIME OF RECEIPT:

WHITE HOUSE  
SITUATION ROOM

(3) Rec'd  
11:43 AM

PRECEDENCE

CLASSIFICATION:

RELEASER:

IMMEDIATE

UNCLASSIFIED

DATE/TIME:

HADLEY RESPONSE TO  
SENATORS WARNER, McCAIN

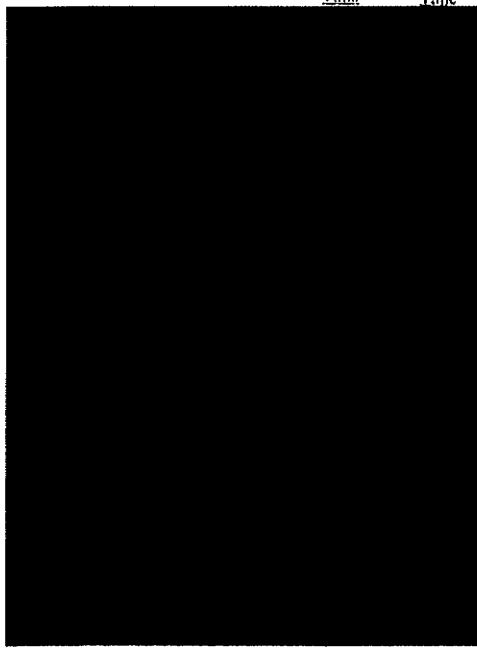
MESSAGE #: 811

Hand deliver to the following primary  
addressees :

+ GRAHAM

Started Delivered

Time Time



ECOSWASHEAX

Time of Receipt

Time/Final Processing

\*\*\*\*\*

MEETING SCHEDULE (2)

This material pertains to a meeting  
scheduled for:

Time / Date

\*\*\*\*\*

FINAL DELIVERY CONFIRMATION:

SDO date time

D/OPA

TIME OF TRANSMISSION:

TIME OF RECEIPT:

WHITE HOUSE  
SITUATION ROOM

(3) Rec'd  
11:43 AM

PRECEDENCE  
IMMEDIATE

CLASSIFICATION:  
UNCLASSIFIED

RELEASER



DATE/TIME:

MESSAGE #: 811

FROM: HADLEY PHONE: ROOM:  
SUBJECT: LETTER SENT TO SENATORS WARNER, MCCAIN, AND GRAHAM PAGES: 3

PLEASE DELIVER TO:

LOCATION	DELIVER TO	ROOM	PHONE
CIA	Hayden		
OSD	Gates		
DNI	McConnell		

SPECIAL DELIVERY INSTRUCTIONS/REMARKS:  
\*\*\*Please deliver today ASAP\*\*\*



THE WHITE HOUSE  
WASHINGTON

July 20, 2007

Dear Senator Warner, Senator McCain, and Senator Graham:

Thank you for your letter of July 19, 2007. As I indicated to you over the telephone in responding to your letter of July 6, 2007, the Administration appreciates the importance you attach to Common Article 3 of the Geneva Conventions ("Common Article 3") and to the construction and application of that requirement. Within the Administration, we have discussed the issues you have raised extensively in developing the Executive Order that addresses Common Article 3, and that discussion has resulted in a variety of changes in the way the Order is drafted. We believe that, as a result, the Order is much improved.

At the same time, I indicated that further delay would not be possible. Issuance of the Executive Order now enables us to ensure that we have available the complement of tools needed to take full advantage in a timely fashion of opportunities we currently have to counter threats against this Nation in the War on Terror. The President has stated that the Central Intelligence Agency's interrogation program has proved extremely valuable in this respect, and for that reason the Executive Order focuses on setting forth the procedural and substantive requirements that must be met before such a program can proceed.

Your recent letter of July 19 indicated concern regarding the participation of the State Department and the Judge Advocates General (JAGs) in developing the Order and addressing related issues. Both the Department of State and the Department of Defense have been involved in the development of this Order at the most senior levels, and other affected agencies and departments have participated extensively in the development of the Order as well. As to the State Department, it has been closely involved in the formulation of the Order, reviewed the final version of the order, and did not object to the Order's issuance. In the last couple of days, the JAGs were briefed in detail on the Order's proposed contents. They provided very useful comments, and the Executive Order was revised as a result to address several of those comments. In addition, as you know,

CIA 2-054

2

General Hayden briefed several senior JAG officers on guidelines and procedures associated with the Central Intelligence Agency's interrogation program, which are designed to ensure the safe administration of the program and compliance with all applicable laws. They made some useful suggestions which General Hayden intends to incorporate into the guidelines and procedures.

Finally, you requested clarification regarding the scope and application of the Executive Order. Through the Executive Order, the President is interpreting the meaning and application of Common Article 3 with respect to certain detentions and interrogations. The Executive Order indicates the procedural and substantive requirements that must be satisfied in order for an interrogation program of the type described in the Order to be undertaken in compliance with Common Article 3. The Executive Order expressly states in section 3(a) that the order is "authoritative for all purposes as a matter of United States law, including satisfaction of the international obligations of the United States." Common Article 3 of course applies beyond the Central Intelligence Agency to the entire U.S. Government in its conduct of the War on Terror.

Again, thank you for your thoughts on this important matter. I agree with you that the issuance of this Order presents a real opportunity for the United States to demonstrate its commitment to America's international obligations, while at the same time waging a robust offensive in the War on Terror.

Sincerely,

*Stephen J. Hadley/rdk*  
Stephen J. Hadley  
Assistant to the President  
for National Security Affairs

The Honorable John Warner  
The Honorable John McCain  
The Honorable Lindsey Graham  
United States Senators  
Washington, D.C.

CIA 2-054