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CENTRAL INTELLIGENCE AGENCY  
Washington, D.C. 20505

General Counsel

14 June 2004

The Honorable Jack L. Goldsmith, III  
Assistant Attorney General  
Office of Legal Counsel  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Goldsmith:

This is in response to your letter of 10 June 2004.

The document referenced in your letter entitled, "Legal Principles Applicable to CIA Detention and Interrogation of Capture Al-Qa'ida Personnel", contains what we have understood to be a shorthand summary of the legal principles applicable to the Central Intelligence Agency's (CIA) treatment of captured Al Qa'ida personnel. Representatives of the Department of Justice's Office of Legal Counsel (OLC) and CIA's Office of General Counsel (OGC) jointly prepared the Legal Principles Document during May and June 2003 based principally on legal research, opinions, and advice from OLC. With OLC's knowledge, the document was created for use by the CIA's Inspector General in its review of CIA interrogations practices in the counterterrorism arena. The inter-office coordination of the document included substantial drafting efforts by then Deputy Assistant Attorney General John Yoo and other OLC staff. The Legal Principles document also served as a basis for the "Legal Authorities" briefing slide used at a 29 July 2003 meeting attended by the Vice President, the National Security Advisor, the Attorney General, who was accompanied by Patrick Philbin, the Director of Central Intelligence, and others. The "Legal Authorities" slide was independently coordinated by OGC with OLC and the White House Counsel's office prior to the July meeting. That meeting and a follow-on briefing of the Secretaries of Defense and State using the same slide resulted in a reaffirmation of the policy and legal bases of CIA's detention and interrogation program.

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The Honorable Jack L. Goldsmith, III

Given the provenance of the Legal Principles document, which is reflected in contemporaneous CIA documentation, the statement in your letter that the document's contents "did not and do not represent an opinion or a statement of the views of this Office" raises concerns. On its face the document itself is, of course, not in the form of an official opinion of the Department. Your current characterization, however, goes further and requires that I ask you to formally address the following question: If the Legal Principles document does not represent OLC's "views" and CIA cannot rely on its substance as representing authoritative legal guidance from OLC, for what purposes may the document and all or any of its principles be used? I would appreciate your promptly answering this question in a form upon which the CIA may rely.

Since, as you know, CIA often seeks Department of Justice guidance on a wide variety of activities, your answer to the question set forth above will have broader implications for the daily interactions between CIA and the Department. As a general matter, CIA's leaders need to fully understand the extent to which they may rely in good faith on guidance from Department of Justice representatives when that guidance is not contained within signed legal opinions. My attorneys in particular need to understand what significance, if any, they should attach to legal guidance provided to them by Department representatives when the guidance is provided orally or in documents that are not signed legal opinions.

You also asked that OGC provide OLC with our views in writing on the question of whether certain interrogation techniques could be applied to captured Al Qa'ida personnel consistent with the "shock the conscience" standards of the Fifth Amendment to the Constitution. Our understanding, which was consistent with the penultimate principle set forth in the Legal Principles document that was coordinated with OLC and briefed to the National Security Council Principals and others in July and September 2003, had been that the interrogation techniques described in OLC's 1 August 2002 signed legal opinion concerning the interrogation of Abu Zubaydah legally could be applied to other captured Al Qa'ida personnel consistent with a merits analysis of the "shock the conscience" standards of the Fifth Amendment to the Constitution. To the extent your office needs particular facts and descriptions of interrogation techniques to draft a formal legal opinion on this question, please use those provided in OLC's August 2002 opinion to CIA.

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The Honorable Jack L. Goldsmith, III

Finally, in connection with your description of OLC's preferred procedures for rendering signed legal opinions, it is worth emphasizing that CIA's detention and interrogation activities are part of a [redacted] program authorized by the President—a program as to which, in addition, senior White House personnel have sought Department of Justice advice. In late May 2004, CIA suspended the use of authorized interrogation techniques pending reaffirmation of the policy and legal bases for its interrogation program. Accordingly, there is now or likely soon will be, an "operational need" for a response to our written March 2004 request that OLC reaffirm its legal analyses contained in the documents identified in our request.

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Sincerely

[redacted signature box]

Scott W. Muller

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The Honorable John D. Rockefeller IV

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Transmittal of OIG Report with DOJ reference (Working) -  
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