

Congress of the United States

Washington, DC 20515

April 30, 2009

Ms. Adrienne Thomas
Acting Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408-0001

Dear Ms. Thomas:

We write seeking materials contained in the Archives' records from the Administration of President George W. Bush, which are now in your custody and control pursuant to 44 U.S.C. § 2203(f)(1). This request is made pursuant to 44 U.S.C. § 2205(2)(c), which states that, subject to privilege or comparable claims, presidential records "shall be made available" to "either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available."

These materials are needed for the Judiciary Committee's ongoing investigation into the role of Justice Department lawyers in approving interrogation practices of the former Administration. They will also shed significant light on the role played by State Department experts in the interagency process that led to the implementation of these practices, a matter of substantial interest to the Foreign Affairs Committee and its Subcommittee on International Organizations, Human Rights, and Oversight.

The documents we request are as follows:

(1) Any copies of a memorandum drafted by Philip Zelikow in his role as Secretary of State Condoleezza Rice's representative on the National Security Council's Deputies Committee in Spring 2005, dissenting from the Department of Justice's legal views regarding certain interrogation methods. This memorandum is described by Professor Zelikow in his article "The OLC 'Torture Memos': Thoughts From A Dissenter."¹

¹Zelikow, *The OLC "Torture Memos,"*: *Thoughts From A Dissenter*, Shadow Government blog at Foreign Affairs, available at http://shadow.foreignpolicy.com/posts/2009/04/21/the_olc_torture_memos_thoughts_from_a_dissenter

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While we have requested this memorandum from the State Department archives, any copies available from the George W. Bush records are also necessary to determine as completely as possible the full circulation of this important document. To the extent this memorandum remains classified despite the public release of the related Justice Department memoranda, we are happy to make appropriate security arrangements.

(2) Copies of any “documentary materials,” as defined in the Presidential Records Act, that are related to or reflect any effort by an official of the Bush Administration to collect, destroy, or impede the preservation or retention of this memorandum, including records of any National Security Council meetings or National Security Council Deputies meetings at which this memorandum was discussed.

As you know, the National Security Council is a component of the Executive Office of the President, and its records are in almost all cases Presidential Records which the Act requires to be preserved.² Thus, depending on the precise circulation of Professor Zelikow’s dissenting memorandum, the effort he describes to “collect and destroy all copies” of the memorandum raises serious questions of a possible violation of, or conspiracy to violate, the Act, or other breach of federal law.

(3) Copies of any “documentary materials,” as defined in the Presidential Records Act, that mention or refer to the Zelikow memorandum. We understand that the Zelikow memorandum was drafted and circulated in Spring 2005. However, the interrogation methods and conditions of confinement that it reportedly discusses continued until at least September 2006.³ And according to the narrative of Bush Administration Office of Legal Counsel opinions on these subjects recently issued by the Senate Select Committee on Intelligence, new legal opinions on these matters were drafted by the Department of Justice’s Office of Legal Counsel in 2006 and 2007.⁴ Accordingly, the requested documents may shed light on the adequacy and completeness of the former Administration’s consideration of these issues over time.

sender

²See 44 USC §§ 2201(2), 2203(a).

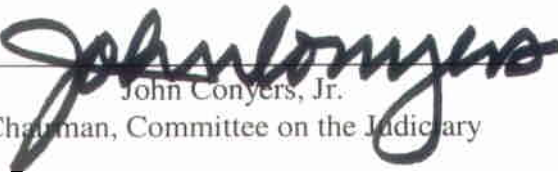
³See Remarks of President Bush on the Global War on Terror, The East Room of the White House, September 6, 2006.

⁴See Declassified Narrative Describing the Department of Justice Office of Legal Counsel’s Opinions on the CIA’s Detention and Interrogation Program (April 22, 2009).

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Thank you very much for providing the requested materials as soon as possible, and no later than Thursday, May 7, 2009. Please direct your response and any questions to the Judiciary Committee office at (202) 225-3951, fax (202) 226-7680.


Sincerely,




John Conyers, Jr.
Chairman, Committee on the Judiciary



Howard Berman
Chairman, Committee on Foreign Affairs



Jerrold Nadler
Chairman, Subcommittee on
the Constitution, Civil Rights and
Civil Liberties



William Delahunt
Chairman, Subcommittee on International
Organizations, Human Rights and Oversight

cc: Hon. Lamar Smith
Hon. James Sensenbrenner
Hon. Ileana Ros-Lehtinan
Hon. Dana Rohrbacher
Mr. Gary Stern