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Counselor's Office

Gillespie, Edward (Ed) - Confidential Files

Stack:	Row:	Sect.:	Shelf:	Pos.:	FRC ID:	Location or Hollinger ID:	NARA Number:	OA Number:
V	6	4	3	3	39235	1000006771	851	CF 0841

Folder Title:

[Proposed Executive Order Entitled Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency, 07/19/2007]

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
002	Memorandum	Proposed Executive Order Entitled Interpretation of the Geneva Conventions... - To: POTUS - From: Robert Portman	1	N.D.	P5;
004	Executive Order	Interpretation of the Geneva Conventions Common Article 3...	8	07/19/2007	P5;

COLLECTION TITLE:

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FRC ID:

39235

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3);

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WHITE HOUSE STAFFING MEMORANDUM

EYES ONLY

EYES ONLY

Date: 07/19/07 9:00 P.M. ACTION / CONCURRENCE / COMMENT DUE BY: 07/20/07 9:00 A.M.

CLOSE HOLD / EYES ONLY STAFFING: INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3 AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION OPERATED BY THE CENTRAL

Subject: INTELLIGENCE AGENCY and accompanying OMB memo

	ACTION	FYI			
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROVE		
BOLTEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SNOW		
CONNAUGHTON	<input type="checkbox"/>	<input type="checkbox"/>	SULLIVAN		
FIELDING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TOWNSEND	<input type="checkbox"/>	<input type="checkbox"/>
GILLESPIE →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WOLFF	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HADLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WRIGHT	<input type="checkbox"/>	<input type="checkbox"/>
HAGIN	<input type="checkbox"/>	<input type="checkbox"/>	YANES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUBBARD	<input type="checkbox"/>	<input type="checkbox"/>	ZINSMEISTER	<input type="checkbox"/>	<input type="checkbox"/>
KAPLAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CLERK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LAZEAR	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MARBURGER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MCBRIDE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MCGURN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
PORTMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Just delivered.

Due in 1 hour.

REMARKS:

PLEASE FORWARD COMMENTS DIRECTLY TO BILL BURCK AND JOHN KNEPPER, BY JULY 20, 2007, AT 9:00 A .M., WITH A COPY TO THE STAFF SECRETARY. THANK YOU.

Bill Burck (p: 6-5110 / f: 6-5440)
John Knepper (p: 5-5733 / f: 5-7289)

Please note: Additional comments were received from departments and agencies after the PC on Wednesday; the attached Executive Order reflects those comments. For your convenience, also attached is a document that redlines these changes.

RESPONSE:

Assistant to the President
and Staff Secretary
Ext. 62702
FAX Ext. 62215

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REVISED DRAFT (CONTROL COPY) 7/19/07

EXECUTIVE ORDER

- - - - -

INTERPRETATION OF THE GENEVA CONVENTIONS COMMON ARTICLE 3
AS APPLIED TO A PROGRAM OF DETENTION AND INTERROGATION
OPERATED BY THE CENTRAL INTELLIGENCE AGENCY

By the authority vested in me as President and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107-40) and the Military Commissions Act of 2006 (Public Law 109-366), it is hereby ordered as follows:

Section 1. General Determinations. (a) The United States is engaged in an armed conflict with al Qaeda, the Taliban, and associated forces. Members of al Qaeda were responsible for the attacks on the United States of September 11, 2001, and for many other terrorist attacks, including against the United States, its personnel, and its allies throughout the world. These forces continue to fight the United States and its allies in Afghanistan, Iraq, and elsewhere, and they continue to plan additional acts of terror throughout the world. On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby

reaffirm that determination.

(b) The Military Commissions Act defines certain prohibitions of Common Article 3 for United States law, and it reaffirms and reinforces the authority of the President to interpret the meaning and application of the Geneva Conventions.

Sec. 2. Definitions. As used in this order:

(a) "Common Article 3" means Article 3 of the Geneva Conventions. The text of Common Article 3 is attached for information as an appendix to this order.

(b) "Geneva Conventions" means:

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(c) "Cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to

the Constitution of the United States.

Sec. 3. Compliance of a Central Intelligence Agency
Detention and Interrogation Program with Common Article 3.

(a) Pursuant to the authority of the President under the Constitution and the laws of the United States, including the Military Commissions Act, this order interprets the meaning and application of the text of Common Article 3, and shall be treated as authoritative for all purposes as a matter of United States law, including satisfaction of the international obligations of the United States. I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section. The requirements set forth in this section shall be applied with respect to detainees in such program without adverse distinction as to their race, color, religion or faith, sex, birth, or wealth.

(b) I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:

(1) the conditions of confinement and interrogation practices of the program do not include—

(A) torture, as defined in section 2340 of title 18, United States Code;

(B) any of the acts prohibited by section 2441(d)

of title 18, United States Code, including murder, torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, taking of hostages, or performing of biological experiments;

(C) other acts of violence serious enough to be considered comparable to murder, torture, mutilation, and cruel or inhuman treatment, as defined in section 2441(d) of title 18, United States Code;

(D) any other acts of cruel, inhuman, or degrading treatment or punishment prohibited by the Military Commissions Act (subsection 6(c) of Public Law 109-366) and the Detainee Treatment Act of 2005 (section 1003 of Public Law 109-148 and section 1403 of Public Law 109-163);

(E) willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or

(F) acts intended to denigrate the religion, religious practices, or religious objects of the individual;

(2) the conditions of confinement and interrogation practices are to be used with an alien detainee who is determined by the Director of the Central Intelligence Agency—

(A) to be a member or part of or supporting al Qaeda, the Taliban, or associated organizations; and

(B) likely to be in possession of information that:

(i) could assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or

(ii) could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces;

(3) the interrogation practices are determined by the Director of the Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee

with whom they are used; and

(4) detainees in the program receive the basic necessities of life, including adequate food and water, shelter from the elements, necessary clothing, protection from extremes of heat and cold, and essential medical care.

(c) The Director of the Central Intelligence Agency shall issue written policies to govern the program, including requirements to ensure:

- (1) safe and professional operation of the program;
- (2) the development of an approved plan of interrogation tailored for each detainee in the program to be interrogated, consistent with subsection 3(b)(4) of this order;
- (3) appropriate training for interrogators and all personnel operating the program;
- (4) effective monitoring of the program, including with respect to medical matters, to ensure the safety of those in the program; and
- (5) compliance with applicable law and this order.

Sec. 4. Assignment of Function. With respect to the program addressed in this order, the function of the President under section 6(c)(3) of the Military Commissions Act of 2006 is assigned to the Director of National Intelligence, consistent with section 301 of title 3, United States Code.

Sec. 5. General Provisions. (a) Subject to subsection (b)

of this section, this order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(b) Nothing in this order shall be construed to prevent or limit reliance upon this order in a civil, criminal, or administrative proceeding, or otherwise, by the Central Intelligence Agency or by any individual acting on behalf of the Central Intelligence Agency in connection with the program addressed in this order.

THE WHITE HOUSE,

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