

UNITED STATES OF AMERICA
Congress of the United States

To Michael Mukasey, Attorney General of the United States, **Greeting:**

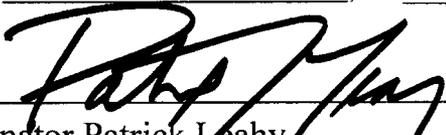
Pursuant to lawful authority, **YOU ARE HEREBY COMMANDED:**

to appear before the Committee on the Judiciary of the Senate of the United States, on November 18, 2008 at 10:00 am in Room 226 of the Dirksen Senate Office Building, Washington, D.C., then and there to testify about what you know relative to the Committee's inquiry into legal advice provided by the Department of Justice's Office of Legal Counsel concerning the Administration's national security practices and policies related to terrorism, including the Administration's policies and practices related to detention and interrogation of detainees in U.S. custody; and to bring with you the documents described in Attachment A under the terms and conditions stated therein. A personal appearance at the above-referenced date and time will not be necessary if the documents described in Attachment A are delivered to the Committee's offices or, if they contain classified national security information, to the Office of Senate Security at least 24 hours prior to the scheduled return.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To any Committee staff member or U.S. Marshal to serve and return.

Given under my hand, by authority vested
in me by the Committee, on this 21 day
of October, 2008.



Senator Patrick Leahy
Chairman, Committee on the Judiciary

United States Senate
Attachment A

Documents Subpoenaed

1. To provide the Committee with all documents constituting the legal analysis and advice the Department of Justice's Office of Legal Counsel ("OLC") provided to any agency, office, entity, or officer of the Executive Branch from September 11, 2001 to the present, concerning the Administration's national security practices and policies related to terrorism, and any related document: including complete and unredacted versions of the following:

A. Memorandum for Alberto R. Gonzales, Counsel to the President, *Re "Protected Persons" in Occupied Iraq* (March 18, 2004).

B. Any final OLC memorandum or written legal advice concerning applicability of the Fourth Geneva Convention in Iraq, including but not limited to Article 49, including any March 19, 2004 memorandum, *Re: Applicability of the Fourth Geneva Convention in Iraq*, including but not limited to Article 49.

C. Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel, Department of Defense ("DOD"), from John C. Yoo, Deputy Assistant Attorney General, OLC, *Re: Authority for Use of Military Force to Combat Terrorist Activities Within the United States* (October, 2001).

D. Memorandum for Daniel Bryant, Assistant Attorney General, Office of Legislative Affairs, from John Yoo, Deputy Assistant Attorney General, OLC, *Re: Applicability of 18 U.S.C. § 4001(a) to Military Detention of United States Citizens* (June 27, 2002).

E. Memorandum for William J. Haynes II, General Counsel, DOD, from Jay S. Bybee, Assistant Attorney General, OLC, *Re: The President's Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations* (March 13, 2002).

F. Any finalized memorandum from the Department of Justice, *Re: Liability of interrogators under the Convention Against Torture and the Anti-Torture Act when a prisoner is not in U.S. custody.*

G. Memorandum for John Yoo, Deputy Assistant Attorney General, OLC, from James C. Ho, Attorney-Advisor, OLC, *Re: Possible Interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War* (Feb. 1, 2002), or any other finalized memoranda or opinions provided by the OLC regarding the interpretation of Common Article 3 of the 1949 Geneva Convention relating to the treatment of prisoners of war.

H. Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, OLC, *Re: Legality of the use of military commissions to try terrorists* (Nov. 6, 2001).

I. Any and all legal advice issued by the OLC concerning written authorizations from the White House of any Central Intelligence Agency (“CIA”) interrogation program or practice.

J. All lists, logs, or indices of any kind of any and all legal memoranda, letters, or opinions that were issued by the OLC from September 11, 2001 to the present, to provide legal advice to the White House or any department or agency of the Executive Branch (including the Department of Justice and its components) concerning the Administration’s national security practices and policies related to terrorism.

2. As an alternative to producing the documents itemized in 1. A-J, this subpoena can be initially satisfied by producing and delivering a complete and comprehensive index of all legal memoranda, letters, or opinions that were issued by the OLC from September 11, 2001 to the present, to provide legal advice to the White House or any department or agency of the Executive Branch (including the Department of Justice and its components), concerning the Administration’s national security practices and policies related to terrorism.

This index shall:

- (i) Identify the agency or official who requested the legal advice from the OLC;
- (ii) Identify the recipient of each legal opinion, letter, or memorandum;
- (iii) Identify the title of each memorandum, letter, or opinion;
- (iv) Identify the DOJ or OLC official who signed the opinion, memorandum, or letter;
- (v) Include a brief description of the legal issues addressed by the opinion, memorandum, or letter.

Instructions

1. To the extent dates for the documents in this subpoena are given these dates are a guide, if they are not accurate the itemized documents shall still be provided if they otherwise meet the description given.

2. In complying with this subpoena, you are required to produce all final versions of all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agent, employee, or representative acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

3. No documents as defined herein called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee. If you have knowledge that any subpoenaed document as defined herein has been destroyed, discarded, or lost, identify the subpoenaed document and provide an explanation of the destruction, discarding, loss or disposal and the date at which the document was destroyed, discarded or lost.

4. This subpoena is continuing in nature. Any document not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto with an explanation of why it was not located or discovered by the return date.

5. If you believe any responsive documents are protected by a privilege, you are required to provide a privilege log that (1) identifies any and all responsive documents to which the privilege is asserted, (2) sets forth the date, type, addressee(s), author(s) (and, if different, the preparer and signatory), general subject matter, and indicated or known circulation of the document, and (3) states the privilege asserted in sufficient detail to ascertain the validity of the claim of privilege.

6. Production with respect to each document shall include all electronic versions and data files from email applications as well as from word processing, spreadsheet, or other electronic data repositories applicable to any attachments, and shall be provided to the Committee where possible in its native file format and shall include all original metadata for each electronic documents or data file.

7. To the extent possible, documents containing classified national security information must be segregated from those not containing such information. All classified documents must be handled consistent with relevant security laws and regulations and delivered to the Office of Senate Security in room SVC-217 of the United States Capitol.

Definitions

1. The term "document" as used in this subpoena includes all emails, memoranda, reports, agreements, notes, correspondence, files, records, and other documents, data or information in any form, whether physical or electronic, maintained on any digital repository or electronic media, and should be construed as it is used in the Federal Rules of Civil Procedure.

2. The terms "related", "relating", "regarding", or "concerning", with respect to any given subject, shall be construed broadly to mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to the subject.

3. The terms "including" and "includes," with respect to any given subject, shall be construed broadly so that specification of any particular matter shall not be construed to exclude any documents that you have reason to believe the Committee might regard as responsive.

4. The term "Department of Justice" includes without limitation, anyone presently or formerly employed, assigned, or detailed there.

5. The term "Department of Defense" includes without limitation, anyone presently or formerly employed, assigned, or detailed there.

6. The term "Central Intelligence Agency" includes without limitation, anyone presently or formerly employed, assigned, or detailed there.

7. The term "White House" includes: all offices, individuals, or entities within the White House Office, including the Office of the Counsel to the President, the Office of the Chief of Staff, and the President himself; the Office of the Vice President, including the Vice President himself; and the National Security Council and its staff.

7. The term "Administration" refers to the Executive Branch during the terms of presidency of George W. Bush.

8. The terms "you" and "your" include all offices, individuals, or entities within the office of the Department of Justice, and, without limitation, anyone presently or formerly employed, assigned, or detailed there.