



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

October 7, 2015

Brett Max Kaufman
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

Re: FOIA Tracking No. FY14-002; ACLU v. DOJ, No. 15-cv-1954 (S.D.N.Y)

Dear Mr. Kaufman:

This letter responds to your October 15, 2013 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), seeking, as narrowed, certain categories of records concerning the government's use of lethal force against individual terrorists and terrorist groups. Pursuant to 28 C.F.R. § 16.5(b), your request was processed in the complex track.

A search of OLC's files has identified several responsive documents, as described more fully in my declaration filed on October 2, 2015 with the District Court for the Southern District of New York in the above-referenced litigation. As stated in that declaration, we are hereby providing you with 171 documents, in full or in part. Information on the redactions, as well as regarding the disposition of the remainder of responsive and potentially responsive documents, is discussed more fully in that declaration and the index of documents attached thereto.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Although your request is the subject of ongoing litigation, and administrative appeals are not ordinarily acted upon in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. You may submit an appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted electronically within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, which appears to read "John E. Bies".

John E. Bies
Deputy Associate Attorney General

Enclosures

From: Koffsky, Daniel L (OLC)
Sent: Tuesday, November 22, 2011 7:37 AM
To: (b) (6)
Subject: FW: Latest Draft of the White Paper
Attachments: White Paper Nov 8.doc

(b) (6): Here is the latest draft of a document we discussed yesterday. While not classified, it is closely held and is still deliberative.

--Dan

From: Seitz, Virginia A
Sent: Wednesday, November 30, 2011 6:34 AM
To: Delery, Stuart F. (OAG)
Subject: FW: FYI, Sen. Grassley pinging us again re: an alleged OLC opinion --
Attachments: 100511 Letter to AG Holder.pdf

Stuart, is there anything further o (b) (5)? I was thinking that one possible response would b (b) (5). What do you think? Va.

From: Weich, Ron (OLA)
Sent: Tuesday, November 29, 2011 8:37 PM
To: Seitz, Virginia A; Krass, Caroline D. (OLC); Delery, Stuart F. (OAG)
Cc: Agrast, Mark D. (OLA)
Subject: FYI, Sen. Grassley pinging us again re: an alleged OLC opinion --

Please let Mark or I know if there is anything new from internal exec branch discussions.

From: Podsiadly, Nick (Judiciary-Rep) [mailto:(b) (6)]
Sent: Tuesday, November 29, 2011 6:47 PM
To: Weich, Ron (OLA)
Cc: Davis, Kolan (Judiciary-Rep)
Subject: FW: Letter to Attorney General Holder

Hi Ron,

Wanted to check in and see if you had an update on whether DOJ planned to respond to Senator Grassley's letter dated 10/5? I understand there is a corresponding request from Chairman Leahy on this same memorandum requested. Appreciate an update when you get a minute.

Thanks.

From: Podsiadly, Nick (Judiciary-Rep)
Sent: Wednesday, October 05, 2011 3:18 PM
To: (b) (6)
Cc: Davis, Kolan (Judiciary-Rep) (b) (6)
Subject: Letter to Attorney General Holder

Ron,

Attached is a letter from Senator Grassley to Attorney General Holder. Please let us know if you have any questions.

Thanks.

Nick

Nicholas J. Podsiadly
Counsel
Senate Committee on the Judiciary
Ranking Member Senator Charles E. Grassley

(b) (6)

From: Seitz, Virginia A (OLC)
Sent: Tuesday, January 24, 2012 9:25 AM
To: Schmalzer, Tracy (OPA)
Subject: RE: Newsweek on Awlaki speech

Truly amazing.

From: Schmalzer, Tracy (OPA)
Sent: Tuesday, January 24, 2012 8:50 AM
To: Seitz, Virginia A
Subject: FW: Newsweek on Awlaki speech

Meant to send yesterday -

Inside the White House debate over how to talk about al Qaeda's Anwar al-Awlaki.

by [Daniel Klaidman](#) | January 23, 2012 12:00 AM EST

After months of internal debate, the Obama administration is planning to reveal publicly the legal reasoning behind its decision to kill the American-born leader of [al Qaeda](#) in the Arabian Peninsula, [Anwar al-Awlaki](#).

Awlaki, whom American officials had identified as the chief of external operations for the al Qaeda affiliate, was killed in a [CIA](#) drone strike last September in Northern Yemen. The targeted killing was one of the most controversial actions in Barack Obama's war on terror. Civil libertarians and human-rights activists have argued that it amounted to a summary execution on the basis of secret evidence and without due process. Defenders of the administration have maintained that the killing was a necessary and lawful act of war to prevent an imminent threat to the safety of the American people.

But the Obama administration itself has said next to nothing about it. At a farewell ceremony for retiring Joint Chiefs chairman Mike Mullen just hours after the strike became public, Obama hailed "the death of Awlaki," calling it a "major blow" in the fight against al Qaeda. But he made no mention of U.S. involvement in the operation. (The CIA's drone program is classified and therefore not publicly acknowledged by government officials.)

Now the administration is poised to take its case directly to the American people. In the coming weeks, according to four participants in the debate, Attorney General Eric Holder Jr. is planning to make a major address on the administration's national-security record. Embedded in the speech will be a carefully worded but firm defense of its right to target U.S. citizens. Holder's remarks will draw heavily on a secret Justice Department legal opinion that provided the justification for the Awlaki killing. The legal memorandum, portions of which were described to *The New York Times* last October, asserted that it would be lawful to kill Awlaki as long as it was not feasible to capture him alive—and if it could be demonstrated that he represented a

From: Krass, Caroline D. (OLC)
Sent: Tuesday, January 24, 2012 9:44 AM
To: Monaco, Lisa (NSD)
Subject: FW: Newsweek on Awlaki speech

In case you haven't seen.

Inside the White House debate over how to talk about al Qaeda's Anwar al-Awlaki.

by [Daniel Klaidman](#) | January 23, 2012 12:00 AM EST

After months of internal debate, the Obama administration is planning to reveal publicly the legal reasoning behind its decision to kill the American-born leader of al Qaeda in the Arabian Peninsula, Anwar al-Awlaki.

Awlaki, whom American officials had identified as the chief of external operations for the al Qaeda affiliate, was killed in a CIA drone strike last September in Northern Yemen. The targeted killing was one of the most controversial actions in Barack Obama's war on terror. Civil libertarians and human-rights activists have argued that it amounted to a summary execution on the basis of secret evidence and without due process. Defenders of the administration have maintained that the killing was a necessary and lawful act of war to prevent an imminent threat to the safety of the American people.

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An early draft of Holder's speech identified Awlaki by name, but in a concession to concerns from the intelligence community, all references to the al Qaeda leader were removed. As currently written, the speech makes no overt mention of the Awlaki operation, and reveals none of the intelligence the administration relied on in carrying out his killing. (White House spokesman Tommy Vietor declined to comment).

That circumspect approach contrasts dramatically with the administration's posture in the aftermath of Osama bin Laden's death, when the president personally addressed the nation to announce the al Qaeda leader's

demise, and key members of his team provided on-the-record accounts of the operation in almost novelistic detail. But the circumstances of that operation differ in crucial respects from the Awlaki strike. The latter involved the CIA's still secret drone program, and Awlaki was American-born, adding an additional level of sensitivity.

In the aftermath of the Awlaki operation, civil libertarians and some prominent members of Congress called on the administration to make its legal analysis public. Some supporters of disclosure, including Sen. Dianne Feinstein of California, have made the case to Obama officials that speaking openly would be the best way to maintain public support for a program that they believe is necessary but remains controversial.

For Obama the question pitted two core principles that he has, at times, struggled to balance: rolling back the Bush administration's penchant for secrecy in counterterrorism, and adequately protecting the intelligence community's most sensitive sources and methods. Obama had guided U.S. counterterrorism policy in a difficult political environment and has often disappointed his liberal base, which believes he has sided with the policies of his predecessor, George W. Bush, a surprising amount of the time.

The calls for transparency in discussing the Awlaki strike were batted away at first. But behind the scenes, several prominent lawyers in the national-security bureaucracy began lobbying their colleagues and superiors for some degree of disclosure. Among them were Jeh C. Johnson, the Defense Department general counsel, and Harold Hongju Koh, the State Department legal adviser. The national-security "principals" quickly divided into camps. The CIA and other elements of the intelligence community were opposed to any disclosures that could lift the veil of secrecy from a covert program. Others, notably the Justice and State departments, argued that the killing of an American citizen without trial, while justified in rare cases, was so extraordinary it demanded a higher level of public explanation. Among the proposals discussed in the fall: releasing a "white paper" based on the Justice memo, publishing an op-ed article in *The New York Times* under Holder's byline, and making no public disclosures at all.

The issue came to a head at a Situation Room meeting in November. At lower-level interagency meetings, Obama officials had already begun moving toward a compromise. David Petraeus, the new CIA director whose agency had been wary of too much disclosure, came out in support of revealing the legal reasoning behind the Awlaki killing so long as the case was not explicitly discussed. Petraeus, according to administration officials, was backed up by James Clapper, the director of national intelligence. (The CIA declined to comment.) The State Department, meanwhile, continued to push for fuller disclosure. One senior Obama official who continued to raise questions about the wisdom of coming out publicly at all was Janet Napolitano, the Homeland Security director. She argued that the calls for transparency had quieted down, as one participant characterized her view, so why poke the hornet's nest? Another senior official expressing caution about the plan was Kathryn Ruemmler, the White House counsel. She cautioned that the disclosures could weaken the government's stance in pending litigation. *The New York Times* has filed a lawsuit against the Obama administration under the Freedom of Information Act seeking the release of the Justice Department legal opinion in the Awlaki case. (The department has declined to provide the documents requested.)

It came down to what Denis McDonough, the deputy national-security adviser, cheekily called the "half Monty" versus the "full Monty," after the British movie about a male striptease act. In the end, the principals settled on the half Monty. As the State Department's Koh continued to push for the maximum amount of disclosure, McDonough began referring to that position as "the full Harold."

A number of Obama officials supported the move in part because they considered it the right policy, but also because it represented an opportunity to separate themselves from the Bush administration. "We need to show we're different," said one senior official, who declined to be named. "If you let these things fester, they become part of the narrative."

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A number of Obama officials supported the move in part because they considered it the right policy, but also because it represented an opportunity to separate themselves from the Bush administration. “We need to show we’re different,” said one senior official, who declined to be named. “If you let these things fester, they become part of the narrative.”

In the end, there was a consensus that the best vehicle would be an upcoming speech on national-security policy that Holder wanted to give. The model was a low-key address that the State Department’s Koh gave in March 2010 on the legal theories underpinning the Obama administration’s counterterrorism policies. Buried deep in the speech, Koh defended the legality of targeted killing without explicitly confirming the CIA’s secret drone program. The address, delivered at a meeting of international lawyers, was widely praised for its forthright, if narrowly drawn, approach to a controversial policy.

A recommendation to go public on Awlaki was made by the national-security “principals” in November and received a provisional signoff from the White House last week. Tom Donilon, the national-security adviser, then circulated a decision memorandum to be signed by key officials throughout the government. It included a five-page draft of Holder’s proposed remarks on the legal rationale for the Awlaki strike.

No venue has been selected yet for the Holder speech. But as he prepares his address, the administration is resuming its drone strikes on al Qaeda. Late last week, U.S. officials confirmed to Reuters that Aslam Awan, a senior operations chief for al Qaeda, was killed in an attack in North Waziristan. The debate over the CIA’s covert program will linger long after Holder has made his remarks.

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From: Agrast, Mark D. (OLA)
Sent: Monday, January 30, 2012 12:08 PM
To: Krass, Caroline D. (OLC); Carlin, John; O'Neil, David (ODAG); Seitz, Virginia A; Delery, Stuart F. (OAG); Anderson, Trisha; Monaco, Lisa (NSD); Axelrod, Matthew (ODAG); Wiegmann, Brad (NSD); Singh, Anita (NSD)
Subject: Re: ASAP from ODNI: Proposed responses to Senator Wyden's questions

Thanks all.

From: Krass, Caroline D. (OLC)
Sent: Monday, January 30, 2012 12:04 PM
To: Carlin, John; Agrast, Mark D. (OLA); O'Neil, David (ODAG); Seitz, Virginia A; Delery, Stuart F. (OAG); Anderson, Trisha; Monaco, Lisa (NSD); Axelrod, Matthew (ODAG); Wiegmann, Brad (NSD); Singh, Anita (NSD)
Subject: Re: ASAP from ODNI: Proposed responses to Senator Wyden's questions

We're ok with the draft responses.

From: Carlin, John
Sent: Monday, January 30, 2012 11:59 AM
To: Agrast, Mark D. (OLA); O'Neil, David (ODAG); Seitz, Virginia A; Krass, Caroline D. (OLC); Delery, Stuart F. (OAG); Anderson, Trisha; Monaco, Lisa (NSD); Axelrod, Matthew (ODAG); Wiegmann, Brad (NSD); Singh, Anita (NSD)
Subject: RE: ASAP from ODNI: Proposed responses to Senator Wyden's questions

Yes, no issues from NSD on that one – defer to OLC.

From: Agrast, Mark D. (OLA)
Sent: Monday, January 30, 2012 11:55 AM
To: Carlin, John; O'Neil, David (ODAG); Seitz, Virginia A; Krass, Caroline D. (OLC); Delery, Stuart F. (OAG); Anderson, Trisha; Monaco, Lisa (NSD); Axelrod, Matthew (ODAG); Wiegmann, Brad (NSD); Singh, Anita (NSD)
Subject: Re: ASAP from ODNI: Proposed responses to Senator Wyden's questions

Please note that the last question concerns a different subject.

From: Carlin, John
Sent: Monday, January 30, 2012 11:42 AM
To: O'Neil, David (ODAG); Agrast, Mark D. (OLA); Seitz, Virginia A; Krass, Caroline D. (OLC); Delery, Stuart F. (OAG); Anderson, Trisha; Monaco, Lisa (NSD); Axelrod, Matthew (ODAG); Wiegmann, Brad (NSD); Singh, Anita (NSD)
Subject: RE: ASAP from ODNI: Proposed responses to Senator Wyden's questions

We are also fine with proposed response o (b) (5).

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From: Krass, Caroline D. (OLC)
Sent: Wednesday, February 08, 2012 1:54 PM
To: Monaco, Lisa (NSD)
Subject: FW: Dean's lecture at Yale on 2/22
Attachments: Speech at Yale LS (2 5) + CH + KH + OLC.docx

Lisa, once everyone has had a chance to give their input (I don't think Stuart has had a chance to read this yet), I think either you or I should send the DOJ comments back around to the group that Jeh emailed originally. I'm happy to send or for you to send. Thanks -- Caroline

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From: Krass, Caroline D. (OLC)
Sent: Monday, February 13, 2012 10:57 AM
To: Monaco, Lisa (NSD); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Hardee, Christopher (ODAG)
Cc: Carlin, John (NSD)
Subject: FW: Dean's lecture at Yale LS on Feb 22
Attachments: Speech at Yale LS (2 5).docx; Jeh Speech Compare Document.docx

Tracking:	Recipient	Read
	Monaco, Lisa (NSD)	Read: 2/13/2012 11:34 AM
	Delery, Stuart F. (OAG)	Read: 2/13/2012 11:00 AM
	O'Neil, David (ODAG)	
	Hardee, Christopher (ODAG)	Read: 2/13/2012 10:57 AM
	Carlin, John (NSD)	Read: 2/13/2012 10:58 AM

Attached from Jeh is a revised version of the speech. I've also attached a redlined document that I created that compares the current version against the version that DOJ sent back last Friday.

He doesn't seem to be asking for comments, but if there is anything that we think is critical, we should let him know. Please let me know if you have any comments and John or I can send them back to Jeh.

-----Original Message-----

From: Johnson, Jeh Charles, Hon, DoD OGC [mailto: (b) ((b) (6)]
Sent: Saturday, February 11, 2012 2:45 PM
To: 'Haines, Avril'; Koh, Harold (STATE); Krass, Caroline D. (OLC); Carlin, John; 'robert.li (b) (6) '; 'Fong, Ivan'; 'STEPHEW (b) (6) '; Wilson, Douglas HON OSD PA (b) (6) LTC OSD PA; Whitman, Bryan SES OSD PA; Little, George CIV OSD PA
Cc: (b) (6) DoD OGC (b) (6) DoD OGC; Taylor, Robert, Mr, DoD OGC; Davidson, Eliana, Ms, DoD OGC; Allen, Charles, Mr, DoD OGC; Jacobsohn, Robin, Ms, DoD OGC (b) (6) COL OSD LA (b) (6) Lt Col, DoD OGC; Johnson, Jeh Charles, Hon, DoD OGC; Davidson, Eliana, Ms, DoD OGC
Subject: Dean's lecture at Yale LS on Feb 22

I received many good comments on this from State L, DOJ, ODNI, DHS and my own folk (b) (5) . I've now included our PA folks.

Two points:

(1 (b) (5))
[Redacted]

(2 (b) (5))
[Redacted]

Jeh Charles Johnson

General Counsel of the Department of Defense 1600 Defense Pentagon Washington, DC 20301-1600

(b) (6) (phone)

(b) (6) (fax)

From: Krass, Caroline D. (OLC)
Sent: Thursday, February 23, 2012 4:20 PM
To: Delery, Stuart F. (OAG)



AG Nat'l Security
Speech 3 5 1...

From: Krass, Caroline D. (OLC)
Sent: Friday, March 02, 2012 5:05 PM
To: Delery, Stuart F. (OAG)
Subject: RE: Revised Draft Speech


AG Nat'l Security
Speech 3 5 1...

Please see a few comments.

From: Delery, Stuart F. (OAG)
Sent: Friday, March 02, 2012 4:44 PM
To: Krass, Caroline D. (OLC)
Subject: FW: Revised Draft Speech

Caroline: Here is the latest (in track changes). If we've introduced any errors from your perspective, please let me know.

Thanks.

<< File: AG Nat'l Security Speech 3 5 12_DRAFT #6.docx >>

From: Krass, Caroline D. (OLC)
Sent: Monday, March 05, 2012 9:52 AM
To: Delery, Stuart F. (OAG)
Subject: FW: Latest Draft of the White Paper
Attachments: White Paper Nov 8.doc

I'll also check on the high side, but I think this is the most recent version of the unclassified white paper.

From: Haines, Avril [mailto: (b) (6)]
Sent: Tuesday, November 08, 2011 8:29 PM
To: 'Gross, Richard C COL JCS OCJCS'; 'Koh, Harold Hongju'; 'Johnson, Jeh Charles, Hon, DoD OGC' (b) (6), (b) (3) (A) (b) (6) 'STEPHEW (b) (6)'; (b) (6) (b) (6) 'Taylor, Robert, Mr, DoD OGC'; 'Perina, Alexandra H'; Fong, Ivan (DHS)
Cc: Seitz, Virginia A; Krass, Caroline D. (OLC); Egan, Brian J. (b) (6) Smith, Bradley; Delery, Stuart F. (OAG); Koffsky, Daniel L (OLC)
Subject: RE: Latest Draft of the White Paper

(b) (5)
[Redacted]

[Redacted]

From: Delery, Stuart F. (OAG)
Sent: Tuesday, March 06, 2012 9:03 AM
To: Krass, Caroline D. (OLC)
Subject: RE: Speech

Here it is:



AG Nat1 Security
Speech 3 5 1...

From: Krass, Caroline D. (OLC)
Sent: Monday, March 05, 2012 4:54 PM
To: Delery, Stuart F. (OAG)
Subject: Speech

Hi –

Of course no rush, but do you have a pdf of the final version of the speech?

Thanks –

Caroline

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 06, 2012 10:15 AM
To: Schmaler, Tracy (OPA); Delery, Stuart F. (OAG)
Subject: RE: talking points / QA



AG speech talking
points.cdk.d...

Please see a few edits in the attached.

From: Schmaler, Tracy (OPA)
Sent: Tuesday, March 06, 2012 10:00 AM
To: Schmaler, Tracy (OPA); Delery, Stuart F. (OAG); Krass, Caroline D. (OLC)
Subject: RE: talking points / QA

As a note – need to get this over by 11 for jay’s pre-brief.

From: Schmaler, Tracy (OPA)
Sent: Tuesday, March 06, 2012 9:02 AM
To: Delery, Stuart F. (OAG); Krass, Caroline D. (OLC)
Subject: talking points / QA

I adapted speech for WH and others. Let me know if you have edits or see anything missing.

<< File: AG speech talking points.docx >>

From: Schmalter, Tracy (OPA)
Sent: Tuesday, March 06, 2012 11:21 AM
To: Krass, Caroline D. (OLC); Delery, Stuart F. (OAG)
Subject: RE: press guidance on Holder speech

I accepted them (b) (5) . may have sent you earlier version.

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 06, 2012 11:18 AM
To: Schmalter, Tracy (OPA); Delery, Stuart F. (OAG)
Subject: RE: press guidance on Holder speech

(b) (5)

From: Schmalter, Tracy (OPA)
Sent: Tuesday, March 06, 2012 11:14 AM
To: Krass, Caroline D. (OLC); Delery, Stuart F. (OAG)
Subject: RE: press guidance on Holder speech

Here is what I sent, can share.

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 06, 2012 11:05 AM
To: Delery, Stuart F. (OAG); Schmalter, Tracy (OPA)
Subject: FW: press guidance on Holder speech

Tracy –

Can I send over the points you sent to the WH? Or, if you send me what you sent them, I could forward to the NSS folks and ask them if it ok to share with State?

Thanks –

Caroline

From: Perina, Alexandra H [mailto: (b) (6)]

Sent: Tuesday, March 06, 2012 10:51 AM

To: Krass, Caroline D. (OLC); Egan, Brian J. (b) (6)

Subject: press guidance on Holder speech

Caroline, Brian, Charles – We've been asked for press guidance on the Holder speech (b) (5) I understand from Kimi that there was discussion last week about press strategy, an (b) (5) Is there anything prepared that you could share with us relating to the speech?

Thanks, A.

Alexandra H. Perina

Office of the Legal Adviser

for Political-Military Affairs

Department of State

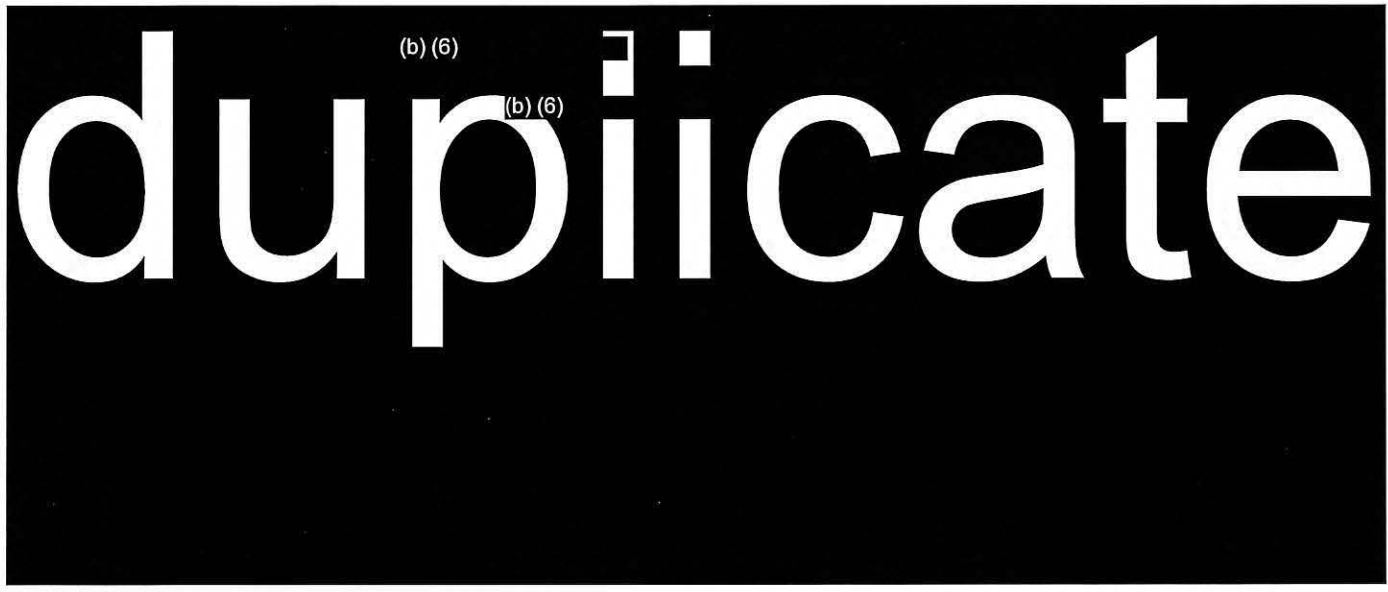
(b) (6)



AG speech talking
points.final...

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 06, 2012 11:26 AM
To: 'Perina, Alexandra H'; Egan, Brian J. (b) (6)
Subject: RE: press guidance on Holder speech
Attachments: AG speech talking points final .docx

Attached is the guidance our press office sent to the WH.



(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Schmaler, Tracy (OPA)
Sent: Tuesday, March 06, 2012 1:57 PM
To: Krass, Caroline D. (OLC); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Weich, Ron (OLA); Agrast, Mark D. (OLA)
Subject: Re: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

I've also talked to stuart - (b) (5)

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 06, 2012 01:47 PM
To: Schmaler, Tracy (OPA); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Weich, Ron (OLA); Agrast, Mark D. (OLA)
Subject: RE: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

OLC is putting together a draft response to Wyden (b) (5). I'm happy to participate in a meeting on this.

From: Schmaler, Tracy (OPA)
Sent: Tuesday, March 06, 2012 1:24 PM
To: Delery, Stuart F. (OAG); O'Neil, David (ODAG); Weich, Ron (OLA); Agrast, Mark D. (OLA); Krass, Caroline D. (OLC)
Subject: RE: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

At the moment its coming through Marcy (a blogger). Not clear if she's referencin (b) (5) or comments Wyden has given her.

From: Delery, Stuart F. (OAG)
Sent: Tuesday, March 06, 2012 1:23 PM
To: Schmaler, Tracy (OPA); O'Neil, David (ODAG); Weich, Ron (OLA); Agrast, Mark D. (OLA)
Subject: RE: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

Is this coming from the Senator's letter/comments? (b) (6)

Do we need to meet? I would include Caroline.

From: Schmaler, Tracy (OPA)
Sent: Tuesday, March 06, 2012 1:16 PM
To: Delery, Stuart F. (OAG); O'Neil, David (ODAG); Weich, Ron (OLA); Agrast, Mark D. (OLA)
Subject: FW: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

Suggestions?

From: Marcy Wheeler [mailto:(b) (6)]

Sent: Tuesday, March 06, 2012 12:54 PM

To: Schmaler, Tracy (OPA)

Subject: Can you explain what Attorney General Holder considers appropriate congressional oversight of targeted killing?

Tracy:

Given that DOJ still hasn't provided the full SSCI with the OLC memo authorizing the targeted killing of an American citizen, I'm wondering whether you can explain what is included in this description of Congressional oversight:

Which is why, in keeping with the law and our constitutional system of checks and balances, the Executive Branch regularly informs the appropriate members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.

Have any members of Congress outside of the Gang of Four seen the OLC memo? Has even the Gang of Four seen the memo itself? Have any of the Judiciary Chairs and Ranking Members seen it?

How does the failure to inform the full SSCI comply with the National Security Act and the Administration's agreement to more fully brief the full committees?

Thanks in advance.

--

Marcy Wheeler

(b) (6)

[Redacted]
[Redacted]

From: Bies, John (OLC)
Sent: Tuesday, March 06, 2012 6:41 PM
To: Weich, Ron (OLA); Agrast, Mark D. (OLA)
Subject: FW: Wyden letter

I wasn't sure whether you' (b) (5), assuming it goes in something like this form.

duplicate

From: Siegel, Nicole (OLA)
Sent: Wednesday, March 07, 2012 5:05 PM
To: (b) (6) (OLC)
Cc: (b) (6) (OLC) (b) (6) (OLC); Powell, H Jefferson (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC) (b) (6) (OLC) (b) (6) (OLC); Colborn, Paul P (OLC); Krass, Caroline D. (OLC)
Subject: RE: (OLA WF 104306) Draft responses to follow up questions for FBI Mueller from 12-14-11 hearing re Oversight of the FBI
MessageId: 222292987

Thanks (b) (6)

From: (b) (6) (OLC)
Sent: Wednesday, March 07, 2012 4:52 PM
To: Siegel, Nicole (OLA)
Cc: (b) (6) (OLC) (b) (6) (OLC); Powell, H Jefferson (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC) (b) (6) (OLC) (b) (6) (OLC); Colborn, Paul P (OLC); Krass, Caroline D. (OLC)
Subject: FW: (OLA WF 104306) Draft responses to follow up questions for FBI Mueller from 12-14-11 hearing re Oversight of the FBI

Nicole: OLC has two comments on Director Mueller's response.

1. (b) (5) [Redacted]
2. non-responsive, (b) (5) [Redacted]

Please let us know if we can be of any further assistance.

(b) (6)
Office of Legal Counsel
(b) (6)

From: Clifton, Deborah J (OLA)
Sent: Tuesday, February 28, 2012 4:05 PM
To: Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); (b) (6) (NSD); Johnson, Robert A. (DEA-US); Lord, Mandy H. (DEA-US); Perkins, Keith C. (DEA-US); Stolaruk, Lisa J. (DEA-US); Strait, Matthew J. (DEA-US); White, Jonathon A. (DEA-US); ATF Exec Sec; Brown, Natalie (USMS); Dawson, Christie (USMS); Disrud, Doug (USMS); Eskra, Jennifer (USMS); Allen, Michael (JMD); Atwell, Tonya M (JMD); Faulkner, Lila (JMD); Foltz, Robin (JMD); Lauria-Sullens, Jolene (JMD); Lofthus, Lee J (JMD); Long, Mariana (JMD); Michaelson, Melanie (CIV); Miguel, Amy (JMD); Murphy, Justin (JMD); Olson, Eric (JMD); Plante, Jeanette (JMD); Rodgers, Janice (JMD); Wahowiak, Marlene (OPR); DeFalaise, Lou (OARM); USAEO-Legislative (USA); Bolleman, Kerry A. (CIV); Mayer, Michael (CIV); Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP) (b) (6) (OLC) (b) (6) (OLC); Powell, H Jefferson (OLC) (b) (6) (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC); Bernhardt, Gena (OJP); Brien, Peter (OJP); Carradini, Rosemary Cavanagh (OJP); Darden, Silas (OJP); Duncan, Summer (OJP); Horne, Sabra (OJP); Johnson, Anna (OJP); LaTour, Angella (OJP); Searby, Susan (OJP); Solomon, Amy (OJP); Spector, Adam T (OJP); Miller, LaTonya (USNCB); O'Neill, Sean (OIP); Pierson, Katherine R (OIP); Chung, Joo (OPCL); Libin, Nancy C. (ODAG); Lullo, Joseph R. (OPCL); Miller, William A. (OPCL); Moncada, Kirsten J (OPCL); Blier, William M.(OIG); Lerner, Jay N. (OIG); Schnedar, Cynthia A. (OIG)
Cc: Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Collette, Matthew M. (OASG); Gunn, Currie (OAAG); Hirsch, Sam (OAAG); Martinez, Anna (OAAG); Leff, Deborah (A2J); Agrast, Mark D. (OLA); Appelbaum, Judy (OLA); Burton, Faith (OLA); Siegel, Nicole (OLA)
Subject: (OLA WF 104306) Draft responses to follow up questions for FBI Mueller from 12-14-11 hearing re Oversight of the FBI

PLEASE PROVIDE COMMENTS TO NICOLE SIEGEL, OLA, NO LATER THAN COB 03/07/12.

From: Krass, Caroline D. (OLC)
Sent: Thursday, March 08, 2012 9:59 AM
To: Delery, Stuart F. (OAG); Swartz, Bruce (CRM); Monaco, Lisa (NSD); Wiegmann, Brad (NSD)
Subject: RE: JAG Question

Tracking:	Recipient	Read
	Delery, Stuart F. (OAG)	Read: 3/8/2012 10:44 AM
	Swartz, Bruce (CRM)	Read: 3/8/2012 10:12 AM
	Monaco, Lisa (NSD)	Read: 3/8/2012 10:06 AM
	Wiegmann, Brad (NSD)	Read: 3/8/2012 10:07 AM

I agree with Stuart. (b) (5)

[REDACTED]

[REDACTED]

From: Delery, Stuart F. (OAG)
Sent: Thursday, March 08, 2012 8:23 AM
To: Swartz, Bruce (CRM); Monaco, Lisa (NSD); Wiegmann, Brad (NSD); Krass, Caroline D. (OLC)
Subject: RE: JAG Question

Adding Caroline. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Incidentally, Jeh Johnson, others in the GC's office, and JCS legal advisors all provided comments on the speech.

From: Swartz, Bruce (CRM)
Sent: Wednesday, March 07, 2012 8:16 PM
To: Delery, Stuart F. (OAG); Monaco, Lisa (NSD); Wiegmann, Brad (NSD)
Subject: JAG Question

Stuart, Lisa, Brad:

I spoke today about our international programs at the Judicial Conference of the Military Court of Appeals (Chief Judge Baker is an old friend), and received a question regarding the AG's speech, which I answered by referring back to the speech itself. But below is a follow-on email, an (b) (5)

[REDACTED]. Best, Bruce

It's the (b) (6) who asked the question at the CAAF conference today about the Attorney General's comments at Northwestern. I just wanted to follow up with a few thoughts clarifying my question. And before I start I want you to know that I in no way speak for any

DOD entity and that I do not even practice Operational Law. Rather, I am emailing you simply as a conference attendee.

The debate we were having in our office yesterday was about the ramifications of the Attorney General's comments. We are all military judge advocates, and as such the idea of killing someone who is engaged in hostilities against the United States is not shocking to us at all. And we all agreed that such killings are justified and condoned in certain circumstances under international law and the law of armed conflict (LOAC). But some of us see the Attorney General's comments as raising issues about why we might be killing certain targets. The fact that Al-Awaki was a US citizen is part of the problem. But another troubling aspect of the issue is that Mr. Holder's comments make it look as though individuals might be targeted because they are criminals and are suspected of breaking some US law.

I will assume that all such attacks thus far were conducted by the intelligence community and not armed forces components, so maybe it has not been an issue yet.

The reason I asked about whether there would be any new DOD/DOJ policy was because my office-mates and I were all wondering what the rationale will be for certain targeted killings going forward if the armed forces are called upon to hit the target. Are the strikes being justified under LOAC principles or because the individual was a criminal suspect? And if the target is a criminal suspect who is being provided "due process," but not necessarily "judicial process," would armed forces components be called upon to engage in what some could call extra-judicial killings? That is why I was curious whether there would be any joint DOD/DOJ policy coming out - because the Attorney General's statements seemed to create a gray area and invite speculation about the rationale for such targeted killings.

I'm curious how these issues were handled with US involvement in South American drug wars in the 80's and 90's. The situation now is obviously different because most South American governments welcomed our assistance back then and the killings were not done by drone strikes, so it probably never received the same level of scrutiny. But I know, based on books I have read like "Killing Pablo," that military and DEA were both working in South America. How were targets chosen back then? What was the legal rationale?

From: Haines, Avril on behalf of Haines, Avril (b) (6)
Sent: Thursday, March 08, 2012 11:51 AM
To: Krass, Caroline D. (OLC)
Subject: RE: Feinstein Statement on Holder Lethal Force Speech

(b) (5)

From: Krass, Caroline D. (OLC) [mailto:(b) (6)]
Sent: Thursday, March 08, 2012 10:57 AM
To: Haines, Avril
Subject: FW: Feinstein Statement on Holder Lethal Force Speech

Assume you've seen, but just in case (b) (5)

From: Feinstein Press
Sent: Wednesday, March 07, 2012 1:03 PM
Subject: Feinstein Statement on Holder Lethal Force Speech

<http://feinstein.senate.gov/>

For Immediate Release

March 7, 2012

Contact: Brian Weiss

(202) 224-9629

Feinstein Statement on Holder Lethal Force Speech

Washington—Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.) today issued the following statement after Attorney General Eric Holder outlined the Obama Administration's legal justification for the use of lethal force on terrorist suspects:

“The Attorney General presented the administration’s legal analysis for the use of force against terrorists, including Americans. I believe it is important for the public to understand the legal basis and to make clear that our counterterrorism efforts are lawful under the Constitution, U.S. law and the law of war.

“We are made safer by strikes against terrorists who continue to lead and carry out attacks on the United States. There are legal limits to this authority and great care is taken to ensure it is exercised carefully and with the absolute minimum of collateral damage. The Senate Intelligence Committee is kept fully informed of counterterrorism operations and keeps close watch to make sure they are effective, responsible and in keeping with U.S. and international law.”

###

From: (b) (6) (OLC)
Sent: Sunday, March 18, 2012 12:42 PM
To: Higginbotham, Ryan K (OLP)
Cc: Krass, Caroline D. (OLC)
Subject: Re: FLASH Guidance Request - ASAP - Human Rights and Counter Terrorism HRC Resolution

Hi Ryan,

OLC has no objection to any of the proposals that State has described. We defer to others on what policy position the Department should take.

Thanks,

(b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Friday, March 16, 2012 05:32 PM
To: (b) (6) (NSD) (b) (6) (NSD); Morales, Michelle (CRM); Opl, Legislation (CRM) (b) (6) (OLC)
Subject: FW: FLASH Guidance Request - ASAP - Human Rights and Counter Terrorism HRC Resolution

All:

State has requested our input as soon as possible (by Sunday night [OOB Monday in Geneva]) on Mexico's draft of the biennial HRC Human Rights and Counter Terrorism Resolution (text is below). In large part, the resolution contains previously co-sponsored language from HRC resolution 13/26 (http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.RES.13.26_AEV.pdf) and GA resolution 66/171.

(b) (5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Would you please send me any comments/edits when possible.

Thank you,

Ryan Higginbotham

Protection of human rights and fundamental freedoms while countering terrorism

The Human Rights Council,
pp. Reaffirming its decision 2/112 of 27 November 2006, its resolutions 6/28 of 14 December 2007, 7/7 of 27 March 2008, 10/15 of 26 March 2009 and **13/26 of 26 March 2010**, and Commission on Human Rights resolutions 2003/68 of 25 April 2003, 2004/87 of 21 April 2004 and 2005/80 of 21 April 2005, and recalling General Assembly resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005, 61/171 of 19 December 2006, 62/159 of 18 December 2007, 63/185 of 18 December 2008, 64/168 of 18 December 2009, **65/221 of 21 December 2010**, and **66/171 of 19 December 2011** and welcoming the efforts of all relevant stakeholders to implement those resolutions, **(13/26 updated)**

1. *Calls upon* States to ensure that any measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law; **(HRC 13/26)**
2. *Expresses serious concern* at the violations of human rights and fundamental freedoms, as well as of refugee and international humanitarian law, in the context of countering terrorism; **(HRC 13/26)**
3. *Reaffirms* its unequivocal condemnation of all acts, methods, practices and financing of terrorism, in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renews its commitment to strengthen international cooperation to prevent and combat terrorism and, in that regard, calls upon States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy **and its four pillars**, which reaffirms, inter alia, respect for human rights for all and the rule of law to be the fundamental basis of the fight against terrorism; **(HRC 13/26)**

4. *Deeply deplores* the suffering caused by terrorism to the victims and their families and expresses its profound solidarity with them, and stresses the importance of providing them with proper support and assistance; (HRC 13/26)

5. *Welcomes* the celebration of a Panel of Discussion on the issue of human rights of victims of terrorism held on 1 June 2011 pursuant to decision 16/116 of the Human Rights Council which raised awareness on the importance of addressing the human rights of victims of terrorism, in the determined effort by the international community to deal with the scourge of terrorism and as part of a comprehensive counter terrorism policy that respects human rights and fundamental freedoms

5 bis Reaffirms further that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

5 ter Recognizes the work carried out by the Special Procedures of the Human Rights Council in the promotion and protection of human rights and fundamental freedoms while countering terrorism.

5 quater Acknowledges that the active participation of civil society can reinforce ongoing governmental efforts to protect human rights and fundamental freedoms while countering terrorism;

6. *Calls upon* States, while countering terrorism, to ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims will receive adequate, effective and prompt reparations where appropriate, including by bringing to justice those responsible for such violations; (HRC 13/26)

7. *Urges* States, while countering terrorism, to protect all human rights, including economic, social and cultural rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of these rights; (HRC 13/26)

7 bis Calls upon States, while countering terrorism, to safeguard the right to privacy in accordance with international law, and urges them to take measures to ensure that interferences with the right to privacy are regulated by law, subject to effective oversight and appropriate redress, including through judicial review or other means;

7 ter notes with concern measures that can undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, the trial of suspects without fundamental judicial guarantees, the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, and the return of suspects to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to torture, and limitations to effective scrutiny of counter-terrorism measures, (UNGA PP9)

7 quater Stresses that all measures used in the fight against terrorism, including the profiling of individuals and the use of diplomatic assurances, memorandums of understanding and other transfer agreements or arrangements, must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, (UNGA pp10)

8. *Urges* States, while countering terrorism, to respect the right to be equal before the courts and tribunals and to a fair trial, as provided for by international law, including international human rights law, such as article 14 of the International Covenant on Civil and Political Rights and, as applicable, international humanitarian law and refugee law; (HRC 13/26)

9. Reiterates the concerns expressed by the General Assembly in its resolution 64/168 with regard to measures that can undermine human rights and the rule of law, and urges all States to take all necessary steps to ensure that persons deprived of their liberty, regardless of the place of arrest or detention, enjoy the guarantees to which they are entitled under international law, including the review of their detention and other fundamental judicial guarantees; (HRC 13/26)

10. *Takes note with appreciation of the report A/HRC/16/51 of the Special Rapporteur on the promotion and protection of human rights while countering terrorism,*

11. *Takes note of the Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, and appreciate the work of the Special Rapporteur in its elaboration at the request of the Human Rights Council.*

11 Bis requests the Special rapporteur, in accordance with his mandate, to continue to gather, request, receive and exchange information on alleged violations of human rights and fundamental freedoms while countering terrorism, and to report regularly to the Council.

12. Requests all States to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to the urgent appeals and providing the information requested, and to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries; **(HRC 13/26)**

13. **Takes note with appreciation of the report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism submitted to the Council (A/HRC/16/50) as well as the work to implement the mandate given to her by the Commission on Human Rights in its resolution 2005/80 and the General Assembly in its resolution 60/158 on the protection of human rights and fundamental freedoms while countering terrorism, and requests the High Commissioner to continue her efforts in this regard; (HRC 10/15) (op 13)**

14. Requests the High Commissioner and the Special Rapporteur to contribute further appropriately to the ongoing discussion regarding the efforts of States Members of the United Nations to assure adequate human rights guarantees to ensure fair and clear procedures, in particular with regard to placing on and removing individuals and entities from terrorism-related sanctions **lists; (op14)**

15. **Recognizes the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance their efficiency and transparency, and welcomes and encourages the ongoing efforts of the Security Council in support of these objectives, including by supporting the enhanced role of the office of the ombudsperson and continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism; GA 66/171 (HRC 13/26 Updated)**

16. Stresses the importance that relevant United Nations bodies and entities and international, regional and subregional organizations, in particular those that are participating in the Counter-Terrorism Implementation Task Force, which provide technical assistance related to the prevention and suppression of terrorism to consenting States, include, as appropriate and where consistent with their mandates, the respect of international human rights law and, as applicable, international humanitarian law and refugee law, as well as the rule of law, as an important element of technical assistance that they offer to States related to counter-terrorism, including by drawing on the advice of, and otherwise ensuring the ongoing dialogue with, the special procedures of the Council within their mandates and the Office of the High Commissioner and relevant stakeholders; **(HRC 13/26)**

17. Requests the High Commissioner and the Special Rapporteur to present their reports, bearing in mind the content of the present resolution, to the Council under agenda item 3, in conformity with its annual programme of work.

From: Krass, Caroline D. (OLC)
Sent: Monday, March 19, 2012 2:22 PM
To: Schmalzer, Tracy (OPA); Seitz, Virginia A (OLC); O'Neil, David (ODAG); Cheung, Denise (OAG)
Subject: RE: WaPo query re. judicial review of targeted drone strikes
Attachments: usgbrief.pdf

Tracking:	Recipient	Read
	Schmalzer, Tracy (OPA)	
	Seitz, Virginia A (OLC)	Read: 3/19/2012 2:28 PM
	O'Neil, David (ODAG)	Read: 3/19/2012 2:29 PM
	Cheung, Denise (OAG)	Read: 3/19/2012 2:24 PM

(b) (5) [Redacted]

From: Schmalzer, Tracy (OPA)
Sent: Monday, March 19, 2012 1:07 PM
To: Krass, Caroline D. (OLC); Seitz, Virginia A (OLC); O'Neil, David (ODAG); Cheung, Denise (OAG)
Subject: FW: WaPo query re. judicial review of targeted drone strikes

I'm checking w. NSS press on what, if anything, they're saying. (b) (5) [Redacted]

From: Eva Rodriguez [mailto: (b) (6)]
Sent: Monday, March 19, 2012 1:00 PM
To: Schmalzer, Tracy (OPA)
Subject: WaPo query re. judicial review of targeted drone strikes

Yo,
So, I'm writing about the wisdom, or lack thereof, of having federal court oversight of targeted drone strikes. Specifically -- having the judge make a determination on whether the administration had met domestic and international criteria before it places someone, including an American, on the target list. Have reached out to the White House, but also wanted to know whether DOJ has thoughts. I'm trying to wrap this up today.
emr

Eva Rodriguez
The Washington Post
Editorial Board
(b) (6) [Redacted]

From: Bies, John (OLC)
Sent: Monday, March 26, 2012 3:16 PM
To: Agrast, Mark D. (OLA)
Subject: FW: Wyden letter
Attachments: Wyden Letter Draft Response 030612 ola.docx

This is the letter I mentioned.



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From: Bies, John (OLC)
Sent: Tuesday, March 27, 2012 1:41 PM
To: Letter, Douglas (OAG)
Subject: FW: Wyden letter

I think this where things last stood on the issue I mentioned. (b) (5)

From: Bies, John (OLC)
Sent: Thursday, March 08, 2012 12:01 PM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Monaco, Lisa (NSD); Schmalder, Tracy (OPA); Weich, Ron (OLA)
Cc: Seitz, Virginia A (OLC)
Subject: RE: Wyden letter

I have made that change in the attached. Other thoughts?

Thanks,

John


From: Krass, Caroline D. (OLC)
Sent: Thursday, March 08, 2012 11:58 AM
To: Anderson, Trisha (ODAG); Bies, John (OLC); Agrast, Mark D. (OLA); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Monaco, Lisa (NSD); Schmalder, Tracy (OPA); Weich, Ron (OLA)
Cc: Seitz, Virginia A (OLC)
Subject: RE: Wyden letter

That sounds like a good idea to us.

From: Anderson, Trisha (ODAG)
Sent: Thursday, March 08, 2012 11:54 AM
To: Bies, John (OLC); Agrast, Mark D. (OLA); Krass, Caroline D. (OLC); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Monaco, Lisa (NSD); Schmalder, Tracy (OPA); Weich, Ron (OLA)

Cc: Seitz, Virginia A (OLC)
Subject: RE: Wyden letter

I just have one thought (b) (5)

A large black rectangular redaction box covers the majority of the page content below the subject line.

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(b) (5)

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From: Krass, Caroline D. (OLC)
Sent: Friday, April 06, 2012 4:28 PM
To: Letter, Douglas (OAG); O'Neil, David (ODAG)
Cc: Delery, Stuart F. (CIV); Seitz, Virginia A (OLC)
Subject: FW: CIA and the Rule of Law
Attachments: Harvard Speech As Prepared for Delivery, April 2012.docx

Tracking:	Recipient	Read
	Letter, Douglas (OAG)	Read: 4/6/2012 5:32 PM
	O'Neil, David (ODAG)	Read: 4/6/2012 4:31 PM
	Delery, Stuart F. (CIV)	
	Seitz, Virginia A (OLC)	

FYI – in case you haven't seen this, attached is a speech that Stephen Preston is giving at Harvard on April 10.

From: STEPHEW (b) (6) [mailto:(b) (6)]
Sent: Friday, April 06, 2012 4:10 PM
To: Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC)
Subject: FW: CIA and the Rule of Law

fyi



From: Seitz, Virginia A (OLC)
Sent: Saturday, April 28, 2012 4:02 PM
To: Anderson, Trisha (ODAG)
Subject: Re: Draft Speech

Hmmm (b) (5)



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From: Anderson, Trisha (ODAG)
Sent: Sunday, April 29, 2012 3:34 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Cc: Letter, Douglas (OAG)
Subject: Fw: Consolidated version

Virginia and Caroline,

I think you said yesterday that you could live with this formulation if necessary. Is that right? Do you have any other thoughts or suggestions for Avril?

(b) (5)
[Redacted text block]

Trisha

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From: Colborn, Paul P (OLC)
Sent: Monday, April 30, 2012 2:31 PM
To: Burton, Faith (OLA)
Subject: Fw: Final Version
Attachments: WilsonCenterFinalPrepared.docx

From: Krass, Caroline D. (OLC)
Sent: Monday, April 30, 2012 12:18 PM
To: Bies, John (OLC); Colborn, Paul P (OLC); Koffsky, Daniel L (OLC)
Cc: Seitz, Virginia A (OLC)
Subject: Fw: Final Version

FYI - to be delivered today.

From: Anderson, Trisha (ODAG)
Sent: Monday, April 30, 2012 11:57 AM
To: Krass, Caroline D. (OLC); Letter, Douglas (OAG); Cheung, Denise (OAG); O'Neil, David (ODAG); Delery, Stuart F. (CIV); Gershengorn, Ian (CIV); Shapiro, Elizabeth (CIV); Taylor, Elizabeth G. (OAAG); Seitz, Virginia A (OLC); Monaco, Lisa (NSD); Carlin, John
Subject: FW: Final Version

Fyi.

From: Haines, Avril [mailto:(b) (6)]
Sent: Monday, April 30, 2012 11:49 AM
To: 'STEPHEW (b) (6)'; 'Perina, Alexandra H'; (b) (6) 'Johnson, Jeh Charles, Hon, DoD OGC'; 'Gross, Richard C COL JCS OCJCS'; 'robert.li (b) (6)'; Anderson, Trisha (ODAG); Fong, Ivan (DHS)
Cc: Egan, Brian J.; Smith, Bradley (b) (6)
Subject: Final Version

From: Guzman, Joseph S (OLA)
Sent: Wednesday, May 09, 2012 12:36 PM
To: (b) (6) (OLC)
Cc: Kralovec, Jamie (OLA); Bies, John (OLC)
Subject: RE: Briefing Book for the AG's June Oversight Hearings

Thank you.

From: (b) (6) (OLC)
Sent: Wednesday, May 09, 2012 12:08 PM
To: Guzman, Joseph S (OLA)
Cc: Kralovec, Jamie (OLA); Bies, John (OLC)
Subject: RE: Briefing Book for the AG's June Oversight Hearings

John Bies.

(b) (6)
Office of Legal Counsel
(b) (6)

From: Guzman, Joseph S (OLA)
Sent: Wednesday, May 09, 2012 12:04 PM
To: (b) (6) (OLC)
Cc: Kralovec, Jamie (OLA)
Subject: RE: Briefing Book for the AG's June Oversight Hearings

(b) (6) who should I put down as the reviewer of this paper? We need a point of contact for each paper. Thanks much.

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 09, 2012 11:55 AM
To: Forrester, Nate (OLC)
Cc: Guzman, Joseph S (OLA)
Subject: RE: Briefing Book for the AG's June Oversight Hearings

Much appreciated (b) (6)

From: (b) (6) (OLC)
Sent: Wednesday, May 09, 2012 11:54 AM
To: Agrast, Mark D. (OLA); Guzman, Joseph S (OLA)
Cc: (b) (6) (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC); Appelbaum, Judy (OLA); Kralovec, Jamie (OLA); Seitz, Virginia A (OLC); Bies, John (OLC) (b) (6) (OLC)
Subject: RE: Briefing Book for the AG's June Oversight Hearings

Mark and Joseph: Here are the first of our three position papers.

(b) (6)

Office of Legal Counsel

(b) (6)

From: Agrast, Mark D. (OLA)

Sent: Wednesday, May 09, 2012 10:41 AM

To: (b) (6) (OLC)

Cc: (b) (6) (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC); Appelbaum, Judy (OLA); Guzman, Joseph S (OLA); Kralovec, Jamie (OLA)

Subject: FW: Briefing Book for the AG's June Oversight Hearings

(b) (6)

Our deadline was last Monday, and I'm afraid we cannot wait until the end of the week to receive the drafts. The deadline was dictated by the leadership offices, working backwards from the date the AG needs the book and building in a very short window for sequential review and editing by OLA, OASG and ODAG. With some 115 separate papers to process, we really don't have any leeway. Most components have now submitted their papers, and we need to ask that you do so as quickly as possible and send them to us as they are completed. If you are still waiting for certain information, we recommend that you bracket this so that we and the leadership offices can review what you have and identify any material that is yet to come.

We appreciate your understanding and assistance.

Mark

From: (b) (6) (OLC)

Sent: Tuesday, May 08, 2012 6:44 PM

To: Guzman, Joseph S (OLA)

Subject: RE: Briefing Book for the AG's June Oversight Hearings

They are parceled out among our front office, and I'm told that we won't likely have completed versions, due to the need to gather more information, before the end of the week at the earliest. I had the impression that our front office was working with your front office on this project, so that they were aware of where things stood, but if I'm wrong about that I apologize for the non-response on our part.

(b) (6)

Office of Legal Counsel

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From: Haines, Avril (b) (6)
Sent: Thursday, May 10, 2012 7:00 PM
To: 'robert.li (b) (6), (b) (3)(A)'; 'STEPHEW (b) (6)'; 'Johnson, Jeh Charles, Hon, DoD OGC';
'Gross, Richard C COL JCS OCJCS'
Cc: (b) (6) Egan, Brian J.; Krass, Caroline D. (OLC)
Subject: Leahy's request
Attachments: White Paper.doc

(b) (5)

From: Bies, John (OLC)
Sent: Friday, May 18, 2012 3:28 PM
To: Agrast, Mark D. (OLA)
Cc: (b) (6) (OLC); Kralovec, Jamie (OLA); Guzman, Joseph S (OLA)
Subject: RE: Paper #107 -- OLC Transparency - EXTENDED 29.67 KB

Mark, we had been planning to address that in #17, but have worked in a proposed Q&A and background point on that question in the attached. Please take a close look to be sure you are okay with it, particularly the background point, where you may have more information that we do. Please let us know if you have any questions or comments. (b) (5)

Thanks

John

From: Agrast, Mark D. (OLA)
Sent: Thursday, May 17, 2012 3:53 PM
To: Bies, John (OLC)
Cc: (b) (6) (OLC); Kralovec, Jamie (OLA); Guzman, Joseph S (OLA)
Subject: FW: Paper #107 -- OLC Transparency

Hi John –

Any response to Joseph's message below? We're close to our deadline on papers and just want to make sure we've got everything covered.

Also hope you and Caroline are keeping #17 in mind, although we understand that it may well be the last paper to be completed . . .

With thanks,

Mark

From: Guzman, Joseph S (OLA)
Sent: Thursday, May 10, 2012 7:49 PM
To: Bies, John (OLC)
Cc: (b) (6) (OLC); Agrast, Mark D. (OLA); Kralovec, Jamie (OLA)
Subject: FW: Paper #107 -- OLC Transparency

John:

Mark had a question for OLC regarding this paper. Please see below and attached.

(b) (5)

A large rectangular area of the document is redacted with black bars. The redaction covers approximately four lines of text.

From: Agrast, Mark D. (OLA)
Sent: Thursday, May 10, 2012 7:38 PM
To: Guzman, Joseph S (OLA); Burton, Faith (OLA)
Cc: Kralovec, Jamie (OLA)
Subject: RE: Paper #107 -- OLC Transparency

Cleared, apart from one major question on the attached.

From: Guzman, Joseph S (OLA)
Sent: Wednesday, May 09, 2012 1:23 PM
To: Agrast, Mark D. (OLA); Burton, Faith (OLA)
Cc: Kralovec, Jamie (OLA)
Subject: FW: Paper #107 -- OLC Transparency

Plus Mark.

From: Guzman, Joseph S (OLA)
Sent: Wednesday, May 09, 2012 12:21 PM
To: Burton, Faith (OLA)
Cc: Kralovec, Jamie (OLA)
Subject: Paper #107 -- OLC Transparency

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From: Bies, John (OLC)
Sent: Wednesday, May 23, 2012 6:00 PM
To: Agrast, Mark D. (OLA)
Subject: RE: Paper #107 -- OLC Transparency

Here it is with one with typos.

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 23, 2012 2:23 PM
To: Bies, John (OLC)
Cc: (b) (6) (OLC); Kralovec, Jamie (OLA); Guzman, Joseph S (OLA); Burton, Faith (OLA)
Subject: RE: Paper #107 -- OLC Transparency

John,

Thanks for the additions. Here are my edit (b) (5) [REDACTED]. Can you please take a look ASAP this afternoon and let us know of any concerns? I've asked Faith to take a look at this as well, but wanted to send it over in the interests of time.

We still have not seen #17, and the deadline is upon us. Is there a plan to get this done, or do we need to discuss? As you know, all papers must be cleared by OLA, OASG, ODAG, and OAG in time for the binder to go to the AG on Friday.

Mark

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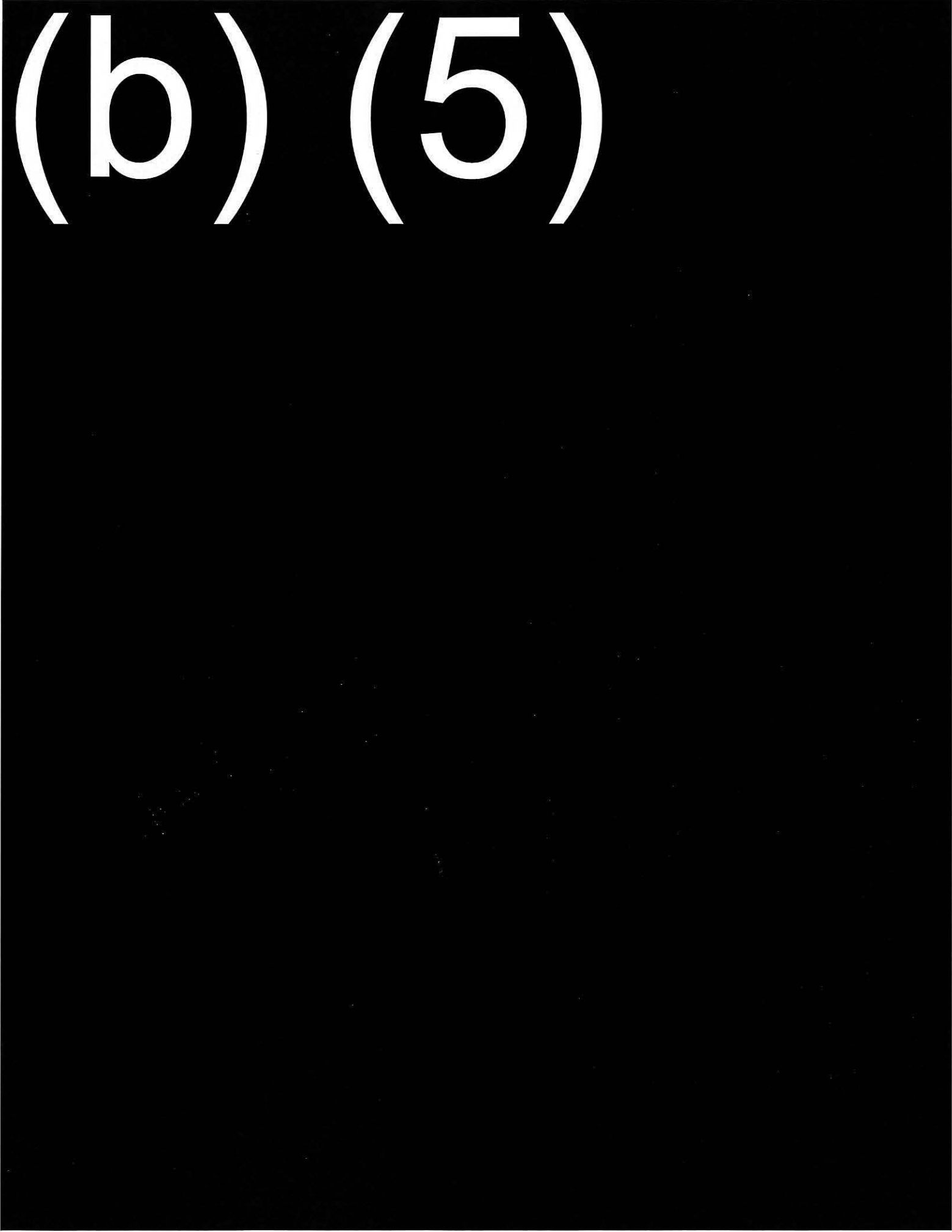
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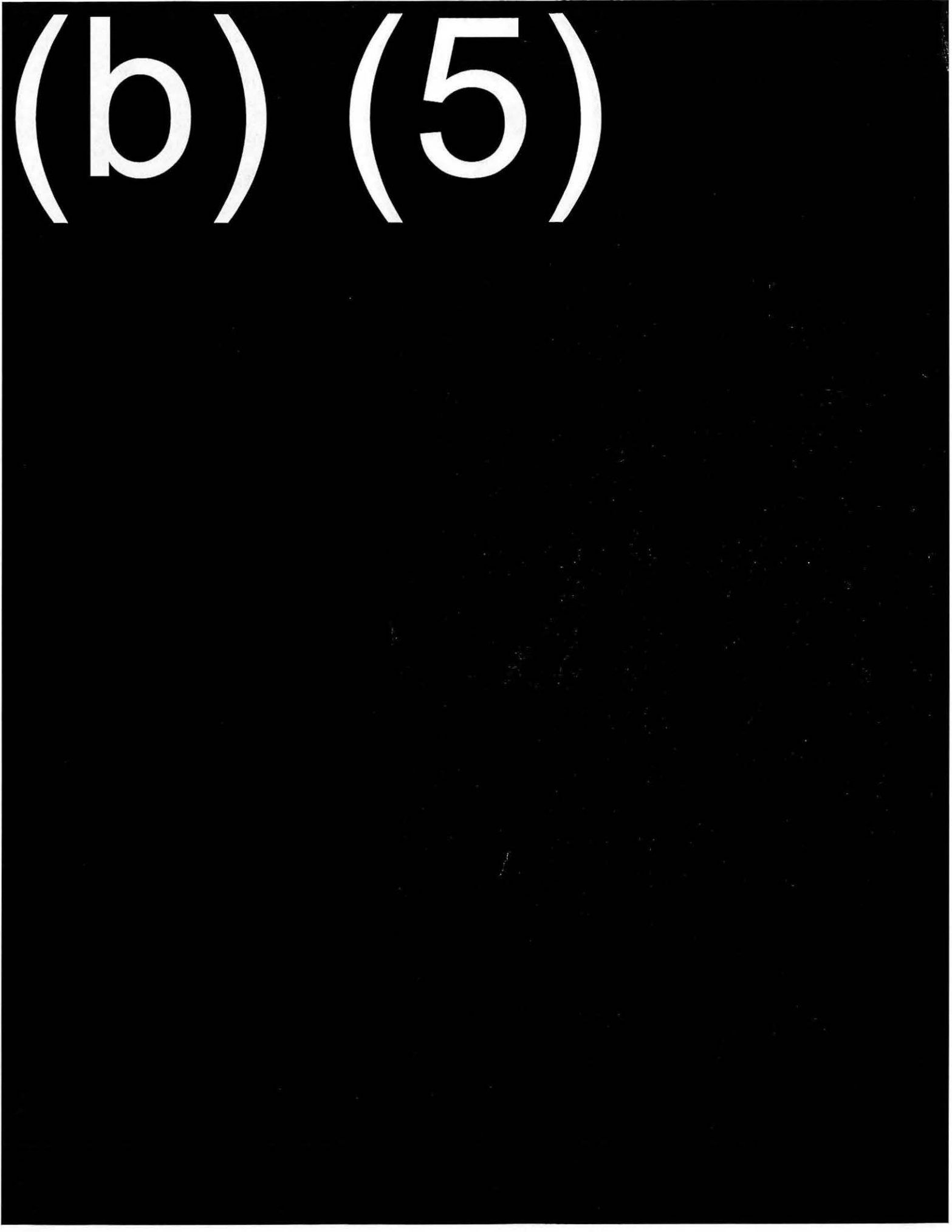
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(b) (5)

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(b) (5)

From: Agrast, Mark D. (OLA)
Sent: Thursday, May 24, 2012 6:31 PM
To: Bies, John (OLC)
Cc: (b) (6) (OLC); Kralovec, Jamie (OLA); Guzman, Joseph S (OLA)
Subject: RE: Paper #107 -- OLC Transparency

Thank you very much, John.

From: Bies, John (OLC)
Sent: Thursday, May 24, 2012 4:09 PM
To: Agrast, Mark D. (OLA)
Cc: (b) (6) (OLC); Kralovec, Jamie (OLA); Guzman, Joseph S (OLA)
Subject: RE: Paper #107 -- OLC Transparency

Mark, as I said when we spoke last night, your proposed revisions to the answer in #107 look fine to us.

I've attached a proposed draft of Paper #1 . (b) (5)

. If folks make substantive edits, we'd appreciate a chance to see them.

Happy to discuss if you have any questions.

Thanks
John

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From: Agrast, Mark D. (OLA)
Sent: Tuesday, May 29, 2012 5:23 PM
To: Bies, John (OLC)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Guzman, Joseph S (OLA); Clemente, Michael A. (OLA); Kralovec, Jamie (OLA)
Subject: RE: AG Briefing Papers
Attachments: 17 (b) (5) - Use of Unmanned Aerial Vehicles to Conduct Attacks (4).docx

So sorry. Please use this version.

From: Bies, John (OLC)
Sent: Tuesday, May 29, 2012 4:39 PM
To: Agrast, Mark D. (OLA)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Guzman, Joseph S (OLA); Clemente, Michael A. (OLA); Kralovec, Jamie (OLA)
Subject: RE: AG Briefing Papers

Mark, I don't think the redlines on Paper 17 came through here.

Thanks
John

From: Agrast, Mark D. (OLA)
Sent: Tuesday, May 29, 2012 4:35 PM
To: Bies, John (OLC)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Guzman, Joseph S (OLA); Clemente, Michael A. (OLA); Kralovec, Jamie (OLA)
Subject: FW: AG Briefing Papers

With the correct attachment this time (the redline), and copying Virginia and Caroline.

From: Agrast, Mark D. (OLA)
Sent: Tuesday, May 29, 2012 4:34 PM
To: Bies, John (OLC)
Cc: Guzman, Joseph S (OLA); Clemente, Michael A. (OLA); Kralovec, Jamie (OLA)
Subject: FW: AG Briefing Papers

John,

Please see the note from Stuart Delery below (b) (5)

I've taken a stab at this in the attached redline.

Since Stuart referenced them, I've attached the talking points that were used for the SJC oversight hearing last November, although the substance obviously is no longer adequate.

Adding Virginia and Caroline, since they will be briefing the AG on this on Thursday.

Mark

Stuart's message:

I had not been asked to review this but have now read through it. (b) (5) [REDACTED]. I've noted a few small comments/questions.

One general issue, but this may really be for OLA or OAG: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thanks.

Mark David Agrast
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. DEPARTMENT OF JUSTICE
Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main | (b) (6) [REDACTED] direct | 202.514.4482 fax

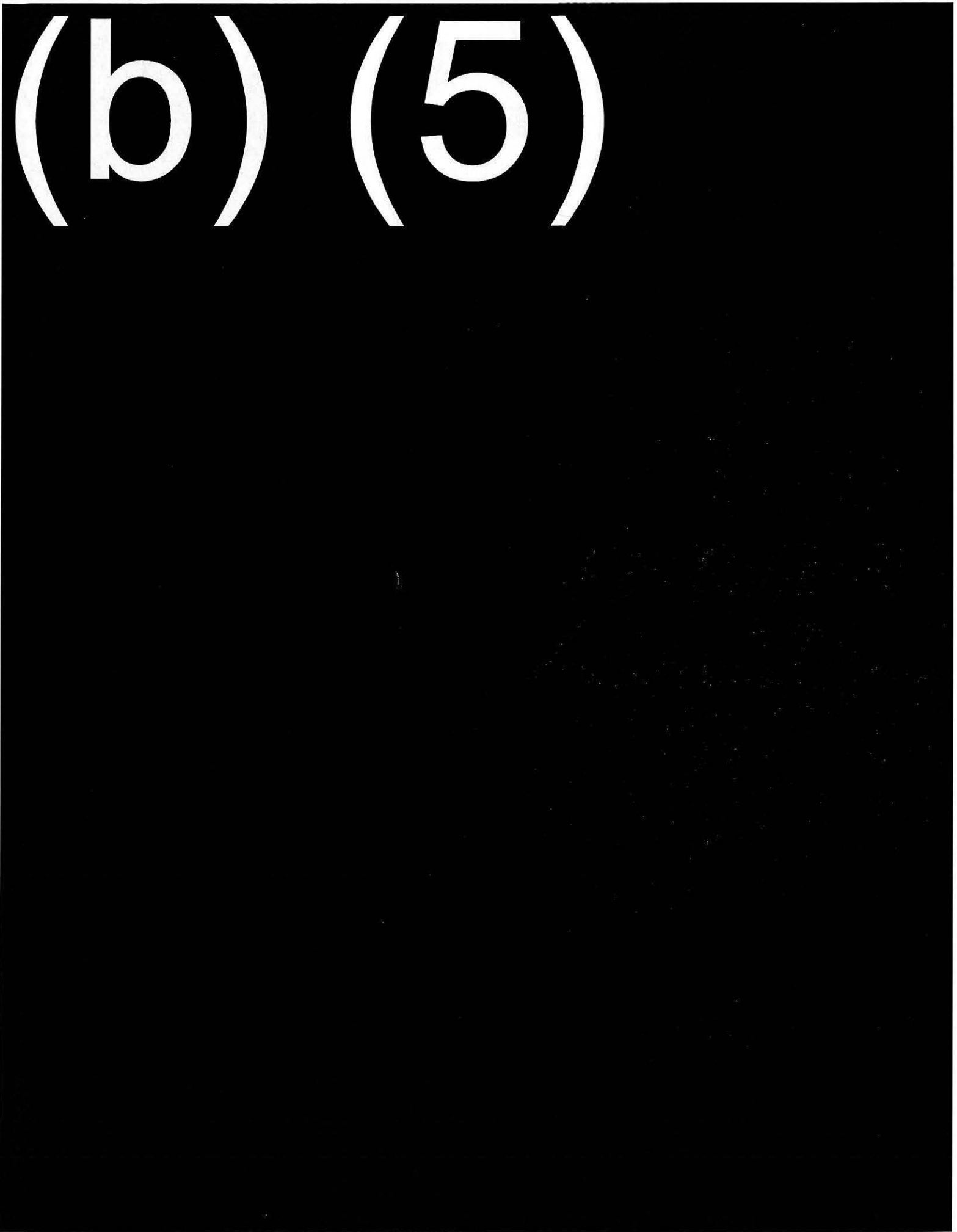
Unclassified email (b) (6) [REDACTED]

SIP (b) (6) [REDACTED]

JWICS (b) (6) [REDACTED]

(b) (5)

(b) (5)



(b) (5)

(b) (5)

(b) (5)

From: Haines, Avril on behalf of Haines, Avril (b) (6)
Sent: Wednesday, May 30, 2012 8:37 AM
To: Krass, Caroline D. (OLC)
Subject: RE: AG Talking Points

With all of the short (crazy) deadlines we give you

From: Krass, Caroline D. (OLC) [mailto:(b) (6)]
Sent: Wednesday, May 30, 2012 7:30 AM
To: Haines, Avril; Egan, Brian J.
Subject: Re: AG Talking Points

You are amazing - thanks for the quick turn around!

From: Haines, Avril [mailto:(b) (6)]
Sent: Wednesday, May 30, 2012 06:39 AM
To: Krass, Caroline D. (OLC); Egan, Brian J. (b) (6)
Subject: Re: AG Talking Points

(b) (5)
[Redacted]

From: Krass, Caroline D. (OLC) [mailto:(b) (6)]
Sent: Tuesday, May 29, 2012 08:51 PM
To: Haines, Avril; Egan, Brian J.
Subject: AG Talking Points

Hi -

(b) (5)
[Redacted]

(b) (5)

(b) (5)

Thanks – if at all possible, it would be great to hear back from you by the end of the day tomorrow (Wednesday). I was hoping maybe you already have points on this issue that have been cleared.

Caroline

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 30, 2012 10:08 AM
To: Krass, Caroline D. (OLC); Bies, John (OLC)
Cc: Seitz, Virginia A (OLC); Guzman, Joseph S (OLA); Clemente, Michael A. (OLA); Kralovec, Jamie (OLA)
Subject: Re: AG Briefing Papers

Thanks very much. We'll go forward with this version.

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(b) (6)

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From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 30, 2012 11:35 AM
To: Krass, Caroline D. (OLC)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

Done.

From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 30, 2012 11:35 AM
To: Agrast, Mark D. (OLA)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

Thanks, Mark.

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 30, 2012 11:32 AM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Hardee, Christopher (ODAG)); Carlin, John; Singh, Anita (NSD); (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

Yes – agreed- I have told them to expect (b) (5) and am sending them momentarily.

From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 30, 2012 11:30 AM
To: Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Hardee, Christopher (ODAG)); Carlin, John; Singh, Anita (NSD); (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

In terms of responding even though it is after 10 am, can we please get our comments over o (b) (5) ? Although ODNI asked for comments by 10 am, the Rules Committee doesn't meet until 5 p.m (b) (5). Thanks very much. Caroline

From: Anderson, Trisha (ODAG)
Sent: Wednesday, May 30, 2012 11:14 AM
To: Agrast, Mark D. (OLA); Hardee, Christopher (ODAG)); Krass, Caroline D. (OLC); Carlin, John; Singh, Anita (NSD); (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

(b) (5), non-responsive

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 30, 2012 11:11 AM
To: Hardee, Christopher (ODAG)); Krass, Caroline D. (OLC); Carlin, John; Singh, Anita (NSD) (b) (6) (NSD); Seitz, Virginia A (OLC)

Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Anderson, Trisha (ODAG); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

(b) (5), non-responsive

From: Hardee, Christopher (ODAG))
Sent: Wednesday, May 30, 2012 11:02 AM
To: Agrast, Mark D. (OLA); Krass, Caroline D. (OLC); Carlin, John; Singh, Anita (NSD) (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Anderson, Trisha (ODAG); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

They look fine to me. In addition, I'd not (b) (5)

From: Agrast, Mark D. (OLA)
Sent: Wednesday, May 30, 2012 10:56 AM
To: Krass, Caroline D. (OLC); Carlin, John; Singh, Anita (NSD) (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Anderson, Trisha (ODAG); Hardee, Christopher (ODAG)); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

Thank you, Caroline. Are ODAG and NSD comfortable with our providing these comments? (Please note that comments were due to ODNI by 10am, so it may be too late for this round.)

From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 30, 2012 10:19 AM
To: Agrast, Mark D. (OLA); Carlin, John; Singh, Anita (NSD) (b) (6) (NSD); Seitz, Virginia A (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Anderson, Trisha (ODAG); Hardee, Christopher (ODAG)); Burton, Faith (OLA); Letter, Douglas (OAG)
Subject: RE: ODNI request for comments on potential amendments to HR 5743, IAA

Mark –

OLC has the following comments on the amendments. Also adding Doug.

(b) (5)

(b) (5)
[Redacted]

(b) (5), non-responsive
[Redacted]

(b) (5)
[Redacted]

Please let me know if you have any questions.

Caroline

From: Agrast, Mark D. (OLA)
Sent: Tuesday, May 29, 2012 7:32 PM
To: Carlin, John; Singh, Anita (NSD) (b) (6) (NSD); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Cc: Ruppert, Mary (OLA); Simpson, Tammi (OLA); Anderson, Trisha (ODAG); Hardee, Christopher (ODAG); Burton, Faith (OLA)
Subject: FW: ODNI request for comments on potential amendments to HR 5743, IAA

Please see below from ODNI regarding potential amendments to the House Intelligence Authorization bill (b) (5)
[Redacted]

[Redacted] I will be happy to pass along any comments to ODNI in the morning.

From: (b) (6), (b) (3) (A)
Sent: Tuesday, May 29, 2012 6:29 PM
To: (b) (6), (b) (3) (A); Kelly, Stephen; Beers, Elizabeth R.
Cc: (b) (6), (b) (3) (A)
Subject: FW: UGENT: Comments needed on Amendments Offered to HR 5743, IAA

Please review (b) (5)
[Redacted]

Example for background only (b) (5)
[Redacted]

"We just received the list of amendments from the Rules Committee website. Our GC will send you commentary on each of them and we would request your support for our views/position on the amendments. Below is the first of several comments/input we will provide you:

(b) (5)

From (b) (6), (b) (3) (A)

Sent: Tuesday, May 29, 2012 5:12 PM

To (b) (6), (b) (3) (A) Alan H Johnson; Damon R Long; Dana L Dodd; DAVIDH2; Heide Kaser; Jewel L Miller (b) (6), (b) (3) (A); Kim Richerson; Mark T Gray; Robert E Bacon; Summer E Pearson (b) (6), (b) (3) (A); Barry A Zulauf; Elizabeth C Collins; Karen S Basinger (b) (6), (b) (3) (A); Martin Sherrard; Rebecca M Flowers; Eva S Kleederman; Jamel C Odom; DANIEKA (b) (6), (b) (3) (A); Mark W Ewing; Paula Kane; Tarrazzia M Martin; Vivian L Mathi (b) (6), (b) (3) (A); William E Hudson; Andrew P Hallman; Bradley S Drasbek; Donald M Hodge (b) (6), (b) (3) (A); JOELNM2 (b) (6), (b) (3) (A) John E. Brennan; Julia M Doan; KATHLEDL; Lakisha J Collier; Laurie A Schroll; RICHASM1; Jim Schmidli (b) (6), (b) (3) (A) (b) (6); Rick Garfola; (b) (6), (b) (3) (A) William R Gade; (b) (6), (b) (3) (A); April D Amador; JAYRW (b) (6), (b) (3) (A); Peter J Baldwin; Mike Luton (b) (6), (b) (3) (A) Nora E Bauland; Timothy J Clar (b) (6), (b) (3) (A); Robert Lit (b) (6), (b) (3) (A); David P Svetz (b) (6), (b) (3) (A); Leon R Mason; Patric Nissen; Brett Freedman; Jon Lehner; Linda Brandt; Margaret Pittman; TD; Tyler Anderson; ocaone; Jeanette J McMillian; Daniel J. Rosenthal (b) (6), (b) (3) (A)

Cc (b) (6), (b) (3) (A)

Subject: UGENT: Comments needed on Amendments Offered to HR 5743, IAA

All,

The House Rules Committee has just published a list of amendments offered to HR 5743, the FY2013 Intelligence Authorization Act. The Rules Committee will meet tomorrow at 5PM to discuss the amendments and formulate a rule for House debate as early as Thursday.

Consequently, we ask that you review the amendments offered and provide comments on matters of significant concern no later than 10AM tomorrow, Wednesday, 29 May. We're sorry for the very short deadline, but we saw these amendments only a few minutes ago. You can see the full text of each amendment by clicking on the hotlink embedded in the sponsor's name.

Please send your comments to (b) (6), (b) (3) (A).

Thanks,

(b) (6), (b) (3) (A)

ODNI/OGC/Legislation

(b) (6), (b) (3) (A)

H.R. 5743

Intelligence Authorization Act for Fiscal Year 2013

Amendments:

Last Updated: 05/29/2012 at 4:45 PM

#	Version #	Sponsor(s)	Party	Summary	Status
#8	Version 1	<u>Clarke (NY)</u>	Democrat	Would require a threat assessment for cyber threats to critical infrastructure.	Submitted
#10	Version 1	<u>Conyers (MI), Ellison (MN), Lee, Barbara (CA)</u>	Democrat	Would require the Director of National Intelligence to submit to the congressional intelligence committees a report containing an assessment of the consequences of a military strike against Iran within 60 days.	Submitted
#5	Version 1	<u>Cuellar (TX)</u>	Democrat	Would direct the Director of National Intelligence to share intelligence information with Mexico and Canada for purposes of border security and combating drug trafficking, in intelligence sharing programs for information gathered in designated border areas.	Submitted
#6	Version 1	<u>Cuellar (TX)</u>	Democrat	Would direct each agency that deals with classified documents to report back in 1 year potential security risks associated with the acquisition of computer hardware. Would require the agencies report to Congress with recommendations of what steps need to be taken to ensure computer hardware that is acquired for use with classified documents is not at risk being used to disclose information to outside sources.	Submitted
#7	Version 1	<u>Cuellar (TX)</u>	Democrat	Would direct the Director on National Intelligence and the Secretary of Defense to work together to develop and implement a combined National and Defense Intelligence Strategy in conjunction with existing strategies.	Submitted
#25	Version 1	<u>Duncan (SC), Westmoreland (GA)</u>	Republican	Late Would require the Government Accountability Office (GAO) to conduct a study to examine the cost savings and effects of consolidating federal data centers in the intelligence community and report back to Congress with the results.	Submitted
#18	Version 1	<u>Farr (CA)</u>	Democrat	Would establish the sense of Congress that those assigned to lead the development of training, tools, and methodologies in support of cyber security, should be reminded to include foreign language and culture in the development process.	Submitted
#1	Version 1	<u>Franks (AZ)</u>	Republican	Would require a report on the nuclear activities of Iran, including a description of any activity by Iran indicating whether Iran has made a decision to build a nuclear weapon, an assessment of the amount of time it would take Iran to develop a nuclear weapon, and an assessment of the effectiveness of diplomacy with regard to persuading Iran to abandon a nuclear weapons program.	Submitted
#11	Version 1	<u>Hahn (CA)</u>	Democrat	Would require the Civil Liberties Protection Officer to review on an ongoing basis, and prepare, as necessary, privacy impact assessments on, the cybersecurity policies, programs, and activities of the Intelligence Community for such purposes as	Submitted

				ensuring compliance with all relevant constitutional and legal protections.	
#12	Version 1	<u>Hahn (CA)</u>	Democrat	Would require the Civil Liberties Protection Officer to ensure that the coordination and training between the intelligence community and local law enforcement agencies shall not violate the constitutional safeguards of racial and ethnic minorities.	Submitted
#13	Version 1	<u>Hahn (CA)</u>	Democrat	Would establish the the sense of Congress that the Intelligence community should prioritize the security of our nation's ports as they play a crucial role to our nation's supply chain and economy.	Submitted
#16	Version 1	<u>Hahn (CA)</u>	Democrat	Would require the Director of Intelligence to ensure that, where appropriate, the intelligence community coordinate with the proper federal, state, and local officials who work at our nations ports, to detect, prevent and respond to potential terrorist activity.	Submitted
#9	Version 1	<u>Hinchey (NY)</u>	Democrat	Would require the Director of National Intelligence (DNI) to report to the House and Senate Intelligence panels on information it has regarding the human rights violations of the military government in Argentina that resulted in 30,000 disappearances between the mid-1970's and mid-1980's.	Submitted
#19	Version 1	<u>Holt (NJ)</u>	Democrat	Would require the AG and DNI to reveal how many U.S. Persons had their domestic communications intercepted since the implementation of the FISA Amendments Act.	Submitted
#20	Version 1	<u>Holt (NJ)</u>	Democrat	Would modify the National Security Act of 1947 to provide criminal penalties, not less than \$100,000, not more than 10 years in jail, or both, for any officer or employee of an intelligence community element who retaliates against an intelligence community employee or contractor who reports covered information (a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety) to an authorized member of Congress.	Submitted
#21	Version 1	<u>Holt (NJ)</u>	Democrat	Would prohibit any USG employee or contractor from engaging in the assassination/targeted killing of a U.S. person unless specific criteria are met.	Submitted
#22	Version 1	<u>Holt (NJ)</u>	Democrat	Would require the Attorney General, Director of National Intelligence and Director of the CIA to publicly disclosure any legal opinions or memoranda used to justify the President's target killing program against United States persons.	Submitted
#2	Version 1	<u>Jackson Lee (TX)</u>	Democrat	Would prevent any of the funds authorized under this Act from being used to violate a person's civil liberties.	Submitted
#3	Version 1	<u>Jackson Lee (TX)</u>	Democrat	Would establish the a Sense of Congress that the Director of the Central Intelligence Agency should take such actions as the Director considers necessary to increase the recruitment and training of ethnic minorities as officers and employees of the Central Intelligence Agency.	Submitted
#4	Version 1	<u>Jackson Lee (TX)</u>	Democrat	Would establish the Sense of Congress that the intelligence community should take all appropriate actions necessary to protect the civil liberties of religious and ethnic minorities.	Submitted
#17	Version 1	<u>Myrick (NC)</u>	Republican	Would require a report from the Director of National Intelligence that would identify and assess various risks in information technology supply chains.	Submitted

#26	Version 1	Poe (TX)	Republican	Late Would prohibit funding to the government of Pakistan.	Submitted
#23	Version 1	Quayle (AZ)	Republican	Would provide an assessment of any collection gaps or inefficiencies the intelligence community may have with drug smuggling on Indian tribes burial sites.	Submitted
#24	Version 1	Quayle (AZ)	Republican	Would amend Section 401(a) of the Intelligence Authorization Act for Fiscal Year 2012 to include Fusion Centers and High Intensity Drug Trafficking Areas (HIDTA) to help coordinate intelligence gathering with Federal land management agencies to stem the flow of drug smuggling on public lands.	Submitted
#14	Version 1	Thompson, Mike (CA)	Democrat	Would require the Director of National Intelligence to report to Congress how the Intelligence Community can improve the methods by which subcontractors are granted security clearances and notified of classified contracting opportunities within the federal government.	Submitted
#15	Version 1	Thompson, Mike (CA), Heck (NV)	Bi-Partisan	Would direct the National Reconnaissance Organization to establish and implement a program to utilize, train and deploy SCI cleared undergraduate and graduate students from the Science, Technology, Engineering and Math (STEM) areas of study.	Submitted

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Office Contact Information

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H-312 The Capitol
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Fax: (202) 225-6763
Email: Rules.Rs@mail.house.gov

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(b) (6), (b) (3) (A)

ODNI/OGC/Legislation

(b) (6) 506

From: Anderson, Trisha (ODAG)
Sent: Wednesday, May 30, 2012 1:47 PM
To: Krass, Caroline D. (OLC)
Subject: RE: AG Briefing Papers

Got it (b) (5)

From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 30, 2012 1:43 PM
To: Anderson, Trisha (ODAG)
Subject: RE: AG Briefing Papers

(b) (5)

From: Anderson, Trisha (ODAG)
Sent: Wednesday, May 30, 2012 1:24 PM
To: Krass, Caroline D. (OLC)
Subject: FW: AG Briefing Papers

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From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 30, 2012 1:52 PM
To: Anderson, Trisha (ODAG)
Subject: RE: AG Briefing Papers

Thanks.

From: Anderson, Trisha (ODAG)
Sent: Wednesday, May 30, 2012 1:48 PM
To: Letter, Douglas (OAG)
Cc: Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Guzman, Joseph S (OLA); Kralovec, Jamie (OLA); Krass, Caroline D. (OLC)
Subject: RE: AG Briefing Papers

Doug: Please use this version instead.



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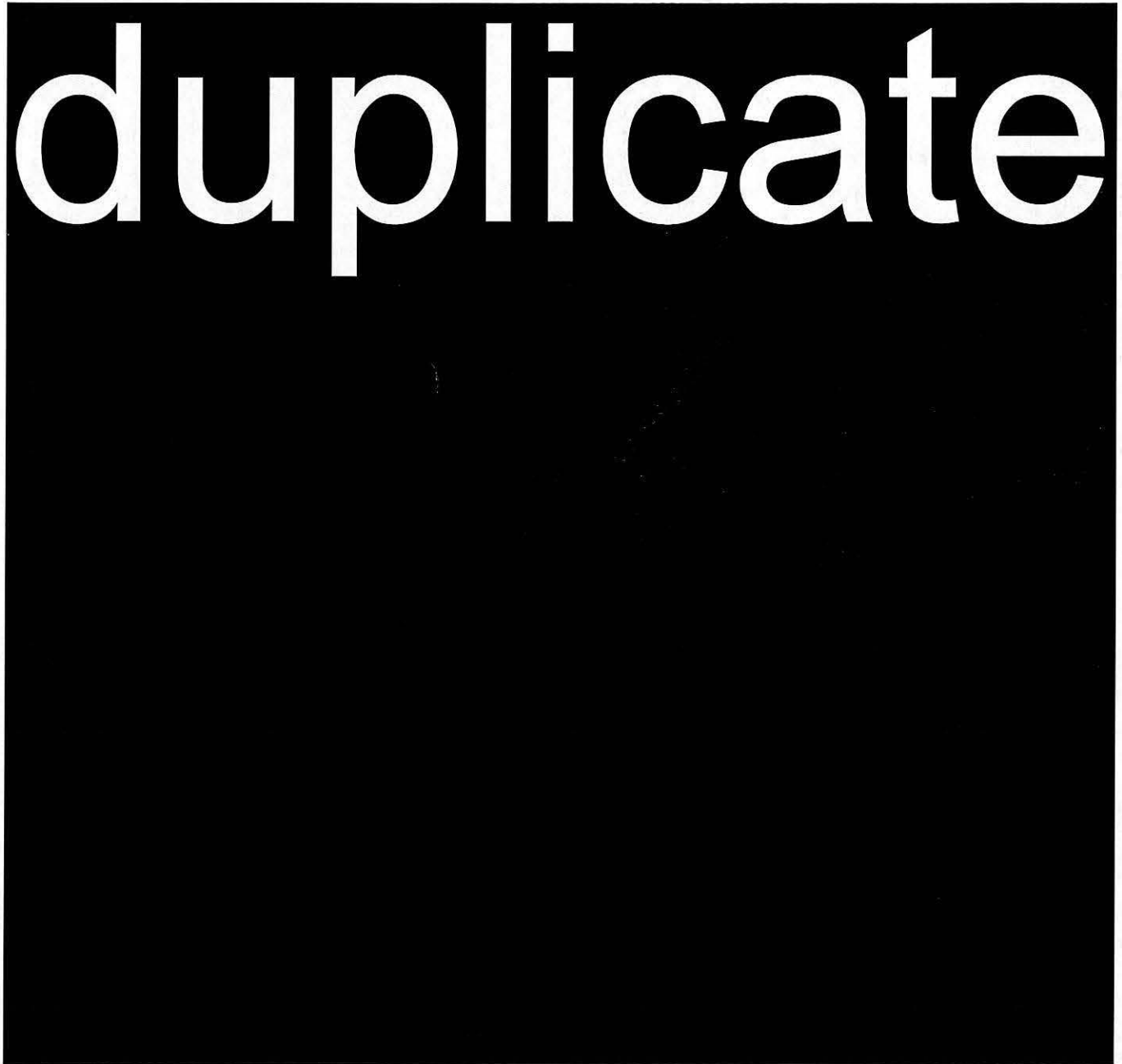
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From: Letter, Douglas (OAG)
Sent: Wednesday, May 30, 2012 2:36 PM
To: Anderson, Trisha (ODAG)
Cc: Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Guzman, Joseph S (OLA); Kralovec, Jamie (OLA); Krass, Caroline D. (OLC)
Subject: RE: AG Briefing Papers

This looks good to me



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From: Clemente, Michael A. (OLA)
Sent: Thursday, May 31, 2012 9:21 AM
To: Agrast, Mark D. (OLA); Krass, Caroline D. (OLC)
Cc: Anderson, Trisha (ODAG); Letter, Douglas (OAG); Guzman, Joseph S (OLA)
Subject: RE: Additional Q and A

Yes, we'll make this addition.

From: Agrast, Mark D. (OLA)
Sent: Thursday, May 31, 2012 9:16 AM
To: Krass, Caroline D. (OLC)
Cc: Anderson, Trisha (ODAG); Letter, Douglas (OAG); Guzman, Joseph S (OLA); Clemente, Michael A. (OLA)
Subject: RE: Additional Q and A

Joseph,

Can you please make this addition when you fix the cross-references?

With thanks,

Mark

From: Krass, Caroline D. (OLC)
Sent: Thursday, May 31, 2012 9:00 AM
To: Agrast, Mark D. (OLA)
Cc: Anderson, Trisha (ODAG); Letter, Douglas (OAG)
Subject: Additional Q and A

Hi – sorry for the late addition, but I was thinking we should add to paper 21 the following:

Question: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: (b) (6) COL USAF (US) on behalf of (b) (6) COL USAF (US)
(b) (6)
Sent: Friday, June 15, 2012 10:47 AM
To: Krass, Caroline D. (OLC); 'Egan, Brian J.'; Gross, Richard C (Rich) BG USARMY JS (US);
(b) (6) (b) (6) (b) (6) Allen, Charles A SES (US) (b) (6)
(b) (6) CIV (US); (b) (6) (b) (6) Seitz, Virginia A
(OLC); Koffsky, Daniel L (OLC) (b) (6) LTC USARMY (US)
Cc: Haines, Avril (b) (6)
Subject: RE: War Powers Resolution Q & As

Brian,

A few comments from our PA folks.

v/ (b) (6)

A few comments on the Q&A below --

(b) (5)
[Redacted]

[Redacted]

[Redacted]

r/DAL

-----Original Message-----

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Friday, June 15, 2012 10:40 AM
To: 'Egan, Brian J.'; Gross, Richard C (Rich) BG USARMY JS (US) (b) (6) COL USAF (US) (b) (6)
(b) (6) (b) (6) Allen, Charles A SES (US); D`annunzio, Michael A CIV (US); (b) (6)
(b) (6) Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC) (b) (6) LTC USARMY (US)
Cc: Haines, Avril (b) (6)
Subject: RE: War Powers Resolution Q & As

Brian (b) (5)
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(b) (5)
[Redacted]

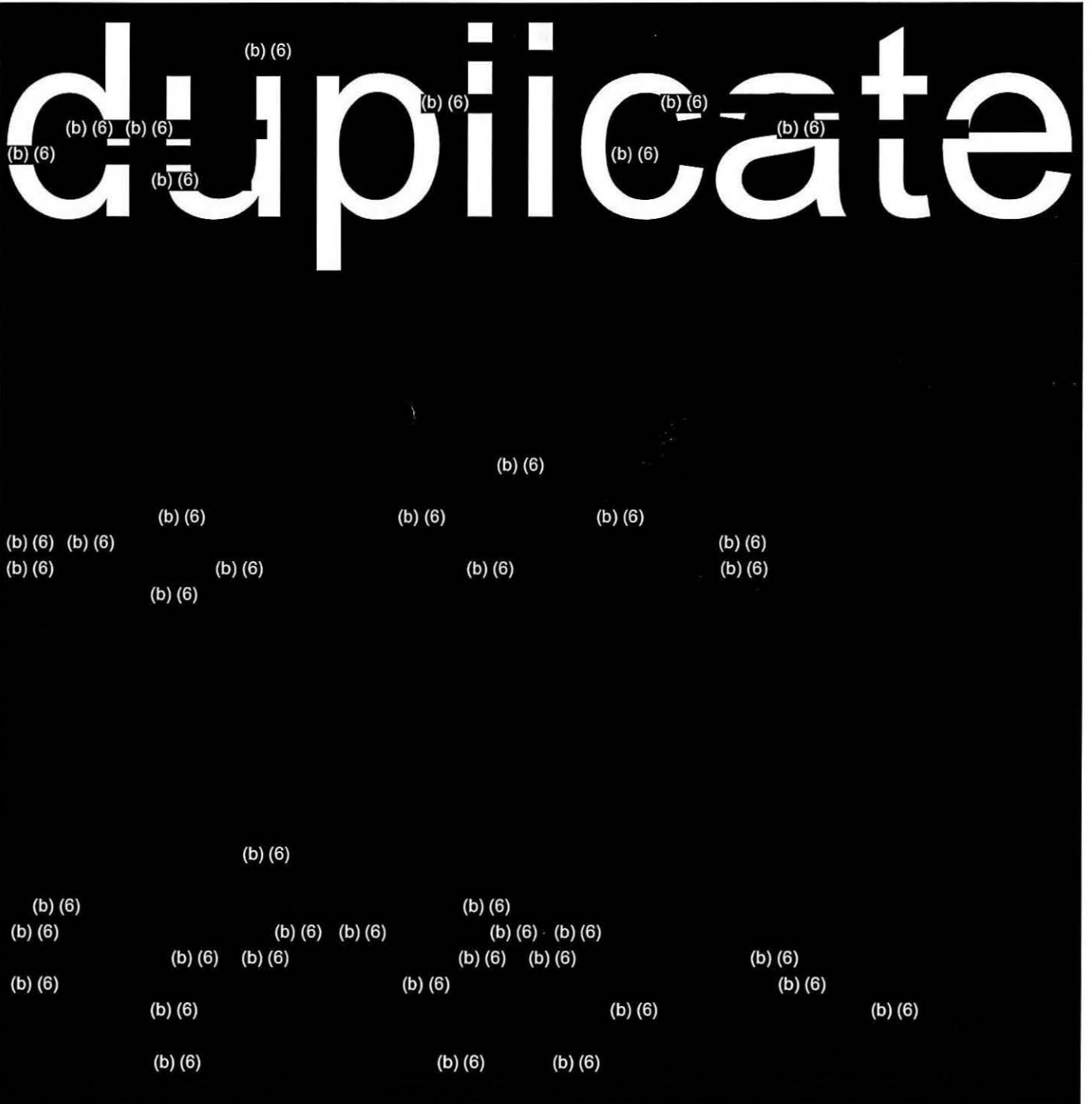
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(b) (5)

Can you please ask your press folks to coordinate with DOJ press as well?

Thanks --

Caroline



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From: Egan, Brian J. on behalf of Egan, Brian J. (b) (6)
Sent: Friday, June 15, 2012 5:13 PM
To: 'Perina, Alexandra H'; Krass, Caroline D. (OLC) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) McLeod, Mary; Conklin, Maegan L; Seitz, Virginia A (OLC);
Koffsky, Daniel L (OLC)
Cc: Haines, Avril (b) (6)
Subject: RE: War Powers Resolution Q & As

Thanks to all of you for your work on this earlier today – here's the link to the released, unclass report (which includes Yemen and Somalia).

<http://www.whitehouse.gov/the-press-office/2012/06/15/presidential-letter-2012-war-powers-resolution-6-month-report>

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From: Rodriguez, Cristina M. (OLC)
Sent: Thursday, July 19, 2012 1:52 PM
To: Ruppert, Mary (OLA); Krass, Caroline D. (OLC)
Cc: Agrast, Mark D. (OLA); Mizer, Benjamin (OLC); Seitz, Virginia A (OLC)
Subject: RE: Cornyn Amendments to S. 3276

That's all very good to know. Thank you!

From: Ruppert, Mary (OLA)
Sent: Thursday, July 19, 2012 12:28 PM
To: Rodriguez, Cristina M. (OLC); Krass, Caroline D. (OLC)
Cc: Agrast, Mark D. (OLA); Mizer, Benjamin (OLC); Seitz, Virginia A (OLC)
Subject: RE: Cornyn Amendments to S. 3276

Thanks, Cristina!

The two Cornyn amendments were tabled so they will not be part of the bill. The Grassley amendment was not raised, although the committee lost the quorum so the markup was not completed. They will reconvene later (b) (5). I'll keep you posted.

Mary

From: Rodriguez, Cristina M. (OLC)
Sent: Thursday, July 19, 2012 9:48 AM
To: Ruppert, Mary (OLA); Krass, Caroline D. (OLC)
Cc: Agrast, Mark D. (OLA); Mizer, Benjamin (OLC); Seitz, Virginia A (OLC)
Subject: RE: Cornyn Amendments to S. 3276

Hi Mary,

We have the following comments on Amendments 1 and 2 (b) (5)

Please let us know if you'd like anything further from us.

All the best,
Cristina

(b) (5)

(b) (5)

[REDACTED]

From: Ruppert, Mary (OLA)
Sent: Wednesday, July 18, 2012 8:19 PM
To: Rodriguez, Cristina M. (OLC); Krass, Caroline D. (OLC)
Cc: Agrast, Mark D. (OLA)
Subject: FW: Cornyn Amendments to S. 3276

Cristina:

We are told this will be the final text. It is the same as what I sent you about a half hour ago.

Thanks for your help on this!

Mary

From: Park, Chan (Judiciary-Dem) [mailto:(b) (6)]
Sent: Wednesday, July 18, 2012 8:12 PM
To: Agrast, Mark D. (OLA); Ruppert, Mary (OLA)
Subject: FW: Cornyn Amendments to S. 3276

From: Tausend, Stephen (Judiciary-Rep) [mailto:(b) (6)]
Sent: Wednesday, July 18, 2012 8:11 PM
To: All Judiciary Users
Subject: RE: Cornyn Amendments to S. 3276

Pasted below is the final text of the additional amendments cited below. We will circulate a final leg. counsel draft as soon as we get it back.

We will also circulate updated text for MDM12413 and MDM12417. The drafts circulated earlier referenced 18 U.S. 2332b(f) for the definition of "Federal crime of terrorism." The updated text will only change these references to 18 U.S. 2332b(g).

Additional Amendment #1

SEC. __ . REPORTING REQUIREMENT.

Not later than 30 days after the date of the enactment of this Act, the President shall submit, in classified or unclassified form, all legal analysis in effect on the date of the enactment of this act related to the President's authority to target and kill United States citizens overseas to—

- (1) the Select Committee on Intelligence of the Senate;
- (2) the Committee on Armed Services of the Senate;
- (3) the Committee on the Judiciary of the Senate;
- (4) the Permanent Select Committee on Intelligence of the House of Representatives
- (5) the Committee on Armed Services of the House of Representatives; and
- (6) the Committee on the Judiciary of the House of Representatives.

Additional Amendment #2

SEC. __ . REPORTING REQUIREMENT.

Not later than 7 days after the killing of a particular United States citizen abroad, with the authorization of the President to effect the killing of that particular United States citizen, the President shall submit a report, in classified or unclassified form, which details the facts and reasoning related to the exercise of this authority to—

- (1) the Speaker of the House of Representatives;
- (2) the Minority Leader of the House of Representatives;
- (3) the Majority Leader of the Senate;
- (4) the Minority Leader of the Senate;
- (5) the Chair of the Permanent Select Committee on Intelligence of the House of Representatives;
- (6) the Chair of the Select Committee on Intelligence of the Senate;
- (7) the Ranking Minority Member of the Permanent Select Committee on Intelligence of the House of Representatives; and
- (8) the Ranking Minority Member of the Select Committee on Intelligence of the Senate.

Stephen Tausend
Counsel to U.S. Senator John Cornyn
United States Senate - Committee on the Judiciary

(b) (6) - Phone

(b) (6) - Fax

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From: Anderson, Trisha (ODAG)
Sent: Wednesday, July 25, 2012 1:01 PM
To: Mizer, Benjamin (OLC) (b) (6) (NSD)
Cc: Singh, Anita (NSD); Boyd, Dean (NSD); Krass, Caroline D. (OLC)
Subject: RE: Aspen Q&A

Same here. Thanks for the opportunity to review.

Trisha

From: Mizer, Benjamin (OLC)
Sent: Wednesday, July 25, 2012 12:20 PM
To: (b) (6) (NSD); Anderson, Trisha (ODAG)
Cc: Singh, Anita (NSD); Boyd, Dean (NSD); Krass, Caroline D. (OLC)
Subject: RE: Aspen Q&A

Thanks (b) (6). These Q&As look fine to us.

Best,
ben

From: (b) (6) (NSD)
Sent: Friday, July 20, 2012 6:21 PM
To: Krass, Caroline D. (OLC); Mizer, Benjamin (OLC); Anderson, Trisha (ODAG)
Cc: Singh, Anita (NSD); Boyd, Dean (NSD)
Subject: Aspen Q&A

Caroline, Ben, and Trisha –

Lisa will be speaking at a panel at the Aspen Security Forum at the end of next week (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Have a great weekend.

(b) (6)

(b) (5)

[Redacted text block]

- [Redacted list item 1]
- [Redacted list item 2]
- [Redacted list item 3]
- [Redacted list item 4]

[Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

(b) (5)

From: Krass, Caroline D. (OLC)
Sent: Thursday, November 15, 2012 9:17 AM
To: Anderson, Trisha (ODAG)
Subject: FW: Draft of Speech at the Oxford Union on November 30
Attachments: Speech to Oxford Union Nov 9 draft.docx

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 11/15/2012 9:20 AM

Here is the speech.

From: Krass, Caroline D. (OLC)
Sent: Thursday, November 15, 2012 6:03 PM
To: 'Johnson, Jeh Charles, Hon, DoD OGC'
Cc: (b) (6) (OLC); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC)
Subject: RE: Draft of Speech at the Oxford Union on November 30
Attachments: Speech to Oxford Union Nov 9 draft -- OLC comments.docx

Jeh -- many thanks for sharing this -- it is a great speech on a thought provoking topic. Attached please find comments from OLC, including many insightful ideas from (b) (6), which we thought you would appreciate. Our comments also benefited from Dan's encyclopedic knowledge of American history.

All the best --

Caroline

-----Original Message-----

From: Johnson, Jeh Charles, Hon, DoD OGC [mailto:(b) ((b) (6))]
Sent: Friday, November 09, 2012 6:27 PM
To: Koh, Harold (STATE); Seitz, Virginia A (OLC); Monaco, Lisa (NSD); 'Haines, Avril'; STEPHEW (b) (6)
'robert.li (b) (6), (b) (3) (A)'; (b) (6) (b) (6) Krass, Caroline D. (OLC) (b) (6)
(b) (6)
Cc: Little, George CIV OSD PA; Whitman, Bryan SES OSD PA (b) (6) DoD OGC; Allen, Charles, Mr, DoD OGC;
Sheehan, Michael HON OSD POLICY; Gross, Richard Clayton (Rich) BG USARMY JS (US); Nagata, Michael BG JCS J37
DDSO (b) (6) LTC OSD PA
Subject: Draft of Speech at the Oxford Union on November 30

Colleagues:

Please review and comment on the draft of this public speech I intend to give at the Oxford Union on November 30. I would appreciate your comments by COB Friday November 16.

Jeh Charles Johnson
General Counsel of the Department of Defense
1600 Defense Pentagon
Washington, DC 20301-1600
(b) (6) (phone)
(b) (6) (fax)

From: Haines, Avril (b) (6)
Sent: Thursday, November 29, 2012 11:01 AM
To: 'Koh, Harold Hongju'; McLeod, Mary; 'Perina, Alexandra H'; Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Monaco, Lisa (NSD); 'STEPHEW (b) (6)'; Koffsky, Daniel L (OLC); 'robert.li (b) (6), (b) (3) (A)
Subject: RE: Draft of Speech at the Oxford Union on November 30
Attachments: Speech to Oxford Union final (2).doc

Hi all - (b) (5)

From: Kate A Martin (b) (6) @cnss.org>
Sent: Wednesday, December 05, 2012 4:43 PM
To: Krass, Caroline D. (OLC)
Subject: Gov response to lawsuit challenging killing of al-Aulaqi/Dec 14 deadline
Attachments: Ltr Pres 12 4 12.docx

Dear Caroline,

It was good to see you even for just a moment last week.

Attached fyi is a letter we sent the President yesterday urging that the government respond to the al-Aulaqi lawsuit on the merits and not seek to have it dismissed on a theory that the case is not justiciable or there is no cause of action.

I know it would be difficult to do this, but I think in the long term it could only be helpful to the President's objectives. (And I think it could be done while still protecting the interests of the individual defendants and without the CIA acknowledging any role in the operation.)

I've also sent a copy to Doug Letter in the AG's office and others in the Department as well.

Hope you're well.

Best,
Kate

ps. In case you didn't see, we filed an amicus brief in the Hedges detention case in the Second Circuit urging reversal of the district court's injunction on the grounds that there is no authority under the AUMF or the NDAA to detain anyone apprehended in the United States.

Kate Martin
Director
Center for National Security Studies

(b) (6)



Center for National Security Studies
protecting civil liberties and human rights

Director
Kate Martin

December 4, 2012

The President
The White House
Washington, DC 20500

Dear Mr. President,

On December 14, the Department of Justice is scheduled to reply to the lawsuit filed by the family of Anwar al-Aulaqi claiming that his constitutional rights were violated by being killed in Yemen. We write to urge that your administration respond to the lawsuit in a manner that will enable judicial review of the legality of such killing and not seek dismissal of the lawsuit on the grounds that the question of legality is non-justiciable. We are confident that permitting judicial review will advance your goals of effectively fighting terrorism and promoting a more just and peaceful world. We are also confident that judicial review can proceed in a manner that protects the legitimate interests of the government in protecting sources and methods, diplomatic relationships and executive branch flexibility. Finally we believe that it is very likely that the courts will uphold the legality of your actions.

One of the hallmarks of your administration has been its commitment to constitutional principles and the rule of law even in the face of deadly threats and the prosecution of a war against al Qaeda in Afghanistan and elsewhere. Judicial review is the linchpin for the rule of law. There can hardly be any instance where such review is more important than in a case where the government claims the right to target and kill an American, even if the grounds for that claim is that he has joined enemy forces overseas fighting against Americans. Enabling such review would demonstrate the confidence of your administration in the reasoning it has advanced to support the legality of its actions. And it would provide an important opportunity to forcefully explain that reasoning and demonstrate to the people of the world that the U.S. is committed to the rule of law and due process. We are concerned that seeking dismissal of the lawsuit on non-justiciability grounds will be seen as an effort to protect the administration's decisions from public scrutiny and judicial accountability.

The Center for National Security Studies, a civil liberties and human rights organization, has long recognized that Americans may be subject to detention and killing in accordance with the laws of war when the United States is engaged, as now, in an armed conflict. However, we believe that the constitutional guarantees of due process and separation of powers require ex post judicial review of targeted killings of Americans. We understand that judicial review of the executive's actions during an armed conflict pose unique challenges. Nevertheless, there have been many such instances, including in the present conflict, where such review has gone forward without undermining the military effort. That judicial review in this case would be after the fact diminishes the likelihood of any undue burden on military operations; at the same time, the fact

that military force was reportedly directed against an American makes such review even more important.

We understand that the intelligence agencies and others are likely to be concerned that judicial review on the merits will interfere with their operations. We also acknowledge that strong arguments can be made under current law that this lawsuit should be dismissed without reaching the merits of the legal claim. Some such arguments have been advanced by your Department of Justice in several cases and have prevented judicial review of actions taken by officials of the former administration. But those cases are different in two significant respects. First, the government conduct at issue in those cases has been disavowed and ended by your administration. Second, in those cases, unlike in the Aulahi case, your administration could not be viewed as seeking to deny judicial review of its own practices. Given your commitment to constitutional principles and the rule of law, and your understanding that adherence to those commitments strengthens rather than undermines our national security, you should enable judicial review of the actions of your own administration.

Without going into all the legal details, we believe a constitutional cause of action already exists in this case and that the merits can be litigated without the need for the kind of factual inquiry that would harm the national security by disclosing secret and sensitive details concerning military operations, intelligence sources or diplomatic relations.

We recognize that legal issues of this kind do not usually land on your desk. But here the issues warrant consideration at the highest level. Just as it is a presidential responsibility to weigh the benefits and costs of undertaking military action, it is a presidential responsibility to decide whether to enable or to resist judicial review of such actions when they involve Americans. We submit that judicial review here serves and strengthens our constitutional values and thereby makes us stronger at home and in the world.

We greatly appreciate consideration of our views.

Respectfully,

A handwritten signature in cursive script, appearing to read "Kate Martin".

Kate Martin

From: Bies, John (OLC)
Sent: Wednesday, January 30, 2013 2:40 PM
To: Anderson, Trisha (ODAG)
Cc: Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Subject: Wyden

As we discussed, here is the most recent draft of the response to Sen. Wyden's February 2012 letter (b) (5)

[REDACTED]



Wyden 020812
Letter to the AG....

From: Bies, John (OLC)
Sent: Friday, February 01, 2013 10:29 AM
To: Levine, Doug (OLA)
Cc: (b) (6) (OLC); Mizer, Benjamin (OLC); Rodriguez, Cristina M. (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

Tracking: **Recipient**
Levine, Doug (OLA)
(b) (6) (OLC)
Mizer, Benjamin (OLC)
Rodriguez, Cristina M. (OLC)
(b) (6) (OLC)
(b) (6) (OLC)

Doug, we have drafted a revised proposed response to Q3 (b) (5)

Thanks,
John

(b) (5)

[Redacted]

[Redacted]

[Redacted]

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Levine, Doug (OLA)
Sent: Tuesday, January 22, 2013 11:39 AM
To: Bies, John (OLC)
Cc: (b) (6) (OLC); Mizer, Benjamin (OLC); Rodriguez, Cristina M. (OLC) (b) (6) (OLC) (b) (6) nie (OLC)
Subject: RE: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

John, sadly the above-referenced QFRs are still wending their way through the clearance process. We have a comment from OLA (pasted below). Could you let me know your thoughts when you have a moment? Thank you.

Doug

(b) (5)

Doug Levine

Office of Legislative Affairs

U.S. Department of Justice

(b) (6) Office (b) (6) Cell

From: Bies, John (OLC)

Sent: Friday, August 03, 2012 10:14 AM

To: Levine, Doug (OLA)

Cc: (b) (6) (OLC); Mizer, Benjamin (OLC); Rodriguez, Cristina M. (OLC) (b) (6) (OLC) (b) (6) (OLC)

Subject: RE: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

Doug, here is our proposed draft response for Q38. (b) (5)

Thanks,

John

(b) (5)

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Levine, Doug (OLA)
Sent: Friday, August 03, 2012 10:10 AM
To: Bies, John (OLC)
Subject: FW: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

John, can you send over OLC's response to QFR 38? I appreciate it.

Doug

Doug Levine
Office of Legislative Affairs
U.S. Department of Justice

(b) (6) Office | (b) (6) Cell

From (b) (6) (OLC)

Sent: Tuesday, July 17, 2012 11:49 AM

To: Levine, Doug (OLA)

Cc: Bies, John (OLC); Rodriguez, Cristina M. (OLC); Mizer, Benjamin (OLC); Thompson, Karl (OLC);

(b) (6) (OLC) (b) (6) (OLC)

Subject: FW: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

Doug: We don't contend that QFR 38 should be assigned to another component. John Bies will spearhead our drafting of a response.

(b) (6)

Office of Legal Counsel

(b) (6)

From: Levine, Doug (OLA)

Sent: Tuesday, July 17, 2012 10:53 AM

To: Miguel, Amy (JMD); Lucas, Daniel (JMD); 'Kuzma, Susan (UNICOR)'; Bollwerk, Helen M. (OPATTY); Rodgers, Ronald L. (OPATTY); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Policy, CRT (CRT); Day, Regina (ENRD); Rowan, Pearlie (ENRD); Wardzinski, Karen (ENRD); Williams, Kim (ENRD); Woolner, Rhodora (ENRD); Beers, Elizabeth R. (FBI); Kelly, Stephen (FBI); Mack, Kristan E. (FBI); Lee, Lashan S. (FBI); Schwartz, Tyler (FBI); Hayn, Linda S. (FBI); Spinola, Theresa M. (FBI) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD) (b) (6) (NSD); Chilakamarri, Varudhini (CIV); Gunn, Currie (OAAG); Hirsch, Sam (OAAG); Kingsley, Benjamin S. (OAAG); Martinez, Anna (OAAG); Martinez, Brian (OAAG); Bernhardt, Gena (OJP); Brien, Peter (OJP); Carradini, Rosemary Cavanagh (OJP); Darden, Silas (OJP); Horne, Sabra (OJP); Johnson, Anna (OJP); LaTour, Angella (OJP); Searby, Susan (OJP); Solomon, Amy (OJP); Spector, Adam T (OJP); Fonzone, Christopher (OLC) (b) (6) (OLC); (b) (6) (OLC); Mizer, Benjamin (OLC); Rodriguez, Cristina M. (OLC); Thompson, Karl (OLC); Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Herwig, Paige (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP); Chaney, Christopher B. (OTJ); Tenoso, Gaye L. (OTJ); Toulou, Tracy (OTJ)

Cc: Columbus, Eric (ODAG); Burrows, Charlotte (ODAG); Appelbaum, Judy (OLA); Agrast, Mark D. (OLA); Burton, Faith (OLA); Clifton, Deborah J (OLA)

Subject: FW: Draft Responses to AG's QFRs from June 12, 2012 SJC oversight hearing

In addition to the set of SJC questions for the record we have also received QFRs from the House Judiciary Committee pertaining to the Attorney General's appearance before that Committee on June 7th. Below is a list of components assigned to draft the various QFR responses. [REDACTED]

(b) (5) [REDACTED]

1) Please review the questions assigned to your component and let me know **no later than 10:00am, tomorrow, July 19th**, if you contend that any QFRs should be reassigned to another component.

2) Please draft responses to all QFRs assigned to your component no later than 12:00pm, Wednesday, August 1st, and send those responses in a separate Word document (i.e., cut and paste the assigned QFR(s) into a new Word document and add your responses directly under those questions in 12 point, Times New Roman font) t (b) (6) [REDACTED], Office of Legislative Affairs.

3) OLA will then circulate the entire document to all relevant components for review and comment.

Because the review and clearance process takes several months we would appreciate everyone's cooperation in meeting the various deadlines that we set throughout the process. If, during the clearance process, you think you may not be able to meet a deadline, please get in touch with Doug Levine at OLA. Thank you in advance for your help.

non-responsive [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

non-responsive

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OLC – 38

non-responsive

[REDACTED]

[REDACTED]

Doug Levine

Office of Legislative Affairs

U.S. Department of Justice

(b) (6) Office (b) (6) Cell

From: Krass, Caroline D. (OLC)
Sent: Tuesday, February 05, 2013 11:46 AM
To: O'Neil, David (ODAG); Anderson, Trisha (ODAG)
Cc: Seitz, Virginia A (OLC)
Subject: FW: draft press guidance on white paper

Tracking:	Recipient	Read
	O'Neil, David (ODAG)	Read: 2/5/2013 11:47 AM
	Anderson, Trisha (ODAG)	Read: 2/5/2013 11:48 AM
	Seitz, Virginia A (OLC)	

Any concerns? (b) (5)

From: Flint, Lara M [mailto:(b) (6)]
Sent: Tuesday, February 05, 2013 11:42 AM
To: Haines, Avril; Fonzone, Christopher; Krass, Caroline D. (OLC)
Cc: Perina, Alexandra H
Subject: draft press guidance on white paper

Avril, Chris, Caroline, here is what is moving in our building for press guidance on the white paper. Let us know if you have any concerns as soon as you can. Thanks! Lara

- (b) (5)
-

SBU
This email is UNCLASSIFIED.

From: (b) (6) (OLC)
Sent: Monday, February 11, 2013 2:27 PM
To: Silas, Adrien (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Krass, Caroline D. (OLC); Bies, John (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC); Colborn, Paul P (OLC)
Subject: FW: (ola wf106452) FW: TIME SENSITIVE: LRM [WT-113-8] NSS Questions for the Record on Deputy National Security Advisor Brennan's Confirmation Hearing # 656408653#
Attachments: Brennan Open Hearing QFRs 2-11-13 0930.docx.docx; wt-113-8 control.doc; Brennan Open Hearing QFRs 2-11-13 0930 - olc edits.docx
IQaccount: OLA

Adrien: Our response is in the attached redline.

(b) (6)
Office of Legal Counsel
(b) (6)

From: Freeman, Andria D (OLA)
Sent: Monday, February 11, 2013 12:11 PM
To: Allen, Michael (JMD); Atwell, Tonya M (JMD); Cantilena, Jennifer (OCIO); Faulkner, Lila (JMD); Foltz, Robin (JMD); Gary, Arthur (JMD); Lauria-Sullens, Jolene (JMD); Lofthus, Lee J (JMD); Long, Mariana (JMD); McCormack, Luke (JMD); Michaelson, Melanie (CIV); Plante, Jeanette (JMD); Rodgers, Janice (JMD); Sutton, Jeffrey (JMD); Ward, Lisa (JMD); Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC) (b) (6) (OLC); Mizer, Benjamin (OLC); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Brink, David (CRM); Hendley, Scott (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA) (b) (6) (b) (6); Chung, Joo (OPCL); Lane Scott, Kristi Z (OPCL); Lullo, Joseph R. (OPCL); Miller, William A. (OPCL); Wood, Alexander W (OPCL)
Cc: Silas, Adrien (OLA); Agrast, Mark D. (OLA); Simpson, Tammi (OLA); Ruppert, Mary (OLA); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Leff, Deborah (A2J); Burton, Faith (OLA)
Subject: (ola wf106452) FW: TIME SENSITIVE: LRM [WT-113-8] NSS Questions for the Record on Deputy National Security Advisor Brennan's Confirmation Hearing #656408653#

**PLEASE PROVIDE COMMENTS TO ADRIEN
SILAS, OLA, NO LATER THAN 2:15pm 2/11/13.**

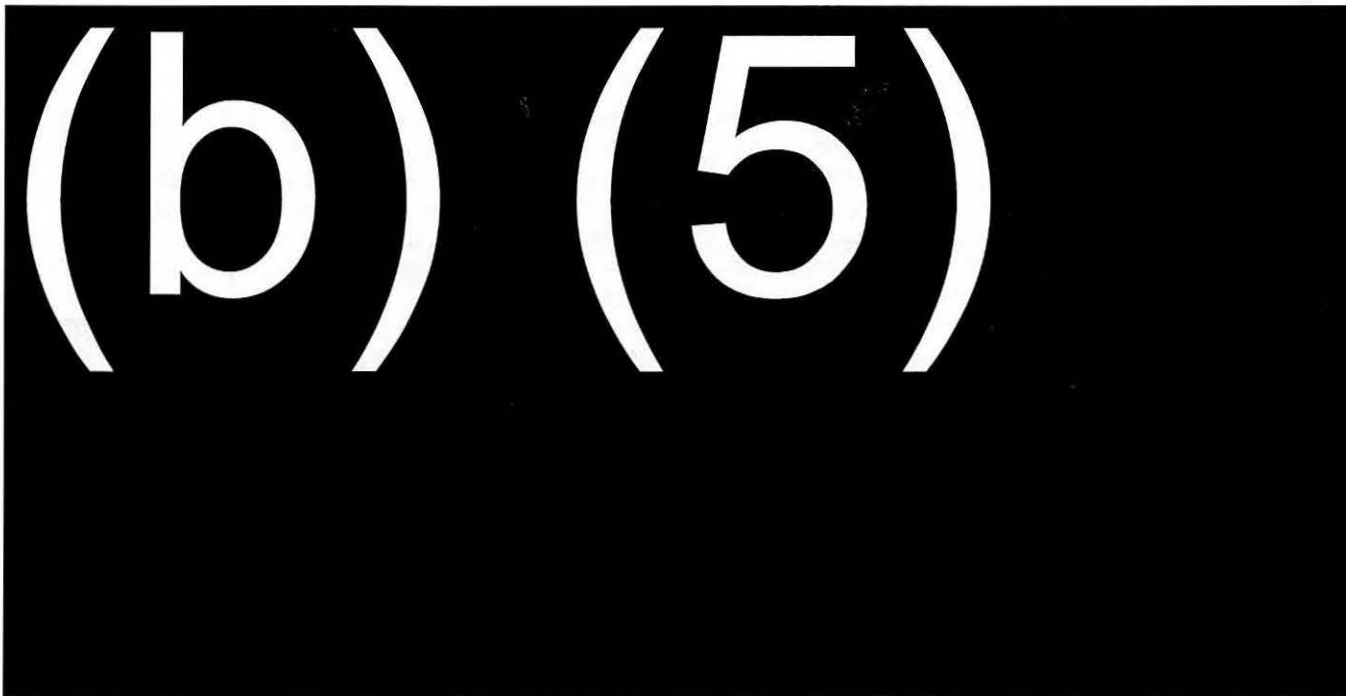
From: Justice Lrm (SMO)
Sent: Monday, February 11, 2013 10:08 AM
To: Clifton, Deborah J (OLA); Freeman, Andria D (OLA)
Subject: FW: TIME SENSITIVE: LRM [WT-113-8] NSS Questions for the Record on Deputy National Security Advisor Brennan's Confirmation Hearing #656408653#

From: Thomas, Will[SMT (b) (6)]
Sent: Monday, February 11, 2013 10:07:06 AM
To: 'DEFENSE'; 'DHS'; Justice Lrm (SMO); DL-NSS-LRM; 'ODNI'; 'STATE'; 'TREASURY'

Cc: Peroff, Kathleen; Siclari, Mary Jo; Hansen, Eric V.; Kosiak, Steve; Hire, Andrew D.; Bregman, Shannon C.; Richter, Shannon; Stuart, Shannon; Zayas-Velez, Diane; King, Barry; MacMaster, Ryan J.; Rogers, Sasha; Holm, Jim; Bullock, Bob; Reeser, Tiffany; Boden, James; Seehra, Jasmeet; Hunt, Alex; Burnim, John D.; Vaeth, Matt; DL-WHO-WHGC-LRM; Cobbina, Awenate; Arguelles, Adam; Rodriguez, Miguel; DL-OVP-LRM; Newman, Kimberly A.; Neill, Allie; Eelman, Emily; DL-NSS-LEGISLATIVE; DL-NSS-CT; DL-NSS-INTECON; Gottlieb, Mike; Aitken, Steven D.; Powell, Lindsey; Berger, Sam; Walsh, Heather V.; Lue, Thomas; Nusraty, Tim; Haines, Avril; Leon, Bryan P.; Rodgers, Marshall J.; Shapiro, Nicholas S.; Fonzone, Christopher; Smith, Bradley; Holmgren, Brett; Pollack, Joshua; Krenzy, Caroline; DL-NSS-DEFENSE; DL-NSS-NONPRO; Fitter, E. Holly

Subject: TIME SENSITIVE: LRM [WT-113-8] NSS Questions for the Record on Deputy National Security Advisor Brennan's Confirmation Hearing #656408653#
Auto forwarded by a Rule

DEADLINE: 3:00 PM TODAY, February 11, 2013



OMB CONTACT: Thomas, Will

E-Mail (b) (6)

PHONE: (202 (b) (6))

FAX: (202 (b) (6))

(b) (5)

(b) (5)

[Redacted]

Thank you.

(b) (5)

(b) (5)

From: Zebley, Aaron M. (FBI)
Sent: Monday, February 11, 2013 11:22 PM
To: Krass, Caroline D. (OLC)
Subject: Re: late night QFR help...

Thx

From: Krass, Caroline D. (OLC) (b) (6)
To: Zebley, Aaron M.; Carlin, John (NSD) (JMD)
Sent: Mon Feb 11 23:21:46 2013
Subject: Re: late night QFR help...

Looks ok to me.

From: Zebley, Aaron M. (FBI)
Sent: Monday, February 11, 2013 09:24 PM
To: Krass, Caroline D. (OLC); Carlin, John (NSD)
Subject: RE: late night QFR help...

Thanks.

The one other version that I had (attached to other email) is immediately below. I think this is consistent with your last version on the key elements. Any concerns with this? thx

(b) (5)

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

Privilege Statement:

This message is transmitted to you by the Director's Office of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by callin (b) (6)

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Monday, February 11, 2013 8:43 PM
To: Zebley, Aaron M.; Carlin, John (NSD) (JMD)
Subject: RE: late night QFR help...

Here is the latest that I have:

(b) (5)

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]

From: Zebley, Aaron M. (FBI)
Sent: Monday, February 11, 2013 7:44 PM

To: Carlin, John (NSD); Krass, Caroline D. (OLC)
Subject: RE: late night QFR help...

Appears he was asked the question in the 3/7/12 House Approps hearing (excerpt attached).

We anticipated the same question would be asked in the 3/15/12 Senate Approps hearing; it appears that he was not asked the question. I can't find the final final vetted response prepared for the 3/15 hearing, but found the attached draft ... which is shorter than the drafts under consideration and reviewed by OLC (I think).

Our QFR coordinator has left for the evening (she is the only person – besides OLA – with access to past FBI QFRs). Spoke to her by phone: she is very confident that we never received a QFR on this issue; this makes sense as the Director's 3/7 response pointed to DOJ. She will confirm first thing in the morning.

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From: Carlin, John (NSD) [mailto:(b) (6)]
Sent: Monday, February 11, 2013 7:19 PM
To: Krass, Caroline D. (OLC) (JMD)
Cc: Zebley, Aaron M.
Subject: FW: late night QFR help...

Caroline: see below – Aaron is running down, but thought FBI had an answer cleared by OLC if the Director was asked the question after the first time (the first time he directed the questioner to DOJ).

Ring any bells?

John

From: Shapiro, Nicholas S. [mailto:(b) (6)]
Sent: Monday, February 11, 2013 6:56 PM
To: Carlin, John (NSD)
Cc: Zebley, Aaron M. (FBI)
Subject: RE: late night QFR help...

Great, thanks guys! much appreciated

Nick

From: Carlin, John (NSD) [mailto:(b) (6)]
Sent: Monday, February 11, 2013 6:56 PM
To: Shapiro, Nicholas S.
Cc: Zebley, Aaron M. (FBI)
Subject: RE: late night QFR help...

Will do, I think the Director gave a response in an open session. Not sure if it was fleshed out in a QFR. Cc'ing Aaron Zebley from FBI who is tracking it down for you tonight.

From: Shapiro, Nicholas S. [mailto:(b) (6)]
Sent: Monday, February 11, 2013 6:48 PM

To: Carlin, John (NSD)
Subject: late night QFR help...

Hey there buddy,

(b) (5) [Redacted]

[Redacted]

Thanks man!

Nick

Nick Shapiro
National Security Staff

(b) (6) [Redacted]

From: Koffsky, Daniel L (OLC)
Sent: Thursday, February 14, 2013 5:18 PM
To: STEPHEW (b) (6)
Subject: RE: Laying Down the Law

Thanks so much for sending this, Stephen.

From: STEPHEW (b) (6) [mailto:(b) (6)]
Sent: Thursday, February 14, 2013 5:15 PM
To: Seitz, Virginia A (OLC) (b) (6); Koffsky, Daniel L (OLC)
Subject: Laying Down the Law

I think this piece by David Cole is quite remarkable. As you may know, David is very bright, a respected legal scholar, a long-time advocate of civil liberties and international human rights, and an active and at times harsh critic of USG counterterrorism programs. While there is a partisan bent to this piece – David is no friend of the Bush Administration and the legacy RDI program – he takes on the left as well as the right in arguing that this Administration's lethal drone operations are not a continuation of the previous Administration's approach to the fight against AQ. More to the point, he explains that President Obama "has sought to pursue al Qaeda within the framework of the laws of war" and "is seeking to chart an appropriate legal course in a new setting of a well-established and generally lawful military tactic: killing the enemy." It would be a stretch to call this a full-throated defense – "[m]any of Obama's policy choices deserve criticism" – but it is a clear statement by one of the left's leading lights acknowledging – indeed, insisting – that the rule of law is integral to our government's current approach to the fight against AQ generally and lethal drone operations in particular. This is a direct result of the Administration's efforts to be as transparent as possible and, especially over the past year, to educate the public on the legal justification for US CT ops abroad. Stephen

Laying Down the Law

Why Obama's targeted killing is better than Bush's torture.
David Cole, ForeignPolicy.com, 12 February 2013

Last week's leak of a Justice Department "white paper" purporting to justify the remote-controlled drone killing of an American citizen without charges or trial raised anew the question whether President Obama's counterterrorism policy is more a continuation than a refutation of his predecessor's controversial and much-criticized approach. Peter Baker wrote in the *New York Times* that President Obama has "embraced some of Mr. Bush's approach to counterterrorism." Notre Dame Law School Professor Mary Ellen O'Connell compared Obama's authorization of drone strikes to the Bush administration's secret memos authorizing the CIA to subject terror suspects to waterboarding and other abusive interrogation tactics. John Yoo, author of the Bush administration's initial "torture memos," got into the act himself, contending in the *Wall Street Journal* that drone strikes "violate personal liberty far more than the waterboarding of three al Qaeda leaders ever did."

But claims that Obama is channeling Bush are grossly exaggerated. While both chose to use military as well as law enforcement measures to respond to the threat posed by al Qaeda, there is a world of difference between the approach Bush took to war powers and that taken by President Obama. Where Bush treated the law as an inconvenient obstacle to be thrust aside in the name of security, Obama has sought to pursue al Qaeda within the framework of the laws of war. Many of Obama's policy choices deserve criticism, to be sure. And his reliance on secrecy is particularly disturbing. But to paint the two leaders with the same brush is to miss the difference between a leader who seeks to evade the law, and one who seeks to abide by it.

There are certainly disquieting parallels between the authorization of drone strikes and the authorization of torture. Both relied on secret Justice Department memos that redefined terms in ways that defy common sense. Where the torture memo said that only pain of the intensity associated with "organ failure or death" constituted torture, the drone memo argues that the United States can kill in self-defense even where no attack is underway or being planned, radically redefining the traditional requirement of an "imminent" attack as only George Orwell could have. Where the torture memo

claimed that "enhanced interrogation" was not barred by a federal law against torture, the drone memo argues that killing an American in Yemen with a drone does not violate a federal statute that prohibits killing an American abroad. Both memos were secret until leaked to the press. (Indeed, all of the underlying memos authorizing drone strikes remain secret; the white paper is merely an unclassified summary of one such memo.) And both the Bush and Obama administrations have sought to dismiss any legal challenge to their respective policies by declaring them secret.

But these similarities should not obscure a fundamental difference. Under the laws of war, international human rights, and the U.S. Constitution, torture is never lawful.

The Bush administration sought to institutionalize the infliction of cruelty and torture as a tactic in its "war on terror," in the face of overwhelming authority that it is never a permissible option. Killing, by contrast, is an inevitable if regrettable aspect of war. No law, treaty, or constitutional provision prohibits killing the enemy in wartime, or in self-defense. On the contrary, the Constitution recognizes the authority to engage in war, and the laws of war permit the use of lethal force as long as it satisfies basic requirements of targeting only the enemy, minimizing collateral damage, and the like. Killing in war time by drone is no more or less legal than killing by bazooka, bayonet, or bomb.

Nor is there anything inherently unconstitutional about killing American citizens. President Lincoln authorized the killing of hundreds of thousands of Confederate soldiers, but no one claims that violated due process. If an American were fighting with al Qaeda on the battlefield against us, few would contend that due process bars our soldiers from shooting back at him. There is no dispute that the taking of an American's life must comport with due process, but there are significant questions about what due process requires in a war setting.

Admittedly, there are many disputes about the applicability of the laws of war to a conflict between a state and a nonstate actor, such as al Qaeda, and about the geographic scope of such a conflict where the nonstate actor may operate in a number of different locales, some far from any traditional battlefield. But the point is that they are difficult and unresolved questions; by contrast, there is no question about the legality of torture.

Thus, where Bush sought to rationalize a universally proscribed war crime, Obama is seeking to chart an appropriate legal course in a new setting of a well-established and generally lawful military tactic: killing the enemy.

Bush's modus operandi was to evade the law -- by keeping detainees beyond our borders where it argued, the law did not reach; by holding some in secret prisons away from the prying eyes of even the International Committee of the Red Cross; by arguing that no judicial review extended to any of them; by treating the Geneva Conventions as "quaint" and inapplicable; and by asserting his power as commander-in-chief to override any law that he deemed inconvenient when "engaging the enemy." His administration seemed to see law, almost as much as it saw al Qaeda, as the enemy.

By contrast, President Obama has insisted since day one that he will fight within the confines of the rule of law. He closed the CIA's secret prisons, forbade "enhanced interrogation," confined interrogation to that permitted by the Geneva Conventions and the Army Field Manual, pursued all domestic terrorism cases through the civilian criminal courts, rejected the notion that the commander-in-chief can ignore laws he does not like, and vowed to close Guantanamo. He has been unable to follow through on the last promise, but this is largely owing to congressional opposition. In his May 2009 speech on national security, Obama insisted that he would fight terror while remaining true to our values and the rule of law. And he hasn't just said so in speeches. When a three-judge panel of the Court of Appeals for the D.C. Circuit in 2010 ruled that the international laws of war did not constrain the president's detention powers, President Obama took the virtually unprecedented step of telling the court that it had granted him too much power. He maintained that his detention authority was constrained by international law, and the Court en banc agreed, rendering that part of the panel's decision nonbinding dicta.

Much of the continuing controversy over Obama's counterterrorism policy stems from underlying disagreements about the propriety and scope of the war. If one takes peacetime as a baseline, the use of lethal force and military detention rather than criminal processes to deal with terrorism is entirely unacceptable. In times of peace, we prosecute terrorists, accord them fair trials, and incarcerate them only upon conviction. In times of war, by contrast, we can detain and kill the enemy's fighters without trial. So if one disputes the propriety of our war against al Qaeda, then all the military means Obama has deployed are problematic. If, by contrast, one concedes that we remain at war with al Qaeda -- see, for example, the boots on the ground in Afghanistan -- then the use of military means, such as killing and detention, ought not to be controversial, so long as they comport with the laws of war. Can anyone really object to the use of a drone, for example, to kill an al Qaeda operative on the battlefield in Afghanistan?

A more nuanced -- and credible -- critique of Obama would acknowledge that for the moment we are at war in Afghanistan, but maintain that the existence of that conflict should not justify the use of lethal force or other military measures thousands of miles away, in Yemen or Somalia, where we are not at war, and where the groups we have

targeted did not even exist when al Qaeda attacked us on 9/11. Not all uses of military force beyond a battlefield are impermissible. In World War II, we captured enemy soldiers far from any battlefield, and no one suggested we could not do so. And if a nation faces a truly imminent threat of attack, it may use lethal force as a last resort in self-defense, even if the threat comes from nowhere near an active battlefield. But whether and to what extent lethal force may be used in Yemen or Somalia is deeply controversial, even if one accepts the existence of an ongoing armed conflict with al Qaeda.

That controversy is fueled by the unacceptable level of secrecy with which the Obama administration has shrouded its drone program. The leaked white paper gives us the most detail yet on the program, but it still leaves many crucial questions unanswered. Should the president ever be able to kill American citizens without acknowledging that he has done so, or does due process forbid the killing of one's own citizens in secret? Can deliberate killing of noncitizens go unacknowledged, or does that violate the prohibition on "forced disappearances"? What procedures and standards of proof are employed to ensure that those targeted for drone strikes are in fact fighting for al Qaeda against us? What is the appropriate definition of "associated forces"? How does the ease of killing with a drone affect the assessment of whether capture is feasible, as capture will always entail more risk to Americans? Is it permissible to treat all al Qaeda leaders as presumptively presenting an "imminent" threat justifying lethal force in self-defense, or does that violate the purpose of the imminence requirement, namely to ensure that lethal force is a last resort? Why shouldn't a court or some other independent entity provide oversight, before and/or after the fact, to ensure that the standards are being adhered to in practice?

These questions will continue to dog the Obama administration as long as it keeps its program largely under wraps. Killing in wartime, unlike torture, is sometimes permissible. Asserting and exercising the power to use lethal force against enemies in a war should not be confused with asserting and exercising the authority to torture. But drones raise new and difficult questions, because they make it possible to kill far from any battlefield, without putting American lives at risk, and in stealthy and deniable ways. These questions deserve full and deliberate consideration in a democracy. If President Obama is committed to fighting terror within the rule of law, he needs to be much more transparent about his exercise of this power.

David Cole is a professor of constitutional law and national security at Georgetown Law, and a fellow at the Open Society Foundation.

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From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 3:42 PM
To: (b) (6) Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC)
Cc: Fonzone, Christopher
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

Great, thanks very much.

From: (b) (6) [mailto:(b) (6)]
Sent: Thursday, August 01, 2013 3:18 PM
To: (b) (6) Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC)
Cc: Fonzone, Christopher
Subject: PLEASE DISREGARD: Fax number for codeword doc

(b) (5) Thanks (b) (6)

(b) (6)
Deputy Legal Adviser
National Security Staff

(b) (6)

From: (b) (6)
Sent: Thursday, August 01, 2013 3:06 PM
To: 'Anderson, Trisha (ODAG)'; 'Seitz, Virginia A (OLC) (b) (6) (b) (6)
(b) (6)
Cc: Fonzone, Christopher
Subject: Fax number for codeword doc

Hello all,

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(b) (6)
Deputy Legal Adviser
National Security Staff

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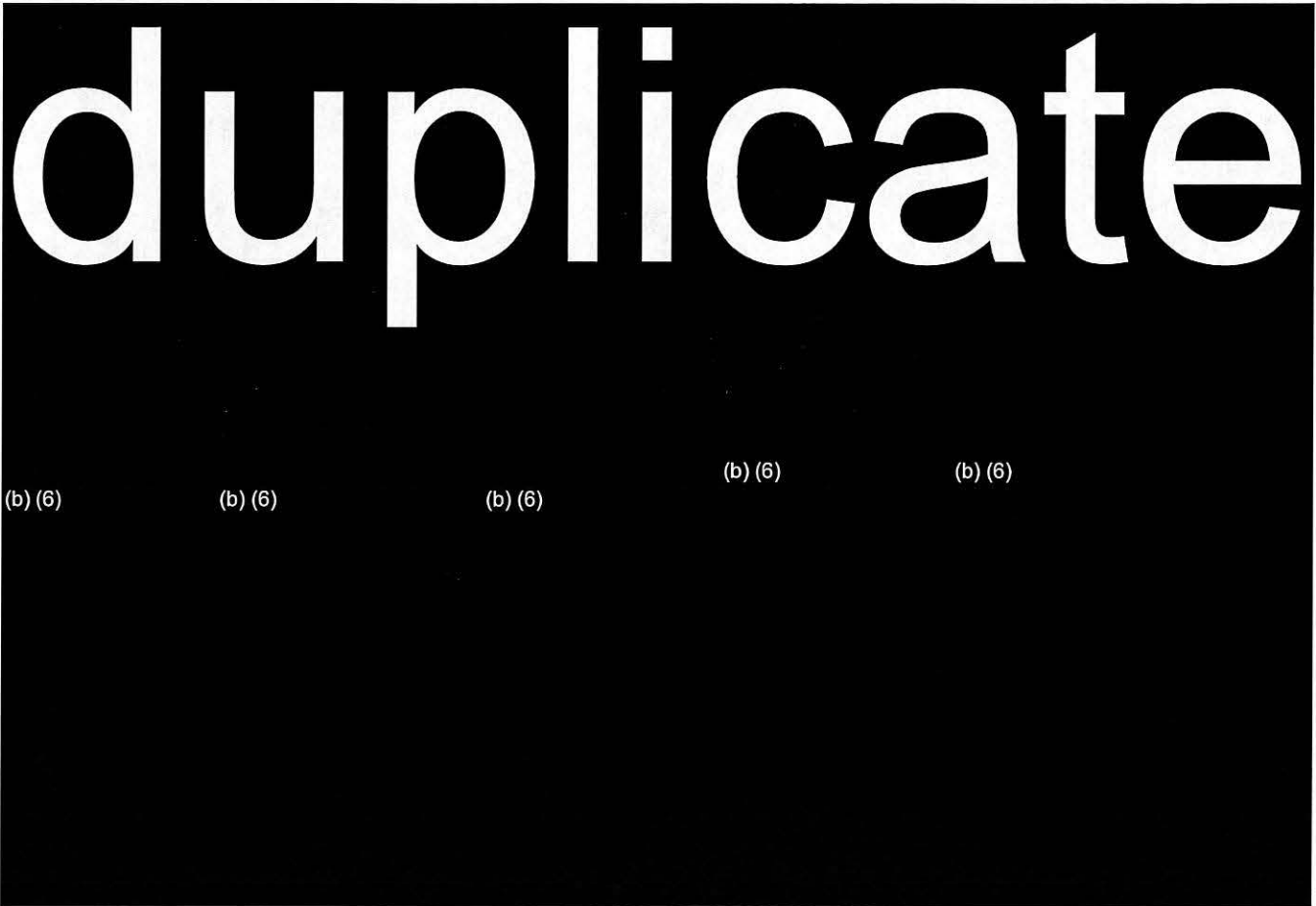
(b) (6)

(b) (6)

From: Forrester, Nate (OLC)
Sent: Thursday, August 01, 2013 10:50 AM
To: Riley, Ann J. (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Bies, John (OLC); Krass, Caroline D. (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)
Attachments: DOJ Statement on Title II and Olmstead Enforcement.pdf; Press Release.pdf; UPS. signedNPA.pdf; UPS.AttachmentA.pdf; UPS.AttachmentB.pdf; AG QFRs from May 15, 2013 HJC Hearing - Combined Component Responses.docx; AG QFRs from May 15 2013 HJC Hearing - OLC redline 2013-08-01.docx

Ann: With apologies for the delay, attached is our redline of the QFR responses.

(b) (6)
Office of Legal Counsel
(b) (6)



(b) (6) (b) (6) (b) (6) (b) (6) (b) (6)

From: Krass, Caroline D. (OLC)
Sent: Wednesday, July 31, 2013 12:19 PM
To: (b) (6); Koffsky, Daniel L (OLC) (b) (6) (NSD)
Cc: Anderson, Trisha (ODAG); Seitz, Virginia A (OLC) (b) (6) (OLC)
Subject: Heads up

As early as later toda (b) (5) is.

16 upon arrival in Geneva, and a working lunch on October 17 before the hearing begins. We will advise as soon as we have firm dates, times and locations.

State Department contacts are **JoAnn Dolan** (b) (6) (b) (6)) and **Sabeena Rajpal** (b) (6) (b) (6)).

Thank you for your continuing work on this,

JoAnn

JoAnn Dolan
Attorney Adviser
Office of the Legal Adviser for
Human Rights and Refugees
U.S. Department of State
2201 C Street, N.W., Rm. 3422
Washington D.C. 20520
Phone: (202) (b) (6)
Fax: (202) (b) (6)

Thank you for your contributions to the U.S. responses to the Human Rights Committee ("Committee") list of issues on U.S. implementation of the International Covenant on Civil and Political Rights (ICCPR). We submitted our written responses on July 3 and they are available at <http://www.state.gov/j/drl/rls/212393.htm>. A PDF version, as submitted to the Committee (without including the questions), is also available through the UN website maintained for the Committee's 109th session.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=624&Lang=en

With that behind us, we have turned to the next steps in preparation for our appearance before the Committee currently scheduled for October 17-18, 2013 in Geneva. The first attachment is a revised timeline to prepare for these meetings. Next immediate steps are:

Delegations: We are very pleased and grateful for the interest and support we have received. (b) (5)

If any other agencies intend to participate, please advise ASAP. If you have not already done so, or if your prior delegation list has changed, please provide an updated delegation list to the State Department by COB TUESDAY, SEPTEMBER 3.

Hard Questions and Answers: As reported during the Human Rights Treaty IPC on May 23, members of the Committee are free to ask any questions they wish during the US Delegation's 6-8 hour appearance before the Committee over two days. The delegation will be expected to respond on the spot and in a webcasted forum that can draw intense press and NGO scrutiny. For that reason, we need to prepare a comprehensive set of fully cleared questions and answers. The second attachment is State Department's first draft compilation of Hard Questions. It is drawn from the Committee's March 28 list of issues that have yet to be fully answered, material previously received from agencies that could not fit into our July 3 written response, and select questions and recommendations proposed by NGO's in their shadow reports to the Committee and to us during and after our May 30th civil society outreach. The attached also includes questions arising from recent events that can be expected to draw Committee questions during the hearing. We anticipate many more will need to be added by the agencies as well. **Comment bubbles next to each question in the attached assign drafting responsibility to one or more agencies to draft answers or provide input for an answer.**

We request agency drafters to propose 2-3 short bullet points to respond directly to the question posed, followed by a background discussion from which the delegation member assigned the question can draw for additional follow-up responses. Our hope is that agencies will modify and condense the "Response" and "Background" text on any question assigned to them to represent the most direct three short points that they would want the delegation to use in Geneva. Feel free to sharpen the questions, responses, and background. In order to try to build on previous work, some questions include background, sources and previous information on the topic. For those questions, agencies can simply update or add new information on recent developments.

Supplemental Hard Q/As: The Q&As in the attached should not be considered exhaustive, but rather a first tranche. Please supplement the package with any additional Q&As that you foresee and how the delegation should respond.

Please send draft answers to all the hard questions assigned to your agency in the attached and any additional Hard Q/As by COB MONDAY AUGUST 19.

The full package of questions and answers will then be circulated interagency for final review and clearance so that everyone will have an opportunity to review the final answers to be used by the delegation.

Delegation Meetings: As noted in the attached timeline, we are currently planning the following delegation conference calls and meetings: a working level conference call on September 6, a working level delegation meeting the week of September 30, a full delegation meeting on (b) (5) the week of October 7, a full delegation meeting on October

From: Stevens, Karen L (CRT)
Sent: Tuesday, July 30, 2013 3:33 PM
To: Ohr, Bruce (CRM); Krass, Caroline D. (OLC); Wiegmann, Brad (NSD)
Cc: Monroe, Becky (CRT) (b) (6) OLP
Subject: FW: ICCPR Hard Qs and further update on ICCPR presentation
Attachments: New Timeline for ICCPR Preparation.docx; IA_Draft_ICCPR_Hard_Qs_(7-30-13).docx

Bruce, Caroline, and Brad,

FYI, this ICCPR tasking just came in from State. (b) (6) in OLP will be circulating to the Department to coordinate the substantive response. It asks for draft answers to the "hard questions" by August 19th, and a final delegation list by September 3. DOJ is listed as one of six agencies that are planning to send a delegation at the rank of DAAG or AAG.

Karen

From: Dolan, JoAnn [mailto: (b) (6)]
Sent: Tuesday, July 30, 2013 3:23 PM
To: (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6)
Cc: (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6)
Subject: ICCPR Hard Qs and further update on ICCPR presentation

Colleagues –

NSS Brandon Prelogar has asked me to send this message on his behalf while he is on TDY this week in China.

Rights of persons belonging to minorities (art. 27)

27. Please provide information on measures taken to guarantee the protection of indigenous sacred areas, as well as to ensure that indigenous peoples are consulted and that their free, prior and informed consent is obtained regarding matters that directly affect their interests. Please provide information on steps taken to implement Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments.

Elimination of slavery and servitude (art. 8 and 24)

21. Please provide information on steps taken:
- (a) To combat human trafficking;
 - (b) To protect children under 18 years of age living in the State party from being sexually exploited through prostitution, as well as the steps taken to ensure that these children are not dealt with through the criminal justice system.

Right to privacy (art. 17)

22. Please provide information on steps taken to ensure judicial oversight over National Security Agency surveillance of phone, email and fax communications both within and outside the State party. Please also specify what circumstances, as mentioned in section 206 of the USA Patriot Act, justify “roving” wiretaps.

Freedom of assembly and association (arts. 21 and 22)

23. Please clarify why agricultural and domestic workers and independent contractors are excluded from the right to organize themselves in trade unions by the National Labor Relations Act and provide information on steps taken to ensure that the right to freedom of association is available to these categories of workers.

Freedom of movement, marriage, family and measures for the protection of minors (arts. 7, 12, 23 and 24)

24. Please clarify whether, following the Supreme Court decisions in *Graham v. Florida* and *Miller v. Alabama*, the State party has conducted a review of the situation of those persons already serving a life sentence without parole for an offence committed as a minor. Please also clarify whether the State party will abolish all juvenile life without parole sentences, including discretionary sentences, uncapped consecutive sentences and long minimum sentences likely to exceed the offender’s life.

25. Please provide information on the number of children held in United States-administered detention facilities in Iraq and Afghanistan, and at Guantanamo Bay, as well as the length of their detention. Please clarify whether parents or close relatives are promptly informed of the location of their detention, whether these children have access to legal, physical and psychological services, as well as an independent complaints mechanism and whether their status as children is taken into account in the charges brought against them.

Right to take part in the conduct of public affairs (art. 25)

26. Please provide information on:
- (a) The rationale for prohibiting persons with felony convictions from voting in federal elections once they have completed their sentence. Please provide information on steps taken to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. Please also provide information on the extent that the regulations relating to deprivation of votes for felony conviction impact on the rights of minority groups.
 - (b) Measures taken by several states, including restrictions on access to voter registration, more stringent eligibility requirements or purging voters from registration rolls leading to the legal or de facto disenfranchisement of voters;
 - (c) Steps taken or foreseen to ensure that residents of Washington, D.C., can exercise the right to vote and elect representatives to the Senate and House of Representatives.

(CCPR/C/USA/CO/3/Rev.1), are in conformity with the obligations upon a State party under article 7 of the Covenant.

16. Please provide information on steps taken to reduce the practice in some maximum security prisons of holding detainees in prolonged cellular isolation, including children and persons with mental disabilities, as well as to improve the conditions and duration of out-of-cell recreation. Please provide information on steps taken to ensure that persons deprived of their liberty have the ability to maintain regular contact with their family, in particular minor children. Please provide information on steps taken to protect detainees against violence, including sexual violence, by other inmates and to improve detention conditions of death row facilities. Please provide information on the number of complaints received on an annual basis by the Department of Justice concerning violations of human rights in prisons, as well as legal actions undertaken. Please provide information on all investigations undertaken by the Department of Justice into conditions in state prisons and jails and state juvenile detention facilities, as well as law enforcement actions undertaken. Please provide information on steps taken to ensure monitoring of conditions in private detention facilities. Please also clarify whether the State party intends to prohibit the shackling of detained pregnant women during transport, labour, delivery and post-delivery, under all circumstances.

17. Please clarify whether the State party will deal with detainees held in Guantanamo Bay and in military facilities in Afghanistan and Iraq within the criminal justice system, and will end the system of administrative detention without charge or trial. Please clarify whether the State party will grant detainees the right to legal representation. Please clarify why there has not been any periodic review yet of individuals at Guantanamo scheduled for indefinite detention, as ordered by Executive Order 13567 of 7 March 2011. Please clarify how the rights enshrined in article 14 of the Covenant are guaranteed for detainees tried by military commissions. Please also clarify how many detainees who were cleared for release are still detained in Guantanamo Bay and what steps the State party is taking to ensure their immediate release.

18. Please provide information on measures taken to ensure that all juveniles are separated from adults during pretrial detention and after sentencing. Please also clarify whether the State party will take steps to ensure that juveniles are not transferred to adult courts but are tried in juvenile courts with specific juvenile protections.

19. Please clarify:

(a) Whether mandatory detention of immigrants who lack identification documents or are charged with the commission of crimes will be eliminated, and how the State party ensures that the decision to detain non-citizens is made on a case-by-case basis after an assessment of the functional need for detention. Please also provide information on steps taken to ensure judicial oversight over decisions to detain such immigrants, and clarify whether the detention period is subjected to a maximum duration;

(b) Whether detained immigrants on a criminal charge are promptly informed of the charges against them, promptly brought before a judicial authority, and given access to legal counsel and legal assistance;

(c) Which steps are taken to ensure that immigrants, in particular those with children, and unaccompanied alien children, are not held in jails or jail-like detention facilities.

20. Please provide information on steps taken to prevent and combat domestic violence, and the impact measured, as well as to ensure that acts of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned. Please clarify what steps have been taken to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence.

international operations, and whether it has held senior officers responsible under the doctrine of command responsibility. Please also clarify whether similar investigations have been instigated against private contractors and civilian intelligence agencies.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty (arts. 7, 9, 10, 12, 13 and 14)

11. Please provide information on:

(a) Whether the State party has instigated independent investigations into cases of torture or cruel, inhuman or degrading treatment or punishment of detainees in United States custody outside its territory. Please clarify whether those responsible have been prosecuted and sanctioned, and whether the State party has prosecuted former senior government and military officials who have authorized such torture and abuse;

(b) Whether the State party deems so-called “enhanced interrogation techniques”, now prohibited by the State party, including “water boarding”, to be in violation of article 7 of the Covenant. Please provide information on whether the State party has taken steps to prosecute officers, employees, members of the Armed Forces, or other agents of the Government of the United States, including private contractors, for having employed these techniques and what is being done to prevent the use of such techniques in the future. Please also clarify whether remedies have been offered to victims of such techniques;

(c) The reasons for the absence of legislation explicitly prohibiting torture within the territory of the State party.

12. Please provide information on the implementation of the recommendations of the Special Interagency Task Force on Interrogations and Transfer Policy Issues. Please also clarify whether since that report the State party systematically evaluates diplomatic assurances from receiving countries, whether in all cases monitoring mechanisms have been established, whether returned detainees have reported the breach of assurances, and whether the State party has taken any remedial steps in response to any such reports.

13. Please provide information on:

(a) Steps taken to address cases of police brutality and excessive use of force, in particular against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the United States-Mexico border, and to hold responsible officers accountable for such abuses;

(b) Steps taken to strictly regulate the use of electro-muscular-disruption devices. Please clarify whether their use is restricted to substitution for lethal weapons, and whether such devices are used to restrain persons in custody.

14. Please provide information on:

(a) Steps taken to prohibit and prevent corporal punishment of children in schools (including the practice of “paddling”), penal institutions (including as a disciplinary measure in juvenile detention), the home, and all forms of care. Please provide information on measures taken to address the alleged more frequent use of corporal punishment against African-American students and students with disabilities;

(b) The application of criminal law to minors in order to address disciplinary issues arising in schools.

15. Please clarify how, in the State party’s view, the possibilities for non-consensual use of medication in psychiatric institutions and for research and experimentation, as outlined in paragraph 31 of the Committee’s previous concluding observations

foreseen to review all relevant immigration enforcement programmes, including the Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security – Criminal Alien Program, the Secure Communities program, and 287(g) agreements, to determine whether they result in racial profiling. Please provide information on the number of complaints regarding racial profiling received annually by the Office for Civil Rights and Civil Liberties against Department of Homeland Security personnel, as well as the results of the investigations and disciplinary action undertaken. Please also provide information on steps taken to address discriminatory and unlawful use of “stop and frisk” practices by officers of the New York Police Department.

6. Please provide information on the imposition of criminal penalties on people living on the streets. Please also provide information on the implementation of the 2009 Helping Families Save Their Home Act and the creation of durable alternatives to criminalization measures to address homelessness.

7. Please provide information on obstacles to the access of undocumented migrants to health services and higher education institutions, and to federal and state programmes addressing such obstacles.

Right to life (art. 6)

8. Please provide information on:

(a) Death sentences imposed, the number of executions carried out, the grounds for each conviction and sentence, the age of the offenders at the time of committing the crime, and their ethnic origin;

(b) Whether the death penalty has been imposed on people with mental or intellectual disabilities since the 2002 Supreme Court ruling in *Atkins v. Virginia* exempting people with “mental retardation” from the death penalty;

(c) Steps taken to guarantee access to federal review of state court death penalty convictions, in the light of the drastic limits imposed by the Antiterrorism and Effective Death Penalty Act of 1996 and the USA Patriot Improvement and Reauthorization Act of 2005 on the availability of federal habeas corpus relief for defendants sentenced to death;

(d) Steps taken to ensure that the death penalty is not imposed on the innocent;

(e) Steps taken to improve criminal defence programmes and legal representation for indigent persons in capital cases, including in Alabama and Texas, as well as civil proceedings, in particular for defendants belonging to racial, ethnic and national minorities.

9. Please provide information on:

(a) The number of victims of gun violence, including in the context of domestic violence, and on steps taken to better protect people against the risks associated with proliferation of firearms. Please also provide information on the applicability of “stand your ground” laws, and whether they provide blanket immunity to persons using force as defined and permitted by such laws;

(b) The use of firearms by the police and the number of cases where such use resulted in the death of persons, as well as the investigations and prosecutions in such cases.

10. Regarding the protection of life in armed conflict:

(a) Please clarify how targeted killings conducted through drone attacks on the territory of other States, as well as collateral civilian casualties are in compliance with Covenant obligations. Please clarify how the State party ensures that such use of force fully complies with its obligation to protect life.

(b) Please clarify whether the State party has effectively investigated and punished lower-ranking soldiers for unlawful killings, including possible war crimes, in its



International Covenant on Civil and Political Rights

Distr.: General
29 April 2013

Original: English

Human Rights Committee

List of issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1), adopted by the Committee at its 107th session (11–28 March 2013)

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please clarify the following issues:
 - (a) The State party's understanding of the scope of applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory; in times of peace, as well as in times of armed conflict;
 - (b) Which measures have been taken to ensure that the Covenant is fully implemented by State and local authorities;
 - (c) Whether the State party intends to reinvigorate Executive Order 13107/1998 on Implementation of Human Rights Treaties.
2. Please clarify whether the State party will establish a national human rights institution with a broad human rights mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
3. Please clarify whether the State party will review its reservations to the Covenant with a view to withdrawing them.

Non-discrimination and equal rights of men and women (arts. 2, para.1; 3; and 26)

4. Please provide information on steps taken to address racial disparities in the criminal justice system, including the overrepresentation of individuals belonging to racial and ethnic minorities in prisons and jails. Please provide the Committee with the latest United States Department of Justice three-year report "on the nature and characteristics of contacts between US residents and the police", and clarify whether the State party has conducted a study on the disparities between population groups and, if so, on the findings of such a study.
5. Please clarify which steps have been taken to eliminate and combat all forms of racial profiling against Arabs, Muslims and South Asians, and whether the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies covers profiling based on religion, religious appearance or national origin. Please provide information on the practices and justification of practices involving the surveillance of Muslims in the State party, given that it has not resulted in any prosecution. Please clarify whether plans are

Subject: Call on DOJ ICCPR Delegation
Location: (b) (6)(b) (6) Passcod (b) (6)
Start: Tue 7/30/2013 2:00 PM
End: Tue 7/30/2013 3:00 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Stevens, Karen L (CRT)
Required Attendees: Ohr, Bruce (CRM); Wiegmann, Brad (NSD); Krass, Caroline D. (OLC); Monroe, Becky (CRT)

When: Tuesday, July 30, 2013 2:00 PM-2:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where (b) (6) Passcod (b) (6)

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Bruce, Brad, Caroline, and Becky,

Thank you for making time for this call on Tuesday July 30. The proposed agenda is:

- (b) (5)
- [Redacted]

I have reattached the list of issues, the ICCPR Committee Questions Presented to DOJ, and the Delegation List from State for easy reference. Additional documents including the draft USG Response to the Questions are in my email of Thursday 7/25 at 5:18 pm, also attached.

Karen

Karen L. Stevens
Senior Counsel
Civil Rights Division
(b) (6)



2013 ICCPR
Delegation List (3)...



ICCPR questions for
US.DOC



List of Issues with
Categoriza...



FW: Follow up on
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To: Moore, Marchelle; Swartz, Bruce
Cc: Wiegmann, Brad (NSD); Ohr, Bruce; Monroe, Becky (CRT); Krass, Caroline D. (OLC)
Subject: Call on ICCPR Delegation Monday?

Bruce and Marchelle,

Would there be time for a 30 minute call on the ICCPR Delegation Monday, between either 10:30 and 2:00 or 3:30 and 5:30? I'd suggest two items for the agenda:

- (b) (5) [REDACTED]
- [REDACTED]

I'm also free Tuesday except at 1:00.

Thank you, and have a good weekend,

Karen

Karen L. Stevens
Senior Counsel
Civil Rights Division
(b) (6) [REDACTED]

duplicate

From: Moore, Marchelle (CRM)
Sent: Friday, July 26, 2013 4:52 PM
To: Stevens, Karen L (CRT)
Cc: Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Swartz, Bruce (CRM); Walker, Anjanette (CRM)
Subject: RE: Call on ICCPR Delegation Monday?

Hi Karen,

I was able to check Bruce O. calendar as well. He is available on Monday and Tuesday at 2-3. He is also available on Tuesday at 3:30 and 5:30.

Let me know which date/time that you decide.

Marchelle P. Moore
Executive Assistant
U.S. Department of Justice
Criminal Division
Direct (b) (6)
Fax (b) (6)

From: Stevens, Karen L (CRT) [mailto:(b) (6)]
Sent: Friday, July 26, 2013 4:34 PM
To: Moore, Marchelle
Cc: Wiegmann, Brad (NSD); Ohr, Bruce; Swartz, Bruce
Subject: RE: Call on ICCPR Delegation Monday?

Thanks Marchelle.

Bruce S (b) (5) . Enjoy your vacation ☺

Bruce Ohr, would you be available Monday or Tuesday?

Karen

From: Moore, Marchelle (CRM)
Sent: Friday, July 26, 2013 4:29 PM
To: Stevens, Karen L (CRT); Swartz, Bruce (CRM)
Cc: Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Monroe, Becky (CRT); Krass, Caroline D. (OLC)
Subject: RE: Call on ICCPR Delegation Monday?

Hi Karen,

Bruce will not be available he begins his vacation Monday.

Marchelle P. Moore
Executive Assistant
U.S. Department of Justice
Criminal Division
Direct (b) (6) 825
Fax (b) (6) 108

From: Stevens, Karen L (CRT) [mailto:(b) (6)]
Sent: Friday, July 26, 2013 3:55 PM

From: Stevens, Karen L (CRT)
Sent: Friday, July 26, 2013 5:27 PM
To: Wiegmann, Brad (NSD); Krass, Caroline D. (OLC)
Cc: Ohr, Bruce (CRM); Swartz, Bruce (CRM); Walker, Anjanette (CRM); Moore, Marchelle (CRM); Monroe, Becky (CRT)
Subject: RE: Call on ICCPR Delegation Monday?

Brad,

Thank you, let's plan for Tuesday from 2:00-2:30. I'm copying Marchelle Moore and Anjanette Walker in CRM for Bruce.

Karen Stevens

Karen L. Stevens
Senior Counsel
Civil Rights Division
(b) (6)

From: Wiegmann, Brad (NSD)
Sent: Friday, July 26, 2013 5:26 PM
To: Krass, Caroline D. (OLC); Stevens, Karen L (CRT)
Cc: Ohr, Bruce (CRM); Swartz, Bruce (CRM); Walker, Anjanette (CRM)
Subject: RE: Call on ICCPR Delegation Monday?

I could do Tuesday at 2 for half an hour.

From: Krass, Caroline D. (OLC)
Sent: Friday, July 26, 2013 5:00 PM
To: Stevens, Karen L (CRT); Wiegmann, Brad (NSD)
Cc: Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Swartz, Bruce (CRM); Walker, Anjanette (CRM)
Subject: RE: Call on ICCPR Delegation Monday?

I could do Monday or Tuesday at 2 pm.

From: Stevens, Karen L (CRT)
Sent: Friday, July 26, 2013 4:54 PM
To: Krass, Caroline D. (OLC); Wiegmann, Brad (NSD)
Cc: Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Swartz, Bruce (CRM); Walker, Anjanette (CRM)
Subject: RE: Call on ICCPR Delegation Monday?

Brad and Caroline –

Would you be free for a call on the ICCPR Monday at 2:00, or Tuesday at 2:00 or 3:30?

Thanks,
Karen

The Committee's website for the January 2013 session is at <http://www2.ohchr.org/english/bodies/hrc/hracs109.htm>.

The 2011 Fourth U.S. Periodic Report is posted at the same site.

Common Core Document to the Fourth U.S. Periodic Report is available at <http://www.state.gov/j/drl/rls/179780.htm> with Annex A at <http://www.state.gov/j/drl/rls/179782.htm>.

The last time the United States appeared before the Committee was at its 87th Session in July 2006 and the documents are available at <http://www2.ohchr.org/english/bodies/hrc/hracs87.htm>.

The U.S. Initial Reports is available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/da936c49ed8a9a8f8025655c005281cf?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/da936c49ed8a9a8f8025655c005281cf?Opendocument)

The U.S. documents are also available at www.state.gov/j/drl/hr/treaties/.

As further background for anyone interested in previewing similar hearings with other countries, webcast links to recent Human Rights Committee sessions can be found at <http://www.treatybodywebcast.org/category/webcast-archives/hrcttee/>

Contacts

Each agency should respond to this request through **one and only one POC**. Additional people may be added as "cc's" for the purpose of facilitating communication with all those involved in this work, but we ask that only one person be assigned the responsibility of meeting deadlines and coordinating, consolidating and reconciling any internal discrepancies (to the extent necessary) in each agency's response to this request and agency clearance for drafts of the final documents.

Action addressees on the to-line of this message are the POCs identified during the preparation of the Fourth Periodic Report for each agency. Cc addressees are additional agency contacts previously on distribution for this and other treaty reports. Please let **JoAnn Dolan (b) (6)** and **Sabeena Rajpal (b) (6)** know immediately of any additions or changes in the POC for your agency or to our overall distribution list reflected in the cc line.

Any questions should be directed to **JoAnn Dolan (b) (6)** and **Sabeena Rajpal (b) (6)**

Thank you in advance for your work on this project.

Brandon Prelogar
Director for Human Rights
Office of Multilateral Affairs and Human Rights
National Security Staff
(b) (6) (office)
(b) (6) (direct)
(b) (6) (unclassified)

IV. Please note that we are already making plans to convene **NGO civil society consultations on May 15** so that their input can be considered before finalizing our written responses. **Agencies are requested to advise State/DRL Jason Pielemeier (b) (6) ASAP of any preferred times on that date.** Afternoon has generally been preferable in the past due to the ease of facilitating participation by individuals on the West Coast.

Timeline for Preparation

(b) (5)	[Redacted]
[Redacted]	[Redacted]
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[Redacted]	[Redacted]

Sources for Relevant Documents

provided below. Additional timeframes and deadlines, particularly as we approach the October hearing, will be forthcoming.

I. The Committee has transmitted a list of 27 issues for which it is requesting additional and updated information. **The United States is requested to submit responses, limited to thirty pages with 1.5 spacing, by June 28, 2013.** Also attached to this email is a matrix, identifying for each issue the relevant NGO "Shadow Reports" submitted to the Committee, the related paragraphs of the 2011 U.S. Report, and reference to relevant paragraphs or sections of other more recently prepared treaty reports/submissions or other official public materials to which we might refer in our response. The matrix also indicates the U.S. agency or agencies that would appear to have relevant information on each issue; **however, each agency should review all issues in the list for possible input. Please provide your agency's responses electronically in one consolidated document to JoAnn Dolan (b) (6) and Sabeena Rajpal (b) (6) by May 10, 2013.** Information should be provided as narrative responses to the questions asked. Please address each issue and sub-issue separately so that our submission can track the Committee's format. In order to comply with the strict 30 page limit, we cannot take more than two pages for each numbered issue (including sub-issues). This means 2 pages with 1.5 spacing from which we will likely have to edit the material down further to meet the page limit. If you have more detail to provide on the issue, please provide it separately from your proposed two-page written response and consider how best the additional information can be addressed in supplemental hard questions and answers to draw upon as we prepare our oral presentation in the months ahead. **We do want to be able to describe briefly any important new initiatives. But, in view of the strict page limitation on our advance written responses, we would ask agencies to try to "think succinct" in any material provided, either for inclusion in our written responses or for use in preparing follow-up hard questions and answers. Please also reference public source documents with web links to the extent available.**

II. (b) (5) [Redacted]
[Redacted]
[Redacted]
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[Redacted]
[Redacted]
(b) (6) (b) (6)

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[Redacted]
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[Redacted]

III. Please provide a list of **persons designated as your agency's anticipated representatives for the U.S. delegation** to participate in the October session in Geneva to JoAnn Dolan (b) (6) and Sabeena Rajpal (b) (6) and me (b) (6) by May 13, 2013. With regard to each member of the delegation, please indicate issues he or she will address. For your reference, attached is a delegation list from 2006, which reflects some last minute substitution (b) (5).

(b) (6) (unclassified)

From: Prelogar, Brandon [mailto:(b) (6)]
Sent: Tuesday, April 23, 2013 12:56 PM
To (b) (6) (b) (6)

[Redacted]

Cc ((b) (6) (b) (6) (b) (6)
(b) (6) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6)
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[Redacted]

Subject: RE: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

Colleagues –

The UN Committee on Human Rights has notified the United States that it will be considering the U.S. Fourth Periodic Report on implementation of the International Covenant on Civil and Political Rights (ICCPR) at its 109th session (14 October to 1 November 2013). The U.S. Report was filed December 30, 2011. A copy of the Secretariat's (OHCHR) note and advance version of Committee questions is attached. Although we have no official notification as yet, the Secretariat has advised US Mission Geneva that **we are currently scheduled for the afternoon of 17 October and the morning of 18 October, with a substantial possibility that we will be asked to go 'overtime' into the afternoon of 18 October.**

This email outlines actions by all affected agencies to prepare for U.S. participation in these sessions, in particular the priority actions of scheduling now and preparing for civil society consultation on May 15, responding to these advance written issues by June 28, and preparing hard Q&As after that. A timeline and sources for relevant documents are

	(b) (5)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

If you have not already done so, please let **JoAnn Dolan (b) (6)** and **Sabeena Rajpal (b) (6)** know immediately of any additions or changes in the POC for your agency as reflected in the to-line above or to our overall distribution list as reflected in the cc-line.

Any questions regarding **(b) (5)** should be directed to **Jason Pielemeier (b) (6)** (**(b) (6)**). Any other questions regarding **(b) (5)** should be directed to **JoAnn Dolan (b) (6)** (**(b) (6)**) and **Sabeena Rajpal (b) (6)** (**(b) (6)**).

Thank you again for your work on this project.

Brandon Prelogar
 Director for Human Rights
 Office of Multilateral Affairs and Human Rights
 National Security Staff
(b) (6) (office)
(b) (6) (direct)

(b) (6)

[Redacted text block]

(b) (6)

(b) (6)

Subject: FW: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

All,

Following up on my April 23 missive, further adjustments have been made to the timeline on USG preparation for presentation of our ICCPR Report in order to give NGOs a full four weeks' advance notice before the Civil Society consultations, now scheduled for Thursday, May 30, to be hosted by Department of State Deputy Assistant Secretary for Democracy, Human Rights and Labor, Dan Baer, and Deputy Legal Adviser Sue Biniaz. The attached list reflects NGOs who have been invited to participate in a consultation with representatives from United States government agencies "on the List of Issues' adopted by the Human Rights Committee on the fourth periodic report by the United States."

The NGO consultation will take place on Thursday, May 30th, 2013 from 1 to 3 PM at the Open Society Foundation's Washington office (1730 Pennsylvania Ave., NW, Suite 700), with an option for organizations to dial-in by phone. We hope we will have good representation from USG agencies, particularly those whose programs are the focus of the Committee's List of Issues and the many NGO shadow reports. **Agency POCs are requested to provide State/DRL Jason Pielemeier (b) (6) the names and titles of those who will be participating in the NGO consultation from each agency.** For your further background, the Department of State has prepared the attached summary of the shadow reports/NGO recommendations submitted to the U.N. Human Rights Committee, organized alphabetically by organization together with an "at a glance" index organized by issue. This complements the matrix that I circulated last week.

The rescheduling of the Civil Society consultations does not change any of the other deadlines for our preparation as previously circulated. The agency deadline for submitting to State draft responses to the Committee's list of issues remains May 10. We also plan to convene an interagency meeting later in May before the NGO consultations and I will circulate an invitation with further details on that shortly. Our slightly revised timeline is as follows:

Revised Timeline for Preparation

(b) (5)	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
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[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

NSS has asked each agency to submit the names and titles of its proposed ICCPR Delegation representatives this week. DOJ sent four representatives to the last ICCPR Presentation in 2006: then AAG for Civil Rights Wan Kim, a counsel from CRT, an attorney advisor from OLC, and an attorney from OLP. (b) (5)

Given the sequester and other limitations on foreign travel, we wanted to discuss with OIA th (b) (5)

Becky and I are available for a meeting or call next week or at your convenience, and would suggest including OLP and possibly OLC in the meeting.

(b) (5)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Thank you and we look forward to discussing this in the next week or so.

Karen

Karen L. Stevens
Senior Counsel
Civil Rights Division
(b) (6)

From: Prelogar, Brandon [mailto:(b) (6)]

Sent: Friday, May 03, 2013 8:42 PM

To: (b) (6) (b) (6)
[Redacted]
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(b) (5)

In addition to the questions from the ICCPR committee, I have attached:

- A List of Issues raised in the Questions, by Category
- The members of the 2006 USG Delegation
- The most recent draft response to the questions circulated by NSS
- The proposed members of the 2013 delegation submitted by State, DOD, DHS, HHS and Interior

The email chain below lays out State's timetable for preparing the USG delegation and the format of the USG presentation. Please let me know if you have questions, and if anyone else from OLC should be added to this list. I will try to schedule an internal DOJ call for Monday.

Many thanks,

Karen

Karen L. Stevens
Senior Counsel
Civil Rights Division

(b) (6)

From: Stevens, Karen L (CRT)
Sent: Friday, May 31, 2013 3:13 PM
To: Swartz, Bruce (CRM); Burrows, Thomas (CRM)
Cc: Monroe, Becky (CRT); Higginbotham, Ryan K (OLP); Siger, Steven B. (OLP); Wroblewski, Jonathan (CRM); Morales, Michelle (CRM)
Subject: FW: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

Dear Bruce and Tom,

Becky Monroe and I wanted to raise an issue related to the USG Presentation to the UN Human Rights Committee on the 2011 ICCPR Treaty Report, which will take place October 17-18 in Geneva. NSS and State have distributed a timeline for the preparation of the U.S. Delegation, which is at the bottom of this email. (b) (6) in OLP has been coordinating DOJ's response to the Committee's questions and other requests from NSS. CRT, Criminal Division Policy and a representative from the capital crimes unit attended the civil society consultation on the treaty yesterday.

From: Stevens, Karen L (CRT)
Sent: Friday, July 26, 2013 12:07 PM
To: Krass, Caroline D. (OLC)
Cc: Swartz, Bruce (CRM); Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Monroe, Becky (CRT)
Subject: Re: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

Thanks Caroline.

Yes, this is the first presentation since 2006. The text of the USG report from late 2011 is on the State Department's treaty reporting page.

Karen

From: Krass, Caroline D. (OLC)
Sent: Friday, July 26, 2013 11:54 AM Eastern Standard Time
To: Stevens, Karen L (CRT)
Cc: Swartz, Bruce (CRM); Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Monroe, Becky (CRT)
Subject: RE: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

Hi Karen –

I'd be happy to participate in a call on Monday, an (b) (5)

It sounds from the message below like the USG has not presented on the ICCPR Treaty since 2006 – is that right?

Thanks –

Caroline

From: Stevens, Karen L (CRT)
Sent: Thursday, July 25, 2013 5:18 PM
To: Krass, Caroline D. (OLC)
Cc: Swartz, Bruce (CRM); Wiegmann, Brad (NSD); Ohr, Bruce (CRM); Monroe, Becky (CRT)
Subject: FW: Follow up on U.S. Fourth report on implementation of the International Covenant on Civil and Political Rights

Hi Caroline,

I am working with Bruce Swartz in Crim/OIA and Brad Wiegmann in NSD on figuring out who should represent DOJ at the USG Presentation on the ICCPR Treaty, which will be October 16-18 in Geneva. (b) (5)

From: Cohen, Ilona (b) (6)
Sent: Tuesday, July 23, 2013 11:46 AM
To: Colborn, Paul P (OLC)
Subject: FW: Stephen Preston APQs
Attachments: Preston SASC APQs DRAFT 7-22-13 (with SWP edits) redline.doc

Se (b) (5) .

(b) (5)

Best 

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Thanks for the update (b) (6)

From: (b) (6) [mailto: (b) (6)]
Sent: Saturday, July 20, 2013 06:29 PM
To: (b) (6) (b) (6) (b) (6) (b) (6) Egan,
Brian J. (b) (6) (b) (6) (b) (6) (b) (6)
(b) (6)
Cc: Fonzone, Christopher (b) (6)
Subject: RE (b) (5)

(b) (5)

_____. We intend to do that early tomorrow morning.

(b) (6)

From: Seitz, Virginia A (OLC) [mailto: (b) (6)]
Sent: Saturday, July 20, 2013 10:47 AM
To: (b) (6) (b) (6) (b) (6) (b) (6) (b) (6)
Cc: (b) (6) (b) (6)
Subject: Re (b) (5)

I think the email we are working on relates t (b) (5)
_____.

From: (b) (6) [mailto: (b) (6)]
Sent: Saturday, July 20, 2013 10:10 AM
To: (b) (6) (b) (6) (b) (6) (b) (6) Seitz,
Virginia A (OLC) (b) (6) (b) (6) (b) (6) (b) (6)
Cc: (b) (6) (b) (6)
(b) (6) (b) (6)
Subject: Re (b) (5)

(b) (5)
_____. I will send that around our internal system when I get in.

From: (b) (6)
Sent: Saturday, July 20, 2013 09:55 AM
To: (b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6)
Cc: (b) (6) (b) (6)
(b) (6) (b) (6)
Subject: Re: package

Addin (b) (6)

(b) (5)

From: Egan, Brian J. (b) (6)
Sent: Sunday, July 21, 2013 11:21 AM
To: Seitz, Virginia A (OLC)
Subject: RE (b) (5)

Hi Virginia (b) (5)
(b) (6) ! Thanks, Brian

From: Seitz, Virginia A (OLC) [mailto:(b) (6)]
Sent: Sunday, July 21, 2013 11:17 AM
To: (b) (6) Egan, Brian J. (b) (6)
Subject: Re (b) (5)

Thank yo (b) (6) (b) (6) so unless it becomes urgent i will plan to review in the morning. Va

From (b) (6) [mailto:(b) (6)]
Sent: Sunday, July 21, 2013 11:06 AM
To (b) (6) (b) (6) Seitz, Virginia A (OLC) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6) (b) (6)
(b) (6)
Cc (b) (6) (b) (6)
(b) (6) (b) (6)
Subject: RE (b) (5)

(b) (5)
[Redacted]

[Redacted]

(b) (5)
[Redacted]

Thanks all.

(b) (6)

From: Egan, Brian J. [mailto:(b) (6)]
Sent: Saturday, July 20, 2013 6:50 PM
To (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) (b) (6)
Cc: Fonzone, Christopher (b) (6)
Subject: Re (b) (5)

Thanks (and sorry for the crazy timing), Brian

From: Egan, Brian J. (b) (6)
Sent: Saturday, July 20, 2013 3:39 PM
To: Seitz, Virginia A (OLC)
Subject: RE (b) (5)

Thanks, Virginia.

From: Seitz, Virginia A (OLC) [mailto:(b) (6)]
Sent: Saturday, July 20, 2013 3:04 PM
To: Egan, Brian J.
Subject: Re (b) (5)

Brian, just FYI that i will be out of reach for the next hour or so. Va.

From: Egan, Brian J. [mailto:(b) (6)]
Sent: Saturday, July 20, 2013 08:26 AM
To: (b) (6) (b) (6) (b) (6) (b) (6) Seitz, Virginia A (OLC);
(b) (6) (b) (6)
Cc: Fonzone, Christopher (b) (6) (b) (6)
(b) (6)
Subject: Re (b) (5)

(b) (6), just wanted to check in - (b) (5) ? Thanks, Brian

From: (b) (6) [mailto:(b) (6)]
Sent: Friday, July 19, 2013 11:07 PM
To: Egan, Brian J. (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6)
Cc: Fonzone, Christopher (b) (6)
Subject: Re (b) (5)

Brian, I have heard nothing about (b) (5) is not likely to be reviewed tonight. If I hear anything, I will notify everyone.

(b) (6)

From: Egan, Brian J. [mailto:(b) (6)]
Sent: Friday, July 19, 2013 09:49 PM
To: (b) (6) (b) (6) Seitz, Virginia A (OLC) (b) (6) (b) (6)
Cc: Fonzone, Christopher (b) (6) (b) (6)
(b) (6)
Subject: (b) (5)

(b) (5)

From: Krass, Caroline D. (OLC)
Sent: Tuesday, July 09, 2013 5:11 PM
To: Anderson, Trisha (ODAG)
Subject: Stopping by

Hi – can I stop by at some point to make a copy of the final package of the PPG and associated documents? We don't have the most highly classified package in our files, just what was sent on JWICS.

Thanks very much –

Caroline

From: Krass, Caroline D. (OLC)
Sent: Monday, July 08, 2013 10:32 AM
To: Anderson, Trisha (ODAG)
Subject: FW (b) (5)

FYI in case you haven't seen the high side traffic.

(b) (6)

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From: Krass, Caroline D. (OLC)
Sent: Monday, July 08, 2013 10:31 AM
To: 'Egan, Brian J.'; Seitz, Virginia A (OLC)
Subject: RE (b) (5)

Tracking:

Recipient	Read
'Egan, Brian J.'	
Seitz, Virginia A (OLC)	Read: 7/8/2013 10:44 AM

Thanks very much, Brian. We appreciate the low-side notification!

From: Egan, Brian J. [mailto:(b) (5)]
Sent: Monday, July 08, 2013 10:28 AM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: (b) (5)

Hi Virginia and Caroline,

(b) (5)

[Redacted]

[Redacted]

Thanks, Brian

(b) (5) [Redacted]

Stuart, just one comment (b) (5) [redacted]
[redacted]
[redacted]
[redacted]. Congratulations on being in the final lap! Best, Caroline

From: Delery, Stuart F. (CIV)
Sent: Thursday, June 20, 2013 7:24 AM
To: Anderson, Trisha (ODAG); Krass, Caroline D. (OLC); Richardson, Margaret (OAG); Cheung, Denise (OAG)
Cc: Wilkenfeld, Joshua (CIV); Gilbert, Helen L. (CIV)
Subject: Draft QFR Answer

One of my QFRs asks what role I had in the draft "White Paper" concerning the use of lethal force. My draft answer, which I believe is consistent with prior discussions, is pasted below. (b) (5) [redacted]
[redacted]
[redacted]

[redacted] If you have any comments, please let me know. The plan is to submit the answers to the Committee by COB tomorrow. Thanks.

9. Please describe your involvement in the drafting of any "White Paper" related to the use of unmanned aerial vehicles to conduct targeted killings as well as your involvement in any FOIA litigation related to that issue.

-
Response: (b) (5) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]
[redacted]

From: Krass, Caroline D. (OLC)
Sent: Thursday, June 20, 2013 11:51 AM
To: Delery, Stuart F. (CIV); Anderson, Trisha (ODAG); Richardson, Margaret (OAG); Cheung, Denise (OAG)
Cc: Wilkenfeld, Joshua (CIV); Gilbert, Helen L. (CIV)
Subject: RE: Draft QFR Answer

Tracking:	Recipient	Read
	Delery, Stuart F. (CIV)	
	Anderson, Trisha (ODAG)	Read: 6/20/2013 12:07 PM
	Richardson, Margaret (OAG)	Read: 6/20/2013 11:55 AM
	Cheung, Denise (OAG)	Read: 6/20/2013 12:35 PM
	Wilkenfeld, Joshua (CIV)	Read: 6/20/2013 11:54 AM
	Gilbert, Helen L. (CIV)	

That sounds good to me.

From: Delery, Stuart F. (CIV)
Sent: Thursday, June 20, 2013 11:08 AM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Richardson, Margaret (OAG); Cheung, Denise (OAG)
Cc: Wilkenfeld, Joshua (CIV); Gilbert, Helen L. (CIV)
Subject: RE: Draft QFR Answer

(b) (5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] Thoughts?

From: Krass, Caroline D. (OLC)
Sent: Thursday, June 20, 2013 10:23 AM
To: Delery, Stuart F. (CIV); Anderson, Trisha (ODAG); Richardson, Margaret (OAG); Cheung, Denise (OAG)
Cc: Wilkenfeld, Joshua (CIV); Gilbert, Helen L. (CIV)
Subject: RE: Draft QFR Answer

(b) (5)

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From: Fonzone, Christopher (b) (6)
Sent: Monday, June 03, 2013 8:23 PM
To: Fonzone, Christopher; Taylor, Robert, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC; (b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); McLeod, Mary; Alexandra H Perina (b) (6) Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) STEPHEW (b) (6); Robert (b) (6) Robert Lit (b) (6), (b) (3) (A) (b) (6) (b) (6)
Cc: Smith, Bradley (b) (6) (b) (6) Haines, Avril
Subject: RE: Bill on Sensitive Military Operations Act
Attachments: Comments on Thornberry Bill (3 June 2013) w Lawyers Group comments.doc

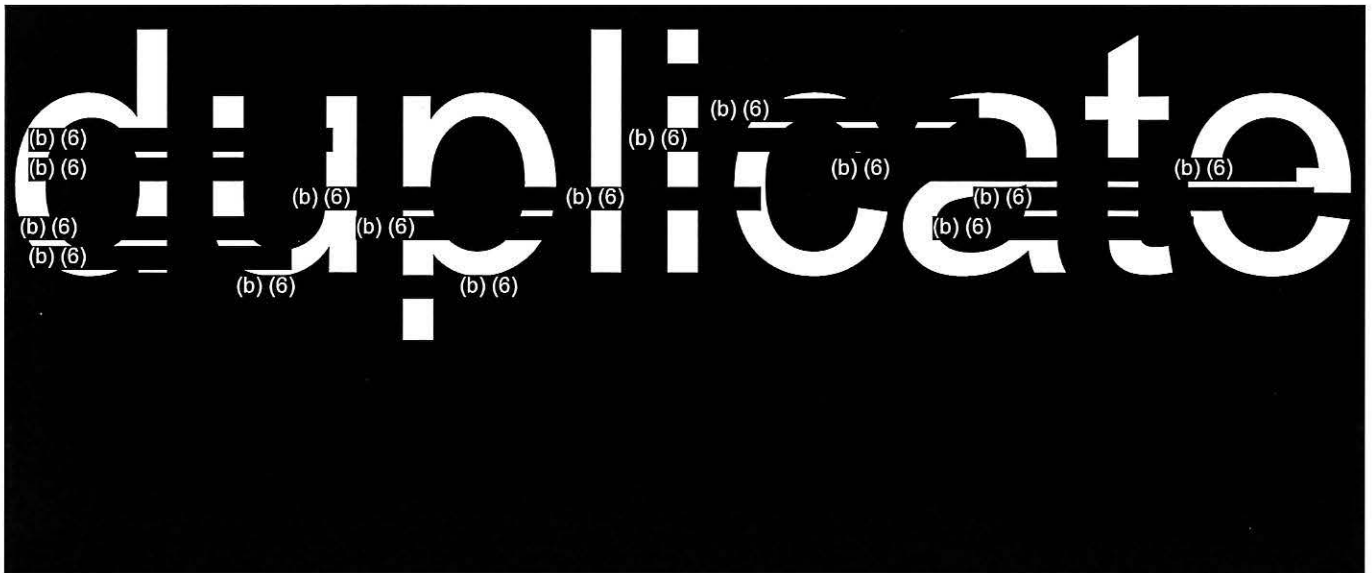
All,

(b) (5)

Thanks again for your help, and if you have any questions please let us know.

Best,

Chris



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(b) (6)

From: Perina, Alexandra H (b) (6)
Sent: Monday, June 03, 2013 2:47 PM
To: Krass, Caroline D. (OLC); Fonzone, Christopher; Taylor, Robert, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC (b) (6) Seitz, Virginia A (OLC); McLeod, Mary; Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) STEPHEW (b) (6) (b) (6) (b) (6) Robert Lit (b) (6), (b) (3) (A) (b) (6) (b) (6) Fabry, Steven F
Cc: Smith, Bradley (b) (6) (b) (6) Haines, Avril
Subject: RE: Bill on Sensitive Military Operations Act
Attachments: Comments on Thornberry Bill (2 June 2013).doc

(b) (5)

Thanks, A.

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Monday, June 03, 2013 2:34 PM
To: Fonzone, Christopher; Taylor, Robert, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC (b) (6) Seitz, Virginia A (OLC); McLeod, Mary; Perina, Alexandra H; Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) (b) (6) Robert (b) (6) Robert Litt (b) (6); (b) (6) (b) (6)
Cc: Smith, Bradle (b) (6) (b) (6) Haines, Avril
Subject: RE: Bill on Sensitive Military Operations Act

Chris – thanks so much for a wonderful gathering last Friday. (b) (5). Best,
Caroline

From: Fonzone, Christopher [mailto: (b) (6)]
Sent: Sunday, June 02, 2013 5:33 PM
To: Taylor, Robert, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC (b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); McLeod, Mary; Alexandra H Perina (b) (6) Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) (b) (6) Robert (b) (6) Robert Litt (b) (6); (b) (6) (b) (6)
Cc: Smith, Bradle (b) (6) (b) (6) Haines, Avril
Subject: RE: Bill on Sensitive Military Operations Act

(b) (5)

(b) (5)

The text "(b) (5)" is followed by three thick black horizontal bars that redact the content of the page. The bars are stacked vertically, with the top bar being the longest and the bottom bar being the shortest.

From: Haines, Avril (b) (6)
Sent: Wednesday, May 29, 2013 2:33 PM
To: Krass, Caroline D. (OLC)
Subject: RE: Bill on Sensitive Military Operations Act

Thank you!

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Wednesday, May 29, 2013 2:33 PM
To: Haines, Avril
Cc: Fonzone, Christopher; Smith, Bradley (b) (6) (b) (6) Seitz, Virginia A (OLC)
Subject: RE: Bill on Sensitive Military Operations Act

Avril –

OL (b) (5)

Best,

Caroline

From: Haines, Avril [mailto: (b) (6)]
Sent: Monday, May 27, 2013 8:04 PM
To: Taylor, Robert, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC (b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); McLeod, Mary; Alexandra H Perina (b) (6) Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) STEPHEW (b) (6) Robert (b) (6) Robert Lit (b) (6), (b) (3) (A) (b) (6) (b) (6)
Cc: Fonzone, Christopher; Smith, Bradley (b) (6) (b) (6)
Subject: Bill on Sensitive Military Operations Act

constraints that it operates under; it clarifies, and proposes improvements to, the procedures for independent oversight; and it sets out the steps the President is now resolved to take in order to close Guantanamo Bay."

"The publication of the procedural guidelines for the use of force in counter-terrorism operations is a significant step towards increased transparency and accountability. It also disposes of a number of myths, including the suggestion that the US is entitled to regard all military-aged males as combatants, and therefore as legitimate targets."

"I will be engaging with senior Administration officials in Washington over the coming days and weeks in an effort to put some flesh on the bones of the announcements made today."

"The President's historic statement today is to be welcomed as a highly significant step towards greater transparency and accountability; and as a declaration that the US war with Al Qaida and its associated forces is coming to an end. The President's principled commitment to ensuring the closure of Guantanamo is an utterly essential step. His acknowledgement that the time has come to tackle not only the manifestations of terrorism but also its social, economic and political causes around the world - to seek long term solutions - signals a shift in rhetoric and a move in policy emphasis towards promoting a strategy of sustainable and ethical counter-terrorism, consistent with Pillar I of the UN Global Counter-Terrorism Strategy."

ENDS

From: Krass, Caroline D. (OLC)
Sent: Friday, May 24, 2013 10:04 AM
To: 'stephew (b) (6)'
Subject: Re: Statement on President Obama's CT Speech

Thanks, Stephen. Very helpful.

From: STEPHEW (b) (6) [mailto:(b) (6)]
Sent: Friday, May 24, 2013 09:18 AM
To: (b) (6) (b) (6)
(b) (6) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6) (b) (6)
robert.li (b) (6), (b) (3) (A) (b) (6) (b) (6) Seitz, Virginia
A (OLC); Krass, Caroline D. (OLC)
Cc: (b) (6) (b) (6)
Subject: FW: Statement on President Obama's CT Speech

I expect others of you may have gotten this. In any event, you may find it of interest. S

From: (b) (6)
Sent: Friday, May 24, 2013 8:55 AM
To: STEPHEW
Subject: Fwd: Statement on President Obama's CT Speech

For information:

Subject: Statement on President Obama's CT Speech

Ben Emmerson, UN Special Rapporteur on Counter-Terrorism and Human Rights welcomed the President's speech, and the publication of policy principles governing counter-terrorism operations, including targeted killings.

"This extremely important speech breaks new ground in a number of key respects. It affirms for the first time this Administration's commitment to seek an end to its armed conflict with Al Qaida as soon as possible; it reminds the world that not every terrorist threat or terrorist attack can be equated with a situation of continuing armed conflict; it sets out more clearly and more authoritatively than ever before the Administration's legal justifications for targeted killing, and the

From: Krass, Caroline D. (OLC)
Sent: Wednesday, May 22, 2013 3:49 PM
To: Haines, Avril; 'Robert, Mr, DoD OGC Taylor (b) (6) (b) (6)'; (b) (6); 'Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6)'; (b) (6); (b) (6), Mr, DoD OGC (b) (6)'; (b) (6); (b) (6) CDR USN JS (US) (b) (6); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); 'McLeod, Mary'; 'Alexandra H Perina (b) (6)'; 'Robert Litt (b) (6)'; (b) (6); (b) (6)'; 'STEPHEW (b) (6)'; 'Robert (b) (6)'
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: NDU Speech -- DO NOT FORWARD
Attachments: 5_22_NDU speech_1pm.OLC.docx

Avril, thanks so much for giving us an opportunity to review this. Please see a few suggestions in the attached from OLC. We have attempted to explain them in comment bubbles.

Best,

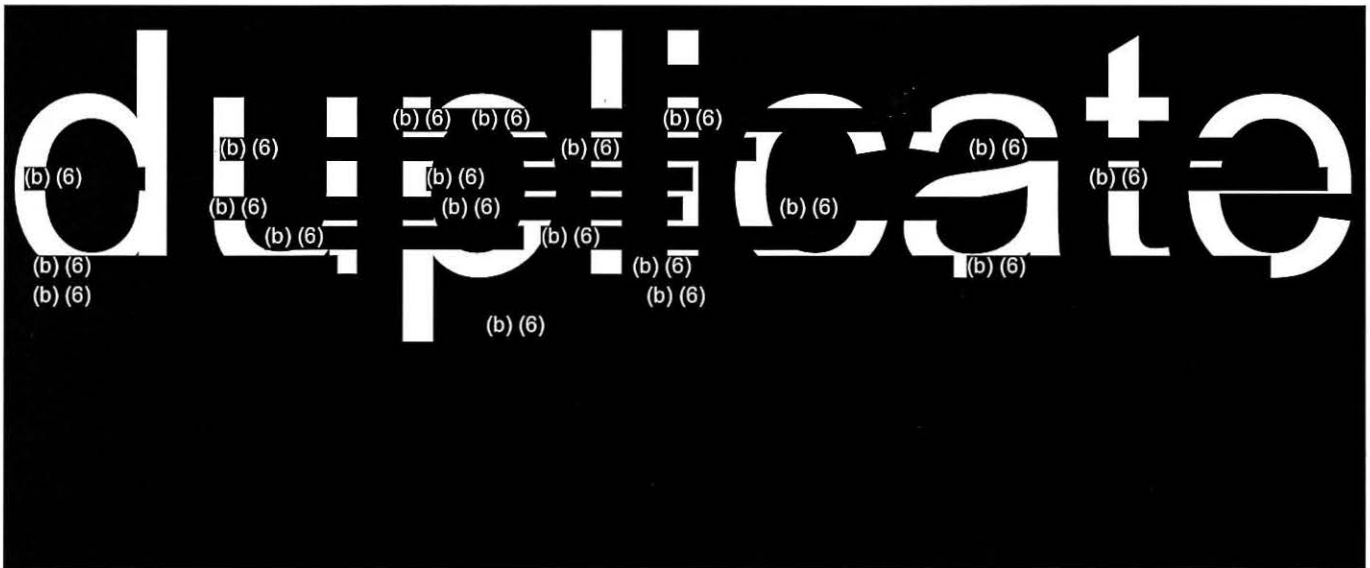
Caroline

From: Haines, Avril [mailto:(b) (6)]
Sent: Wednesday, May 22, 2013 1:08 PM
To: 'Robert, Mr, DoD OGC Taylor (b) (6) (b) (6)'; (b) (6); 'Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6)'; (b) (6); Mr, DoD OGC' (b) (6)'; (b) (6); (b) (6) CDR USN JS (US) (b) (6); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); 'McLeod, Mary'; 'Alexandra H Perina (b) (6)'; 'Robert Lit (b) (6), (b) (3) (A)'; (b) (6); (b) (6)'; 'STEPHEW (b) (6)'; 'Robert (b) (6)'
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: NDU Speech -- DO NOT FORWARD

(b) (5)

From: Fonzone, Christopher (b) (6)
Sent: Thursday, May 16, 2013 11:54 PM
To: Robert, Mr, DoD OGC Taylor (b) (6) (b) (6) (b) (6) Gross,
Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6)
(b) (6) CDR USN JS (US) (b) (6) (b) (6) COL USAF JS
DOM (US) (b) (6) McLeod, Mary; Alexandra H Perina
(b) (6) Fabry, Steven F (b) (6) STEPHEW (b) (6)
Robert (b) (6) Robert Lit (b) (6), (b) (3) (A) (b) (6)
(b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky,
Daniel L (OLC); Anderson, Trisha (ODAG)
Cc: Smith, Bradley (b) (6) Haines, Avril
Subject: RE: PPG Rollout -- email on JWICS

(b) (5)



(b) (6) (b) (6)

(b) (6) (b) (6) [SIPR]

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

From: Krass, Caroline D. (OLC)
Sent: Monday, May 13, 2013 12:27 PM
To: Anderson, Trisha (ODAG)
Subject: FW: SASC Joint Statement -- latest draft
Attachments: Draft_SASC statement (5 10 13 1451) (olc).docx

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 5/13/2013 1:50 PM

Trisha, attached is what we sent back. My understanding is that the testimony is also under review in the Department through the OMB process. Caroline

-----Original Message-----

From: Krass, Caroline D. (OLC)
Sent: Monday, May 13, 2013 12:26 PM
To: 'Taylor, Robert, Mr, DoD OGC'; (b) (6); (b) (6) 'McLeod, Mary'; Seitz, Virginia A (OLC); 'Stephew (b) (6)
Cc: (b) (6) DoD OGC; Allen, Charles, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC; Fonzone, Christopher (b) (6)
Subject: RE: SASC Joint Statement -- latest draft

Thanks very much, Bob. This is well done. We have a few suggestions -- please let me know if you have any questions.

Best,

Caroline

-----Original Message-----

From: Taylor, Robert, Mr, DoD OGC [mailto:(b) (6) (b) (6)]
Sent: Friday, May 10, 2013 2:59 PM
To: (b) (6); (b) (6) 'McLeod, Mary'; Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); 'Stephew (b) (6)
Cc: Fonzone, Christopher (OLC) (b) (6) DoD OGC; Allen, Charles, Mr, DoD OGC; Starzak, Alissa, Ms, DoD GC
Subject: SASC Joint Statement -- latest draft

Avril, Mary, Virginia, Caroline, and Stephen -- attached is draft testimony for the SASC hearing scheduled for this coming Thursday, at 9:30 am.

Thanks very much.

Bob

Robert S. Taylor
Acting General Counsel

(b) (6) 8

From: Haines, Avril (b) (6)
Sent: Friday, May 10, 2013 9:30 PM
To: 'Robert, Mr, DoD OGC Taylor (b) (6) (b) (6) (b) (6)'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6)'; 'CDR USN JS (US) (b) (6) (b) (6)'; 'COL USAF JS DOM (US) (b) (6)'; 'McLeod, Mary'; 'Alexandra H Perina (b) (6)'; 'Fabry, Steven F (b) (6)'; 'STEPHEW (b) (6)'; 'Robert (b) (6)'; 'Robert Lit (b) (6), (b) (3) (A) (b) (6)'; '(b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG)
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: PPG Rollout -- email on JWICS

(b) (5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

From: Haines, Avril
Sent: Friday, May 10, 2013 3:04 AM
To: Robert, Mr, DoD OGC Taylor (b) (6) (b) (6) (b) (6) Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) McLeod, Mary; Alexandra H Perina (b) (6) Fabry, Steven F (b) (6) STEPHEW (b) (6); Robert (b) (6) Robert Litt (b) (6), (b) (3) (A) (b) (6) Seitz, Virginia A (OLC) (b) (6) Caroline D. (SMO) 'Krass (b) (6) (b) (6) (b) (6) Anderson, Trisha (ODAG) (b) (6)
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: PPG Rollout -- email on JWICS

(b) (5)
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[Redacted]
[Redacted]

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From: Koffsky, Daniel L (OLC)
Sent: Monday, April 29, 2013 2:27 PM
To: Anderson, Trisha (ODAG); Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Subject: RE: PPG package for final Lawyers Group review

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 4/29/2013 2:34 PM
	Krass, Caroline D. (OLC)	Read: 4/29/2013 2:40 PM
	Seitz, Virginia A (OLC)	Read: 4/29/2013 2:29 PM

I'm here, though leaving in a few minutes for an intra-office gathering.

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From: (b) (6) (b) (6)
Sent: Friday, April 26, 2013 7:49 PM
To: (b) (6) (b) (6) (b) (6) 'Gross, Richard Clayton (Rich) BG USARMY JS (US)'; (b) (6) COL USAF JS DOM (US)'; 'robert.li (b) (6), (b) (3) (A) ((b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); 'Perina, Alexandra H'; 'McLeod, Mary'; (b) (6) 'STEPHEW (b) (6)'; 'Allen, Charles A SES (US)'; (b) (6) CIV (US)'; (b) (6) CDR USN JS (US)'; (b) (6) 'Fabry, Steven F'; (b) (6)
Cc: Haines, Avril; Fonzone, Christopher; Smith, Bradley
Subject: PPG package for final Lawyers Group review

Hello all,

(b) (5)
[Redacted]

(b) (6)
Deputy Legal Adviser
National Security Staff
(b) (6)

From: Haines, Avril (b) (6)
Sent: Tuesday, April 23, 2013 6:31 PM
To: 'Robert, Mr, DoD OGC Taylor (b) (6) (b) (6) (b) (6) (b) (6)'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) (b) (6) CDR USN JS (US) (b) (6) (b) (6)'; 'McLeod, Mary'; 'Alexandra H Perina (b) (6) (b) (6)'; 'Robert Lit (b) (6), (b) (3) (A) (b) (6) (b) (6) (b) (6)'; 'STEPHEW (b) (6)'; 'Robert (b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Richardson, Margaret (OAG); O'Neil, David (ODAG); Delery, Stuart F. (CIV) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6)'
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: Letter with disclosure

(b) (5)



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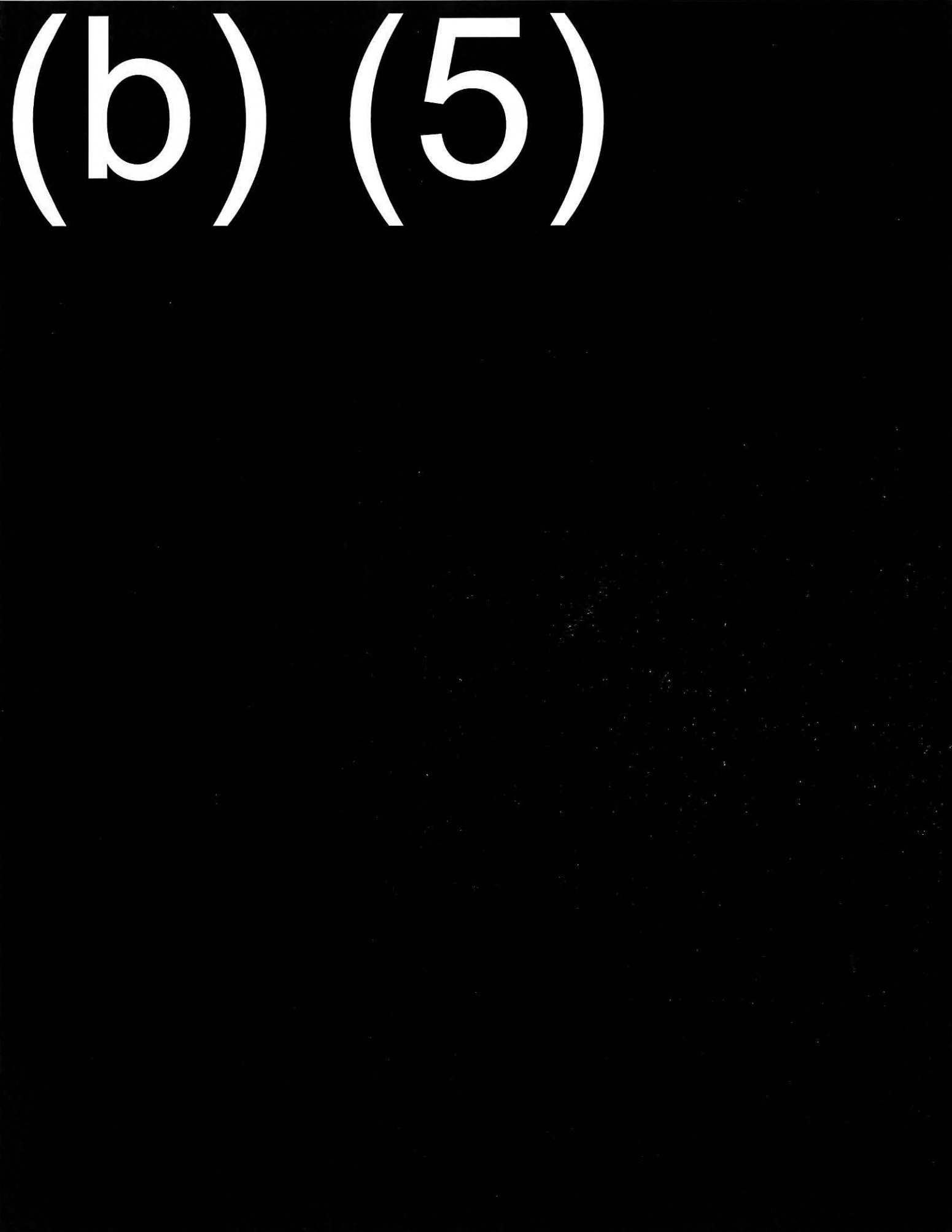
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From: Krass, Caroline D. (OLC)
Sent: Tuesday, April 23, 2013 10:40 AM
To: Anderson, Trisha (ODAG)
Subject: FW: DOD Draft Law of War Manual

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 4/23/2013 12:17 PM

Here are the prior DOJ comments. Dave asked OLC to put them together last time because of a lack of resources in ODAG. I think the other components will need 2-3 weeks to put their comments together. I told Chuck a few weeks ago that we were unlikely to meet his deadline.

From: Krass, Caroline D. (SMO)
Sent: Monday, May 23, 2011 2:13 PM
To: Haines, Avril
Cc: 'Allen, Charles, Mr, DoD OGC'; 'DeRosa, Mary B.'; 'Johnson, Jeh Charles, Hon, DoD OGC'
Subject: DOD Draft Law of War Manual

Avril –

With many apologies for the delay, please find attached the preliminary comments from the Department of Justice on DOD's draft Law of War Manual. Please let us know when you receive comments from other agencies – we'd be interested in seeing their views as well.

Thank you –

Caroline



DoD Law of War
Manual – DOJ p...

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From: Krass, Caroline D. (OLC)
Sent: Wednesday, April 17, 2013 9:29 AM
To: Anderson, Trisha (ODAG)
Subject: RE: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Thanks, Trisha.

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(b) (6)

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From: Krass, Caroline D. (OLC)
Sent: Tuesday, April 16, 2013 8:40 PM
To: Anderson, Trisha (ODAG); Thompson, Karl (OAG); Seitz, Virginia A (OLC)
Subject: Re: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Additional language in all caps below.

(b) (5)



From: Krass, Caroline D. (OLC)
Sent: Tuesday, April 16, 2013 08:33 PM
To: Anderson, Trisha (ODAG); Thompson, Karl (OAG); Seitz, Virginia A (OLC)
Subject: Re: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Sorry - I am at a place where I only have my bberry:

(b) (5)







From: Anderson, Trisha (ODAG)
Sent: Tuesday, April 16, 2013 08:20 PM
To: Krass, Caroline D. (OLC); Thompson, Karl (OAG); Seitz, Virginia A (OLC)
Subject: RE: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

(b) (5)



Do you have a suggestion for how we might otherwise respond to that Q? Thanks!



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(b) (6)

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duplicate

From: Anderson, Trisha (ODAG)
Sent: Tuesday, April 16, 2013 8:31 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Thompson, Karl (OAG)
Subject: RE: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Ok; I'll recast the question. Thanks!

From: Seitz, Virginia A (OLC)
Sent: Tuesday, April 16, 2013 8:19 PM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Subject: Re: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Trisha, this looks good to me as well (b) (5)

From: Krass, Caroline D. (OLC)
Sent: Tuesday, April 16, 2013 08:14 PM
To: Anderson, Trisha (ODAG); Thompson, Karl (OAG); Seitz, Virginia A (OLC)
Subject: Re: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

These edits look good to me. Only one suggestion (b) (5)

From: Anderson, Trisha (ODAG)
Sent: Tuesday, April 16, 2013 07:58 PM
To: Thompson, Karl (OAG); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: FW: Drones and OLC Opinions Paper -- ODAG & OAG - PLEASE PROVIDE CONCURRENCE

Attached is a proposed revised version of the AG's talking points on OLC opinions/drones. (b) (5)

Please feel free to make any additional changes.

<<AG TPs re OLC Opinions Draft 041613.docx>>

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From: Krass, Caroline D. (OLC)
Sent: Monday, April 15, 2013 10:40 AM
To: Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Seitz, Virginia A (OLC); Thompson, Karl (OAG)
Cc: Werner, Sharon (OAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

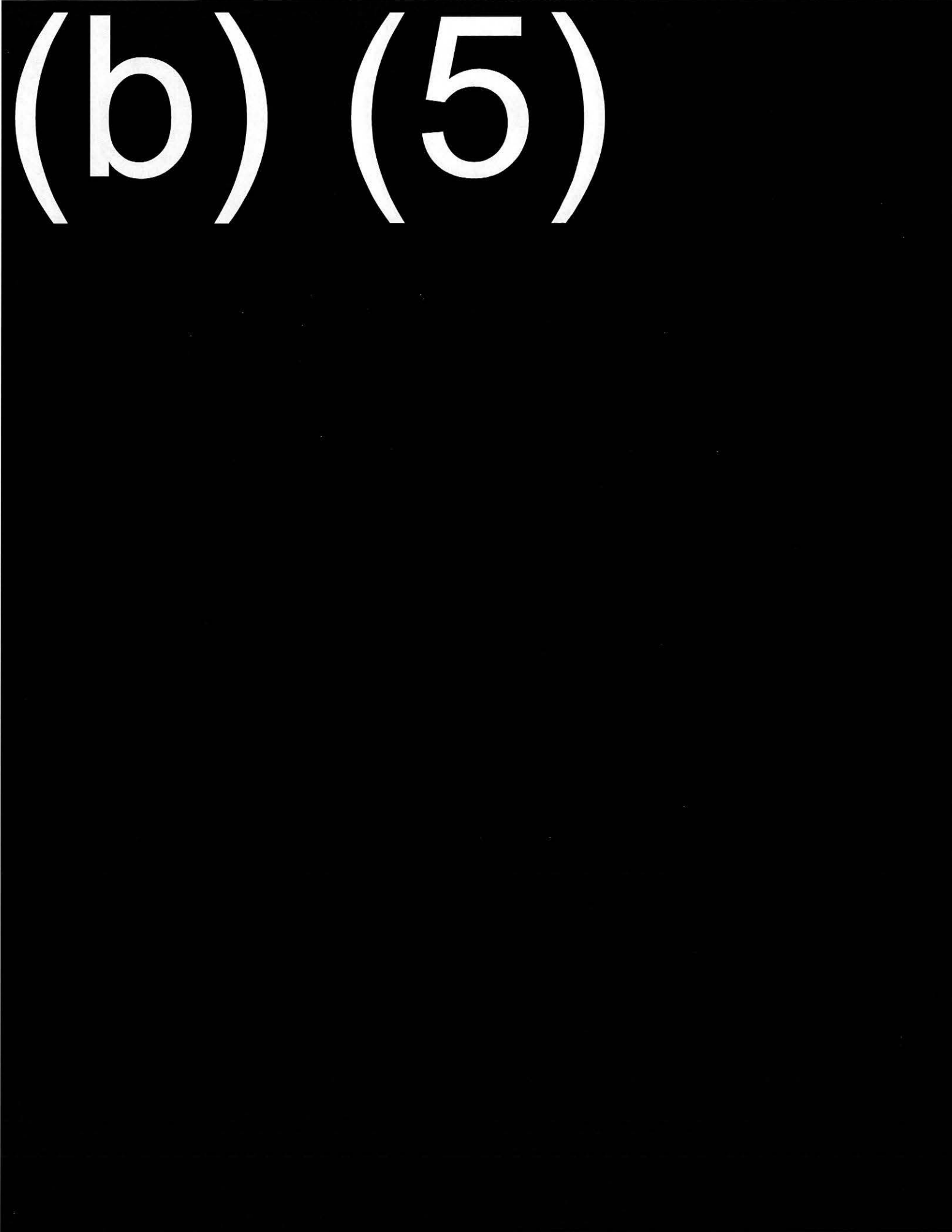
Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 4/15/2013 10:45 AM
	Agrast, Mark D. (OLA)	
	Seitz, Virginia A (OLC)	Read: 4/15/2013 10:41 AM
	Thompson, Karl (OAG)	Read: 4/15/2013 10:41 AM
	Werner, Sharon (OAG)	Read: 4/15/2013 11:10 AM

(b) (5)

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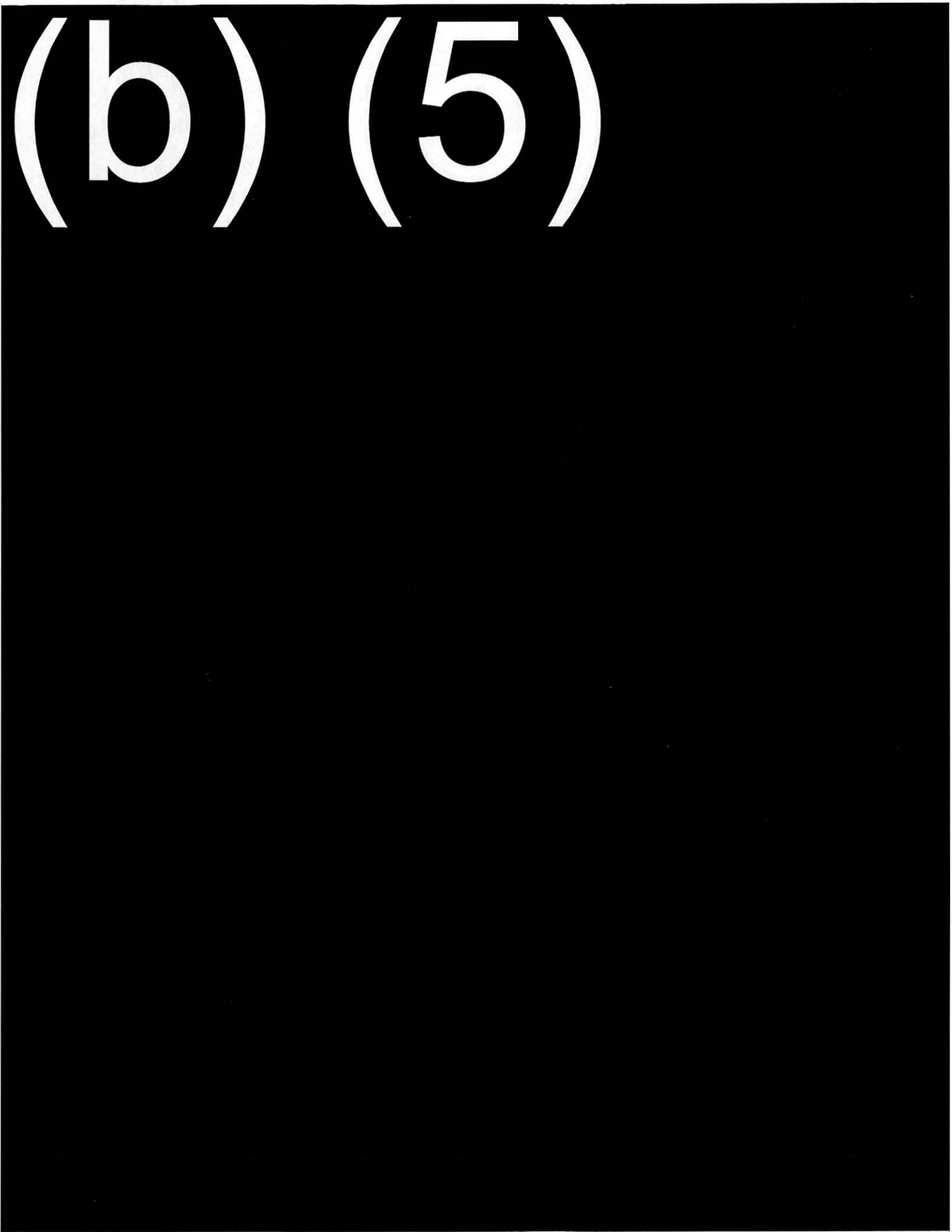
(b) (5)

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duplicate

(b) (6)

duplicate

From: Krass, Caroline D. (OLC)
Sent: Monday, April 15, 2013 10:39 AM
To: Killian, Matthew (JMD); Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Lira, Katherine (JMD); Seitz, Virginia A (OLC); Thompson, Karl (OAG)
Cc: Lynch, LaFondra N (JMD); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Werner, Sharon (OAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

Tracking:	Recipient	Read
	Killian, Matthew (JMD)	Read: 4/15/2013 10:44 AM
	Anderson, Trisha (ODAG)	Read: 4/15/2013 10:45 AM
	Agrast, Mark D. (OLA)	Read: 4/15/2013 12:21 PM
	Lira, Katherine (JMD)	Read: 4/15/2013 10:50 AM
	Seitz, Virginia A (OLC)	Read: 4/15/2013 10:49 AM
	Thompson, Karl (OAG)	Read: 4/15/2013 11:03 AM
	Lynch, LaFondra N (JMD)	
	Burrows, Charlotte (ODAG)	Read: 4/15/2013 10:43 AM
	Columbus, Eric (ODAG)	Read: 4/15/2013 10:55 AM
	Werner, Sharon (OAG)	Read: 4/15/2013 11:11 AM



Also please see attached with new language highlighted in yellow.

From: Killian, Matthew (JMD)
Sent: Monday, April 15, 2013 10:11 AM
To: Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Lira, Katherine (JMD); Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Cc: Lynch, LaFondra N (JMD); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Werner, Sharon (OAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

I will update this quickly so the AGs book + the 4 briefers will have the most up to date we can provide for this morning.

duplicate

<< File: 21 - Drones.docx >> << File: 72- OLC Opinions.docx >> << File: 72a- OLC Transparency Attachment - Feinstein Letter to President on 2-12-2013.pdf >> << File: 72b- OLC Transparency Attachment - Leahy-Grassley Letter to President 02-07-2013.pdf >>

Please let me know if you have any questions.

Thanks,

Matt Killian
Justice Management Division
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Phone (b) (6)

Email (b) (6)

From: Lira, Katherine (JMD)
Sent: Monday, April 15, 2013 9:17 AM
To: Anderson, Trisha (ODAG); Killian, Matthew (JMD); Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Cc: Lynch, LaFondra N (JMD); Agrast, Mark D. (OLA); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Werner, Sharon (OAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions
Importance: High

All,

OAG edited the same version edited by ODAG, which was provided to OAG on 3/29 (ODAG edits were due on 3/28). It appears OAG did not use the version ODAG sent on 4/3 (last update to ODAG's edited paper) and JMD had the version approved by OAG.

Because OAG's edits were editorial vs substantive and ODAG corrected inaccuracies and made updates based on recent developments we will use ODAG's version and swap that into the AG's binder. I'm cc'ing Sharon Werner so she can see the ODAG version as compared to the OAG approved version.

<< File: AG TPs re OLC Opinions Draft 040313 (edited).docx >> << File: 2013 Apropos Hearing -- OLC Opinions - OAG edits sent 4-8-13.docx >>

From: Anderson, Trisha (ODAG)
Sent: Friday, April 12, 2013 5:54 PM
To: Killian, Matthew (JMD); Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Cc: Lira, Katherine (JMD); Lynch, LaFondra N (JMD); Agrast, Mark D. (OLA); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions
Importance: High

I'm not sure what has happened with these papers; none of the changes that I made (in consultation with OLC and OLA) **(b) (5)**. Attached is the version that I forwarded to be passed to OAG and should form the basis of these papers.

<< File: AG TPs re OLC Opinions Draft 040313 (edited).docx >>


From: Killian, Matthew (JMD)
Sent: Friday, April 12, 2013 5:08 PM
To: Anderson, Trisha (ODAG); Krass, Caroline D. (OLC); Seitz, Virginia A (OLC)
Cc: Lira, Katherine (JMD); Lynch, LaFondra N (JMD)
Subject: AG Hearing Prep - Drones and OLC Opinions

Trisha, Caroline, and Virginia,

Please find attached an electronic copy of the Drones and OLC Opinions paper for the AG's briefings on Monday.

From: Krass, Caroline D. (OLC)
Sent: Monday, April 15, 2013 9:27 AM
To: Anderson, Trisha (ODAG); Lira, Katherine (JMD)
Cc: Killian, Matthew (JMD)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 4/15/2013 9:28 AM
	Lira, Katherine (JMD)	Read: 4/15/2013 9:31 AM
	Killian, Matthew (JMD)	Read: 4/15/2013 9:29 AM


AG TPs re OLC
Opinions Draft 0...

(b) (5)

From: Anderson, Trisha (ODAG)
Sent: Monday, April 15, 2013 9:25 AM
To: Lira, Katherine (JMD); Krass, Caroline D. (OLC)
Cc: Killian, Matthew (JMD)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

It's the file titled "AG TPs re OLC Opinions Draft 040313." (b) (5)

From: Lira, Katherine (JMD)
Sent: Monday, April 15, 2013 9:23 AM
To: Krass, Caroline D. (OLC)
Cc: Anderson, Trisha (ODAG); Killian, Matthew (JMD)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

ODAG's versio (b) (5)

From: Krass, Caroline D. (OLC)
Sent: Monday, April 15, 2013 9:21 AM
To: Lira, Katherine (JMD)
Cc: Anderson, Trisha (ODAG)
Subject: RE: AG Hearing Prep - Drones and OLC Opinions

On which version should we be suggesting edits? (b) (5)

From: Cole, James (ODAG)
Sent: Sunday, April 07, 2013 2:33 PM
To: Krass, Caroline D. (OLC)
Cc: Seitz, Virginia A (OLC)
Subject: Re: Classified Close-Hold Documents

Thanks, Caroline. Hope you get out as well.

Jim

On Apr 7, 2013, at 1:47 PM, "Krass, Caroline D. (OLC)" (b) (6) wrote:

Jim –

(b) (5) [Redacted]

[Redacted]

I hope you are enjoying this lovely day.

Best,

Caroline

From: Agrast, Mark D. (OLA)
Sent: Tuesday, April 02, 2013 6:30 PM
To: Bies, John (OLC); Anderson, Trisha (ODAG)
Subject: RE: AG talking points

A couple of comments/questions on the attached.



AG TPs re OLC
Opinions Draft 0...

From: Bies, John (OLC)
Sent: Tuesday, April 02, 2013 2:41 PM
To: Anderson, Trisha (ODAG); Agrast, Mark D. (OLA)
Subject: RE: AG talking points

(b) (5)

[REDACTED], but otherwise this version looks fine to me (b) (5) [REDACTED]).

(My apologies, for some reason the edits appear in the same color as Trisha's.)

<< File: AG TPs re OLC Opinions Draft 040213 (edits).docx >>

From: Anderson, Trisha (ODAG)
Sent: Tuesday, April 02, 2013 1:34 PM
To: Bies, John (OLC); Agrast, Mark D. (OLA)
Subject: AG talking points

John and Mark,

I've tried to update and modify the AG's talking points on OLC opinion-related issues for use if necessary at the upcoming Appropriations subcommittee hearings. Would you mind taking a quick look at the revisions and letting me know your thoughts? Thanks very much.

Trisha

<< File: OLC Opinions.docx >>

Cc: Seitz, Virginia A (OLC) (b) (6)
Subject: Re: CT Document

(b) (5)

From: Haines, Avril [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 10:46 AM
To: Krass, Caroline D. (OLC)
Cc: Seitz, Virginia A (OLC)
Subject: Re: CT Document

(b) (5)

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 10:42 AM
To: Haines, Avril
Cc: Seitz, Virginia A (OLC) (b) (6)
Subject: Re: CT Document

Hi (b) (5) ?

From: Haines, Avril [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 12:30 AM
To: Davidson, Eliana, Ms, DoD OGC (b) (6) (b) (6) Robert, Mr, DoD OGC Taylor (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) Mr, DoD OGC (b) (6) (b) (6) (b) (6) Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) (b) (6) COL USAF JS DOM (US) (b) (6) (b) (6) CDR USN JS (US) (b) (6) (b) (6) Robert Litt (b) (6), (b) (3) (A) (b) (6) (b) (6) Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Alexandra H Perina (b) (6) (b) (6) Flint, Lara M (b) (6) (b) (6) McLeod, Mary (b) (6) Robert (b) (6) (b) (6) ucia.gov>; STEPHEW (b) (6) (b) (6)
Cc: (b) (6) (b) (6) Fonzone, Christopher (b) (6)
Subject: CT Document

(b) (5)

From: Haines, Avril (b) (6)
Sent: Sunday, March 17, 2013 10:24 PM
To: Seitz, Virginia A (OLC)
Subject: Re: CT Document

Bless you - I don't know why these things have to happen on the weekend.

From: Seitz, Virginia A (OLC) [mailto: (b) (6)]
Sent: Sunday, March 17, 2013 10:18 PM
To: Haines, Avril
Subject: Re: CT Document

My earlier email didn't go thru (b) (5)
More tomorrow. Va

From: Haines, Avril [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 02:20 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Cc: Fonzone, Christopher (b) (6)
Subject: RE: CT Document

(b) (5)
[Redacted]

From: Seitz, Virginia A (OLC) [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 1:32 PM
To: Haines, Avril; Krass, Caroline D. (OLC)
Subject: Re: CT Document

(b) (5)
[Redacted]

From: Haines, Avril [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 11:32 AM
To: Krass, Caroline D. (OLC)
Cc: Seitz, Virginia A (OLC)
Subject: Re: CT Document

(b) (5)
[Redacted]

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Saturday, March 16, 2013 11:22 AM
To: Haines, Avril

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Krass, Caroline D. (OLC)
Sent: Monday, March 11, 2013 11:30 PM
To: Anderson, Trisha (ODAG)
Subject: Fw: THanks very much for looking at this
Attachments: 2013 03 10 TPs Re Drone Strikes az4.docx

FYI

From: Krass, Caroline D. (OLC)
Sent: Monday, March 11, 2013 10:13 PM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC)
Subject: RE: THanks very much for looking at this

Attached is what I sent back after talking to Dan.

From: Krass, Caroline D. (OLC)
Sent: Monday, March 11, 2013 7:01 PM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC)
Subject: FW: THanks very much for looking at this

I have just one edit on the attached. Do you have others? I think they would appreciate a quick review. Thanks.

From: Zebley, Aaron M. (FBI)
Sent: Monday, March 11, 2013 6:40 PM
To: Krass, Caroline D. (OLC)
Cc: Weissmann, Andrew (FBI)
Subject: THanks very much for looking at this

Privilege Statement:

This message is transmitted to you by the Director's Office of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by callin (b) (6)

From: Krass, Caroline D. (OLC)
Sent: Monday, March 11, 2013 10:13 PM
To: Zebley, Aaron M. (FBI)
Cc: Weissmann, Andrew (FBI)
Subject: RE: THanks very much for looking at this
Attachments: 2013 03 10 TPs Re Drone Strikes az4.docx

Tracking:	Recipient	Read
	Zebley, Aaron M. (FBI)	Read: 3/11/2013 10:14 PM
	Weissmann, Andrew (FBI)	

Aaron, you have done a great job on these. Please see just a few comments.

Best,

Caroline

From: Zebley, Aaron M. (FBI)
Sent: Monday, March 11, 2013 6:40 PM
To: Krass, Caroline D. (OLC)
Cc: Weissmann, Andrew (FBI)
Subject: THanks very much for looking at this

Privilege Statement:

This message is transmitted to you by the Director's Office of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by callin (b) (6) .

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(b) (6)

From: Krass, Caroline D. (OLC)
Sent: Thursday, March 07, 2013 10:59 AM
To: 'Haines, Avril'; O'Neil, David (ODAG); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG)
Cc: Fonzone, Christopher; Smith, Bradley
Subject: RE: For press Q & A today -- URGENT

Avril – just two point (b) (5)

[Redacted]

[Redacted]

Caroline and Virginia

(b) (6)
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(b) (5)

(b) (5)

From: O'Neil, David (ODAG) [mailto: (b) (6)]
Sent: Thursday, March 07, 2013 9:54 AM
To: Haines, Avril; Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG)
Subject: Re: For press Q & A today -- URGENT

+Denise and Margaret

(b) (6)

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(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Krass, Caroline D. (OLC) [mailto:(b) (6)]
Sent: Thursday, March 07, 2013 10:10 AM
To: Haines, Avril; O'Neil, David (ODAG); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG)
Subject: RE: For press Q & A today -- URGENT

From OLC's perspective (b) (5) [Redacted]

From: Haines, Avril [mailto:(b) (6)]
Sent: Thursday, March 07, 2013 10:05 AM
To: O'Neil, David (ODAG); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG)
Subject: RE: For press Q & A today -- URGENT

(b) (5) [Redacted]

[Redacted]

[Redacted]

From: Anderson, Trisha (ODAG)
Sent: Thursday, March 07, 2013 10:56 AM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Cheung, Denise (OAG); Richardson, Margaret (OAG); O'Neil, David (ODAG)
Subject: RE: For press Q & A today -- URGENT

I don't have any concerns with sending either of these points.

From: Seitz, Virginia A (OLC)
Sent: Thursday, March 07, 2013 10:53 AM
To: Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG); O'Neil, David (ODAG)
Subject: RE: For press Q & A today -- URGENT

(b) (5)

[REDACTED]

From: Krass, Caroline D. (OLC)
Sent: Thursday, March 07, 2013 10:45 AM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG); O'Neil, David (ODAG)
Subject: FW: For press Q & A today -- URGENT

Any objection to my sending the following:

(b) (5)

[REDACTED]

From: Haines, Avril [mailto: (b) (6)]
Sent: Thursday, March 07, 2013 10:27 AM
To: Krass, Caroline D. (OLC); O'Neil, David (ODAG); Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG); Cheung, Denise (OAG); Richardson, Margaret (OAG)
Cc: Fonzone, Christopher; Smith, Bradley
Subject: RE: For press Q & A today -- URGENT

(b) (5)

[REDACTED]

From: Haines, Avril (b) (6)
Sent: Thursday, March 07, 2013 9:55 AM
To: O'Neil, David (ODAG); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); Anderson, Trisha (ODAG)
Cc: Fonzone, Christopher; Smith, Bradley
Subject: RE: For press Q & A today -- URGENT

(b) (5) [Redacted]

[Redacted]

From: Haines, Avril
Sent: Thursday, March 07, 2013 9:42 AM
To: O'Neil, David (ODAG); Seitz, Virginia A (OLC) (b) (6) Caroline D. (SMO)' Krass
(b) (6) (b) (6) (b) (6) Anderson, Trisha (ODAG)
(b) (6)
Subject: For press Q & A today -- URGENT

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

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(b) (5)

(b) (5)

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(b) (5)

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(b) (5)

(b) (5)

From: Krass, Caroline D. (OLC)
Sent: Tuesday, March 05, 2013 4:07 PM
To: Agrast, Mark D. (OLA); Appelbaum, Judy (OLA); Schmalder, Tracy (OPA); Anderson, Trisha (ODAG)
Cc: Seitz, Virginia A (OLC); O'Neil, David (ODAG)
Subject: (b) (5) Feedback on AG Talking Points

Tracking:	Recipient	Read
	Agrast, Mark D. (OLA)	Read: 3/5/2013 4:17 PM
	Appelbaum, Judy (OLA)	Read: 3/5/2013 4:09 PM
	Schmalder, Tracy (OPA)	
	Anderson, Trisha (ODAG)	Read: 3/5/2013 4:09 PM
	Seitz, Virginia A (OLC)	Read: 3/5/2013 4:13 PM
	O'Neil, David (ODAG)	Read: 3/5/2013 4:40 PM

(b) (5)



From: Fonzone, Christopher (b) (6)
Sent: Tuesday, March 05, 2013 3:41 PM
To: Krass, Caroline D. (OLC)
Cc: Haines, Avril; Siskel, Edward
Subject: RE: AG Talking Points
Attachments: 2 - OLC Opinions revised -- 3-6-13 Hearing (clean) whco and nss.docx

Caroline –

(b) (5)

Please let me know if there is anything else you need, and thanks again for all of your help on this.

Best,

Chris

From: Krass, Caroline D. (OLC) [mailto:(b) (6)]
Sent: Tuesday, March 05, 2013 10:29 AM
To: Fonzone, Christopher
Subject: AG Talking Points

Chris, as I mentioned, attached are the talking points that have been prepared for the AG's hearing tomorrow. Please let me know if you have any concerns (b) (5).

Thanks –

Caroline

(b) (5)

Draft of AG's coming up.

----- Original Message -----

From: Anderson, Trisha (ODAG)

Sent: Sunday, March 03, 2013 09:23 PM

To: Seitz, Virginia A (OLC); O'Neil, David (ODAG); Krass, Caroline D. (OLC); Thompson, Karl (OAG)

Cc: Richardson, Margaret (OAG)

Subject: Re:

I agree (b) (5)

----- Original Message -----

From: Seitz, Virginia A (OLC)

Sent: Sunday, March 03, 2013 09:15 PM

To: O'Neil, David (ODAG); Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)

Cc: Richardson, Margaret (OAG)

Subject: Re:

(b) (5)

Thanks, Va

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From: Krass, Caroline D. (OLC)
Sent: Monday, March 04, 2013 10:59 AM
To: O'Neil, David (ODAG); Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject: RE:
Attachments: AG Letter to Rand Paul.doc

Tracking:	Recipient	Read
	O'Neil, David (ODAG)	Read: 3/4/2013 11:02 AM
	Anderson, Trisha (ODAG)	Read: 3/4/2013 11:10 AM
	Seitz, Virginia A (OLC)	Read: 3/4/2013 12:03 PM
	Thompson, Karl (OAG)	Read: 3/4/2013 11:01 AM
	Richardson, Margaret (OAG)	Read: 3/4/2013 11:04 AM

Attached is a revised version of the letter. Trisha is double-checkin (b) (5) with NSD.

-----Original Message-----

From: O'Neil, David (ODAG)
Sent: Monday, March 04, 2013 10:51 AM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject: RE:

And I just spoke to Nick Shapiro, who said that the goal is to get the two letters up together by 4 or NLT 5 pm today. I told him I thought we'd have an internally cleared version to share with them by noon or so, and when they get it they will then send us Brennan's draft.

-----Original Message-----

From: Krass, Caroline D. (OLC)
Sent: Monday, March 04, 2013 10:31 AM
To: O'Neil, David (ODAG); Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject: RE:

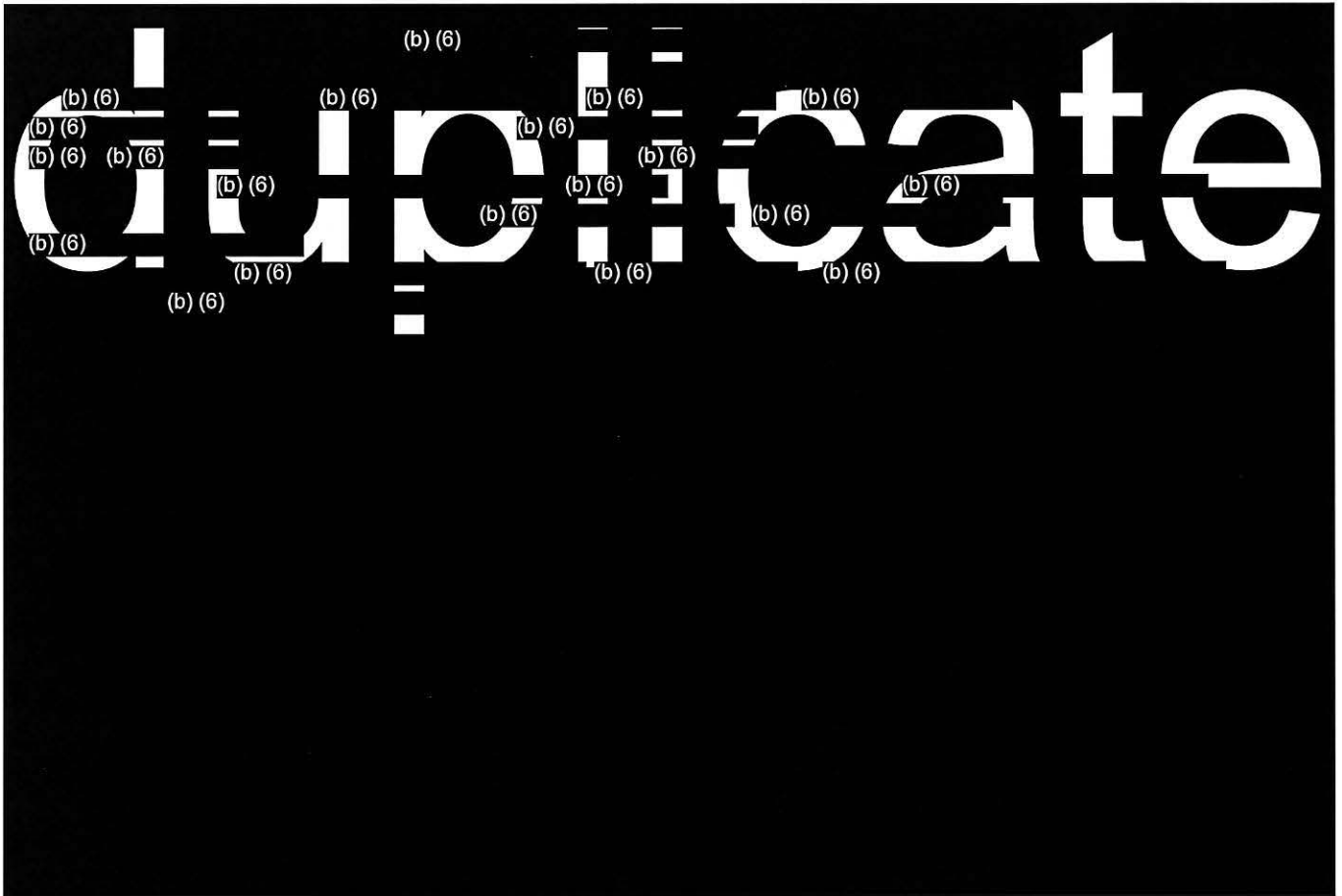
I just talked to Chris. They are still tweaking (in what he said was a non-substantive way) the letter from JOB to Rand Paul and he thinks they may want to send up both letters together later today.

-----Original Message-----

From: O'Neil, David (ODAG)
Sent: Sunday, March 03, 2013 10:42 PM
To: Anderson, Trisha (ODAG); Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject: Re:

Cc: Anderson, Trisha (ODAG)
Subject: Fw: Brennan Open Hearing QFRs

Fyi - deadline is noon tomorrow.



From: Krass, Caroline D. (OLC)
Sent: Monday, March 04, 2013 10:57 AM
To: Anderson, Trisha (ODAG); Seitz, Virginia A (OLC)
Subject: RE: Brennan Open Hearing QFRs

Tracking:	Recipient	Read
	Anderson, Trisha (ODAG)	Read: 3/4/2013 11:10 AM
	Seitz, Virginia A (OLC)	Read: 3/4/2013 12:02 PM

Will do, thanks.

From: Anderson, Trisha (ODAG)
Sent: Monday, March 04, 2013 10:55 AM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: FW: Brennan Open Hearing QFRs

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

From: Krass, Caroline D. (OLC)
Sent: Tuesday, February 19, 2013 6:31 PM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Hostetler, Kelley Brooke (OLC); Monaco, Lisa (NSD); Carlin, John (NSD) (b) (6) (NSD); Cheung, Denise (OAG); Thompson, Karl (OAG)
Cc: Anderson, Trisha (ODAG)
Subject: RE: Brennan Open Hearing QFRs

For your records, attached is the final version of these QFRs.

From: Krass, Caroline D. (OLC)
Sent: Monday, February 11, 2013 11:00 AM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Hostetler, Kelley Brooke (OLC); Monaco, Lisa (NSD); Carlin, John (NSD) (b) (6) (NSD); Cheung, Denise (OAG); Thompson, Karl (OAG)
Cc: Anderson, Trisha (ODAG)
Subject: RE: Brennan Open Hearing QFRs

Attached are some suggestions from OLC. Trisha, will you be compiling the comments from others? (b) (5) [REDACTED] I'll be in a meeting until about noon.

From: Krass, Caroline D. (OLC)
Sent: Sunday, February 10, 2013 7:37 PM
To: Seitz, Virginia A (OLC); Koffsky, Daniel L (OLC); Hostetler, Kelley Brooke (OLC); Monaco, Lisa (NSD); Carlin, John (NSD) (b) (6) (NSD); Cheung, Denise (OAG); Thompson, Karl (OAG)

From: Krass, Caroline D. (OLC)
Sent: Sunday, March 03, 2013 8:42 PM
To: O'Neil, David (ODAG); Seitz, Virginia A (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject: Re:

(b) (5) [Redacted]

----- Original Message -----

From: O'Neil, David (ODAG)
Sent: Sunday, March 03, 2013 07:44 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Richardson, Margaret (OAG)
Subject:

(b) (5) [Redacted]

[Redacted] " Any other edits or are you guys

ok with this? Thanks.

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Agrast, Mark D. (OLA)
Sent: Saturday, March 02, 2013 7:09 PM
To: Bies, John (OLC)
Subject: Re: AG Hearing Prep

Thanks, John.

From: Bies, John (OLC)
Sent: Friday, March 01, 2013 06:29 PM
To: Agrast, Mark D. (OLA); Thompson, Karl (OAG)
Cc: Krass, Caroline D. (OLC)
Subject: AG Hearing Prep

Mark & Karl,

Going over the transcript of the HJC hearing, I pulled together some hypothetical questions across the range of issues that came up at HJC that might be useful for mootng the AG on the drone issues.

Thanks,

John

- (b) (5) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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(b) (5)

duplicate

Do we need to anticipate a question on the standard of proof?

From: Colborn, Paul P (OLC)
Sent: Friday, March 01, 2013 6:41 PM
To: Burton, Faith (OLA)
Subject: Fw: Revised Talking Points
Attachments: 2 - OLC Opinions revised -- 3-6-13 Hearing.clean.docx; 2 - OLC Opinions revised -- 3-6-13 Hearing.docx

Fyi

From: Krass, Caroline D. (OLC)
Sent: Friday, March 01, 2013 06:30 PM
To: Anderson, Trisha (ODAG); Agrast, Mark D. (OLA); Thompson, Karl (OAG); Clemente, Michael A. (OLA)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

Attached are a redlined and clean version of the revised OLC opinions talking points. (b) (5)

Thanks everyone!

Caroline

<<2 - OLC Opinions revised -- 3-6-13 Hearing.clean.docx>> <<2 - OLC Opinions revised -- 3-6-13 Hearing.docx>>

From: Anderson, Trisha (ODAG)
Sent: Friday, March 01, 2013 6:12 PM
To: Agrast, Mark D. (OLA); Krass, Caroline D. (OLC); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

Just a couple of very minor points – very sorry for the delay. I agree tha (b) (5)

Trisha

<< File: 2 - OLC Opinions revised -- 3-6-13 Hearing.docx >>

From: Agrast, Mark D. (OLA)
Sent: Friday, March 01, 2013 5:33 PM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

(b) (5)

duplicate

From: Thompson, Karl (OAG)
Sent: Friday, March 01, 2013 5:30 PM
To: Krass, Caroline D. (OLC); Agrast, Mark D. (OLA); Anderson, Trisha (ODAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

(b) (5) [Redacted]

[Redacted]

From: Krass, Caroline D. (OLC)
Sent: Friday, March 01, 2013 5:24 PM
To: Agrast, Mark D. (OLA); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

Trisha (just so you don't feel left out), I'm not making any edits to the document itself in case you are in it right now.

Thanks all –

Caroline

From: Agrast, Mark D. (OLA)
Sent: Friday, March 01, 2013 5:17 PM

From: Agrast, Mark D. (OLA)
Sent: Friday, March 01, 2013 5:00 PM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

Thanks for the quick work. Some edits and comments on the attached.

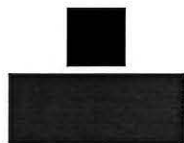


2 - OLC Opinions
revised.docx

duplicate

From: Thompson, Karl (OAG)
Sent: Friday, March 01, 2013 4:47 PM
To: Krass, Caroline D. (OLC); Anderson, Trisha (ODAG)
Cc: Agrast, Mark D. (OLA); Seitz, Virginia A (OLC); Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Revised Talking Points

A few suggestions in the attached.



duplicate

From: Seitz, Virginia A (OLC)
Sent: Thursday, February 28, 2013 8:18 AM
To: Haines, Avril
Subject: RE: Per our conversation this weekend I've run through all of the traps, I think. . . .

(b) (5)

A large rectangular area of the document is completely redacted with black bars, covering approximately six lines of text.

, Va.

(b) (6)

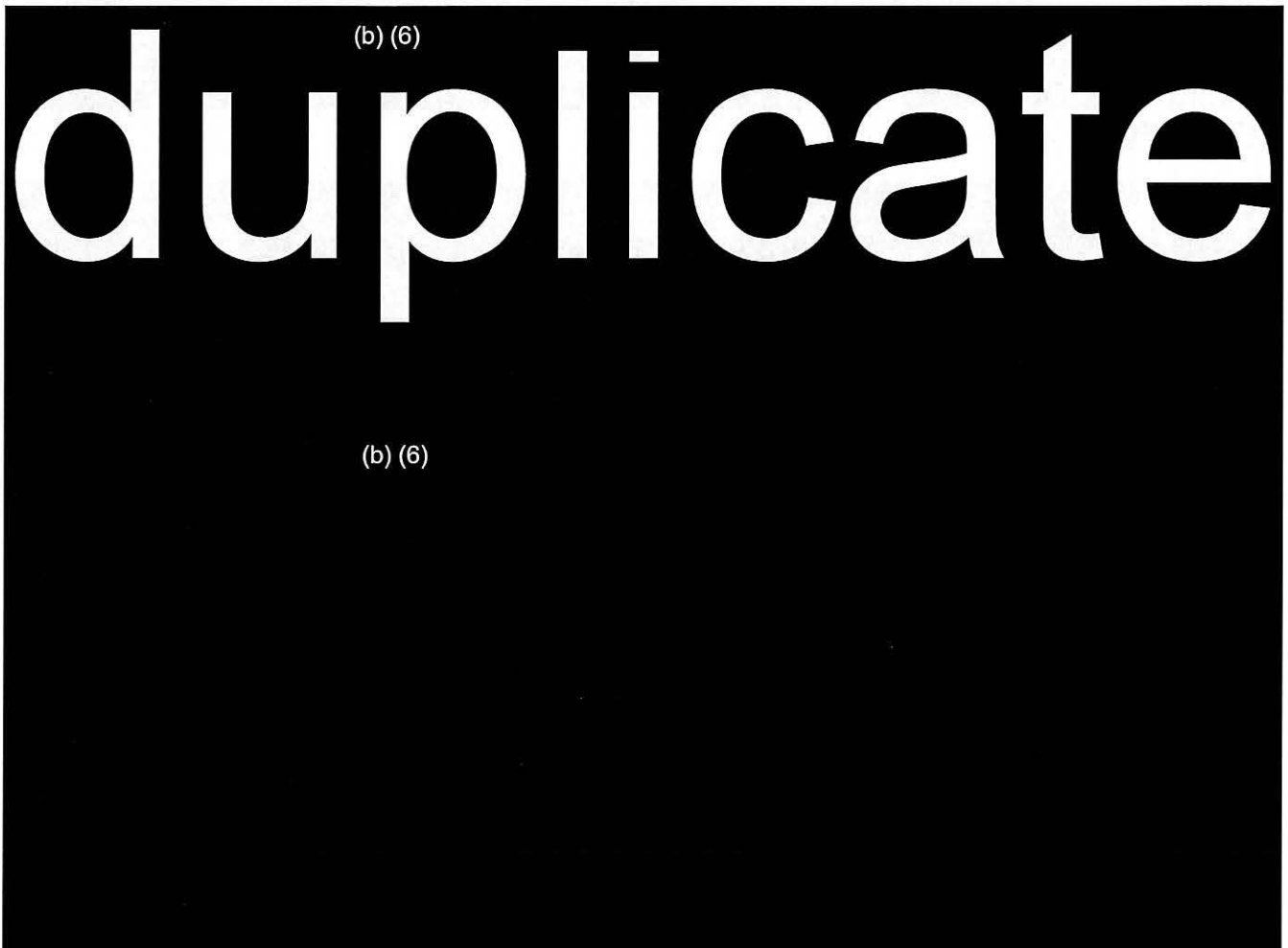
duplicate

(b) (6)

A large black rectangular redaction box covers the majority of the page's content. The word "duplicate" is printed in large white font across the center of this redacted area. Two small "(b) (6)" labels are positioned above and below the word.

From: Krass, Caroline D. (OLC)
Sent: Wednesday, February 27, 2013 7:07 AM
To: (b) (6)
Subject: Re: Per our conversation this weekend I've run through all of the traps, I think

Thanks very much for your help and for letting us know what happened.



From: Seitz, Virginia A (OLC)
Sent: Tuesday, February 26, 2013 10:56 PM
To: (b) (6) Krass, Caroline D. (OLC)
Subject: Re: Per our conversation this weekend I've run through all of the traps, I think . . .

Thank you for many things including filling us in. Look forward to a conversation at some point and, again, thank you. Va.

From: Haines, Avril [mailto:(b) (6)]
Sent: Tuesday, February 26, 2013 10:52 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: RE: Per our conversation this weekend I've run through all of the traps, I think . . .

With Caroline's correct email address . . .

From: Haines, Avril
Sent: Tuesday, February 26, 2013 10:52 PM
To: Seitz, Virginia A (OLC) (b) (6) Krass, Caroline D.
Subject: Per our conversation this weekend I've run through all of the traps, I think . . .

(b) (5)

[Redacted]

(b) (6) robert.li (b) (6), (b) (3) (A) (b) (6) (b) (6)
(b) (6)
Cc: (b) (6) (b) (6) (b) (6)
Subject: RE: Letter from Senator Rand Paul

(b) (5)

-----Original Message-----

From: Taylor, Robert, Mr, DoD OGC [mailto: (b) (6) (b) (6)]
Sent: Monday, February 25, 2013 3:39 PM
To: 'Haines, Avril'; STEPHEWP (b) (6) 'McLeod, Mary'; 'Perina, Alexandra H'; Allen, Charles, Mr, DoD OGC; Gross, Richard Clayton (Rich) BG USARMY JS (US); (b) (6) Col JCS OCICS LC'; Robert Litt (b) (6) 'Krass, Caroline D. (OLC)'; Trisha Anderson
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul
Importance: High

Avril -- see attached comments/suggested edits.



-----Original Message-----

From: Fonzone, Christopher [mailto: (b) (6)]
Sent: Monday, February 25, 2013 4:26 PM
To: Taylor, Robert, Mr, DoD OGC; (b) (6) Haines, Avril; STEPHEW (b) (6) (b) (6)
(b) (6) Allen, Charles, Mr, DoD OGC; Gross, Richard Clayton (Rich) BG USARMY JS (US);
(b) (6) robert.li (b) (6), (b) (3) (A) (b) (6) (b) (6)
(b) (6)
Cc: Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

Bob & Bob (and all) --

(b) (5)
[Redacted]

[Redacted]

Thanks,

Chris

-----Original Message-----

From: Taylor, Robert, Mr, DoD OGC [mailto: (b) (6) (b) (6)]
Sent: Monday, February 25, 2013 4:01 PM
To: (b) (6) Haines, Avril; STEPHEW (b) (6) (b) (6) (b) (6) Allen, Charles,
Mr, DoD OGC; Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) robert.li (b) (6), (b) (3) (A)
(b) (6) (b) (6) (b) (6)
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

(b) (5)
[Redacted]

-----Original Message-----

From (b) (6) [mailto: (b) (6)]
Sent: Monday, February 25, 2013 3:52 PM
To: Taylor, Robert, Mr, DoD OGC (b) (6) STEPHEW (b) (6) (b) (6)
(b) (6) Allen, Charles, Mr, DoD OGC; Gross, Richard Clayton (Rich) BG USARMY JS (US);

From: Fonzone, Christopher (b) (6)
Sent: Monday, February 25, 2013 4:50 PM
To: Krass, Caroline D. (OLC) (b) (6) (b) (6) Haines, Avril;
STEPHEW (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) (b) (6)
robert.li (b) (6), (b) (3) (A) (b) (6) Anderson, Trisha (ODAG)
Cc: Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

Thanks to all. (b) (5)

-----Original Message-----

From: Krass, Caroline D. (OLC) [mailto: (b) (6)]
Sent: Monday, February 25, 2013 4:48 PM
To: (b) (6) (b) (6) (b) (6) Fonzone, Christopher; Haines, Avril; STEPHEW (b) (6);
(b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) robert.li (b) (6), (b) (3) (A) (b) (6) Anderson, Trisha (ODAG)
Cc: Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

(b) (5)

-----Original Message-----

From: (b) (6) [mailto: (b) (6)]
Sent: Monday, February 25, 2013 4:46 PM
To: (b) (6) (b) (6) (b) (6) (b) (6)
STEPHEW (b) (6) (b) (6) (b) (6) (b) (6)
(b) (6) (b) (6) robert.li (b) (6), (b) (3) (A) (b) (6) Krass, Caroline
D. (OLC); Anderson, Trisha (ODAG)
Cc: (b) (6) (b) (6)
Subject: RE: Letter from Senator Rand Paul

Agree (b) (5)

-----Original Message-----

From: Taylor, Robert, Mr, DoD OGC [mailto: (b) (6) (b) (6)]
Sent: Monday, February 25, 2013 4:42 PM
To: 'Fonzone, Christopher' (b) (6) Haines, Avril; STEPHEWP (b) (6) (b) (6) Allen,
Charles, Mr, DoD OGC; Gross, Richard Clayton (Rich) BG USARMY JS (US) (b) (6) Robert Litt;
(b) (6) (b) (6) Trisha Anderson
Cc: Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

Simpler is better, and this is about as simple and straight forward as it gets.

So, yes, I think this works.

(b) (6)
duplica**te**
(b) (6)
(b) (6)
(b) (6)
(b) (6)
(b) (6)

From: Krass, Caroline D. (OLC)
Sent: Monday, February 25, 2013 1:41 PM
To: Anderson, Trisha (ODAG)
Subject: RE: Letter from Senator Rand Paul

Tracking: **Recipient** **Read**
Anderson, Trisha (ODAG) Read: 2/25/2013 1:43 PM

Perfect, thanks.

From: Anderson, Trisha (ODAG)
Sent: Monday, February 25, 2013 1:36 PM
To: Krass, Caroline D. (OLC)
Subject: RE: Letter from Senator Rand Paul

So sorry; I miss understood your emails. I thought OLC was still considering whether to make any comments beyond the minor edits in the attachment. I'll go ahead and send for us, noting in the cover email tha (b) (5)

From: Krass, Caroline D. (OLC)
Sent: Monday, February 25, 2013 1:33 PM
To: Anderson, Trisha (ODAG)
Subject: RE: Letter from Senator Rand Paul

Sorry, I thought I had sent you an attachment. I will resend.

From: Anderson, Trisha (ODAG)
Sent: Monday, February 25, 2013 1:27 PM
To: Krass, Caroline D. (OLC)
Subject: RE: Letter from Senator Rand Paul

(b) (5) so just let me know if you have anything else and if you want me to respond for DOJ.

duplicate

From: Krass, Caroline D. (OLC)
Sent: Monday, February 25, 2013 1:34 PM
To: Anderson, Trisha (ODAG)
Subject: FW: Letter from Senator Rand Paul
Attachments: Dear Senator Paul 2-25.docx

Tracking: **Recipient** **Read**
Anderson, Trisha (ODAG) Read: 2/25/2013 1:35 PM

From: Krass, Caroline D. (OLC)
Sent: Monday, February 25, 2013 12:20 PM
To: Anderson, Trisha (ODAG)
Subject: RE: Letter from Senator Rand Paul

Attached are oLC's minor edits.

From: Krass, Caroline D. (OLC)
Sent: Monday, February 25, 2013 12:19 PM
To: Anderson, Trisha (ODAG)
Subject: RE: Letter from Senator Rand Paul

Ok, thanks. I'll let you know if we have anything beyond minor edits and then you can respond if you would like to on behalf of DOJ.

From: Anderson, Trisha (ODAG)
Sent: Monday, February 25, 2013 12:13 PM
To: Krass, Caroline D. (OLC)
Subject: FW: Letter from Senator Rand Paul

(b) (5) [REDACTED]

From: Haines, Avril [mailto:(b) (6)]
Sent: Monday, February 25, 2013 11:58 AM
To: 'STEPHEW (b) (6)'; (b) (6) 'McLeod, Mary'; 'Perina, Alexandra H'; 'Taylor, Robert, Mr, DoD OGC'; 'Allen, Charles, Mr, DoD OGC'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US)'; (b) (6) Col JCS OCJCS LC'; 'robert.li (b) (6), (b) (3) (A)' ((b) (6) (b) (6) Krass, Caroline D. (OLC); Anderson, Trisha (ODAG)
Cc: Fonzone, Christopher; Smith, Bradley (b) (6)
Subject: RE: Letter from Senator Rand Paul

(b) (5) [REDACTED]

From: Fonzone, Christopher (b) (6)
Sent: Monday, February 18, 2013 9:27 PM
To: 'STEPHEW (b) (6)'; (b) (6) 'McLeod, Mary'; 'Perina, Alexandra H';
'Taylor, Robert, Mr, DoD OGC'; 'Allen, Charles, Mr, DoD OGC'; 'Gross, Richard Clayton
(Rich) BG USARMY JS (US)'; (b) (6) Col JCS OCJCS LC'; 'robert.li (b) (6), (b) (3) (A)';
(b) (6) (b) (6) Krass, Caroline D. (OLC); Anderson,
Trisha (ODAG)
Cc: Smith, Bradley (b) (6)
Subject: RE: Brennan Hearing QFRs -- Round Two
Attachments: JOB Post-hearing QFRs.pdf

All,

(b) (5) Thanks again to everyone for all of
your help on them.

Best,

Chris

From: Fonzone, Christopher
Sent: Monday, February 18, 2013 5:10 PM
To: 'STEPHEW (b) (6)'; (b) (6) 'McLeod, Mary'; 'Perina, Alexandra H'; 'Taylor, Robert, Mr, DoD OGC';
'Allen, Charles, Mr, DoD OGC'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US)'; (b) (6) Col JCS OCJCS LC';
'robert.li (b) (6), (b) (3) (A)'; (b) (6) (b) (6) 'Krass, Caroline D. (OLC)'; 'Anderson, Trisha
(ODAG)'
Cc: Smith, Bradley (b) (6)
Subject: Brennan Hearing QFRs -- Round Two

All,

(b) (5)

Thanks in advance for all of your help, and sorry again for the quick turnaround!

Please let me know if you have any questions.

Best,

Chris

(b) (5)

(b) (5)

From: Seitz, Virginia A (OLC)
Sent: Thursday, February 14, 2013 6:02 PM
To: 'STEPHEW (b) (6)'
Subject: Re: Laying Down the Law

I saw it this morning and had a very similar reaction. You and I should talk at some point (b) (5)
(b) (5). I would very much like to get your perspective. Va.

(b) (6) (b) (6)
duplicate

From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 5:47 PM
To: Singh, Anita (NSD) (b) (6) (NSD)
Cc: (b) (6) (OLC)
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

Tracking:	Recipient	Read
	Singh, Anita (NSD)	
	(b) (6) (NSD)	Read: 8/1/2013 6:10 PM
	Singdahlsen, Jeffrey (OLC)	

Never mind – just got arrived!

From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 5:46 PM
To: Singh, Anita (NSD) (b) (6) (NSD)
Cc: (b) (6) (OLC)
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

Anita – I have to leave the SCIF but (b) (6) will be here for another 15 minutes or so – could it please be left with him and if not, could you please ask someone to leave it for me in the Command Center? Thanks -- Caroline

From: Singh, Anita (NSD)
Sent: Thursday, August 01, 2013 5:28 PM
To: Krass, Caroline D. (OLC) (b) (6) (NSD)
Cc: Anderson, Trisha (ODAG)
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

We'll get it to you there.

From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 5:27 PM
To: Singh, Anita (NSD) (b) (6) (NSD)
Cc: Anderson, Trisha (ODAG)
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

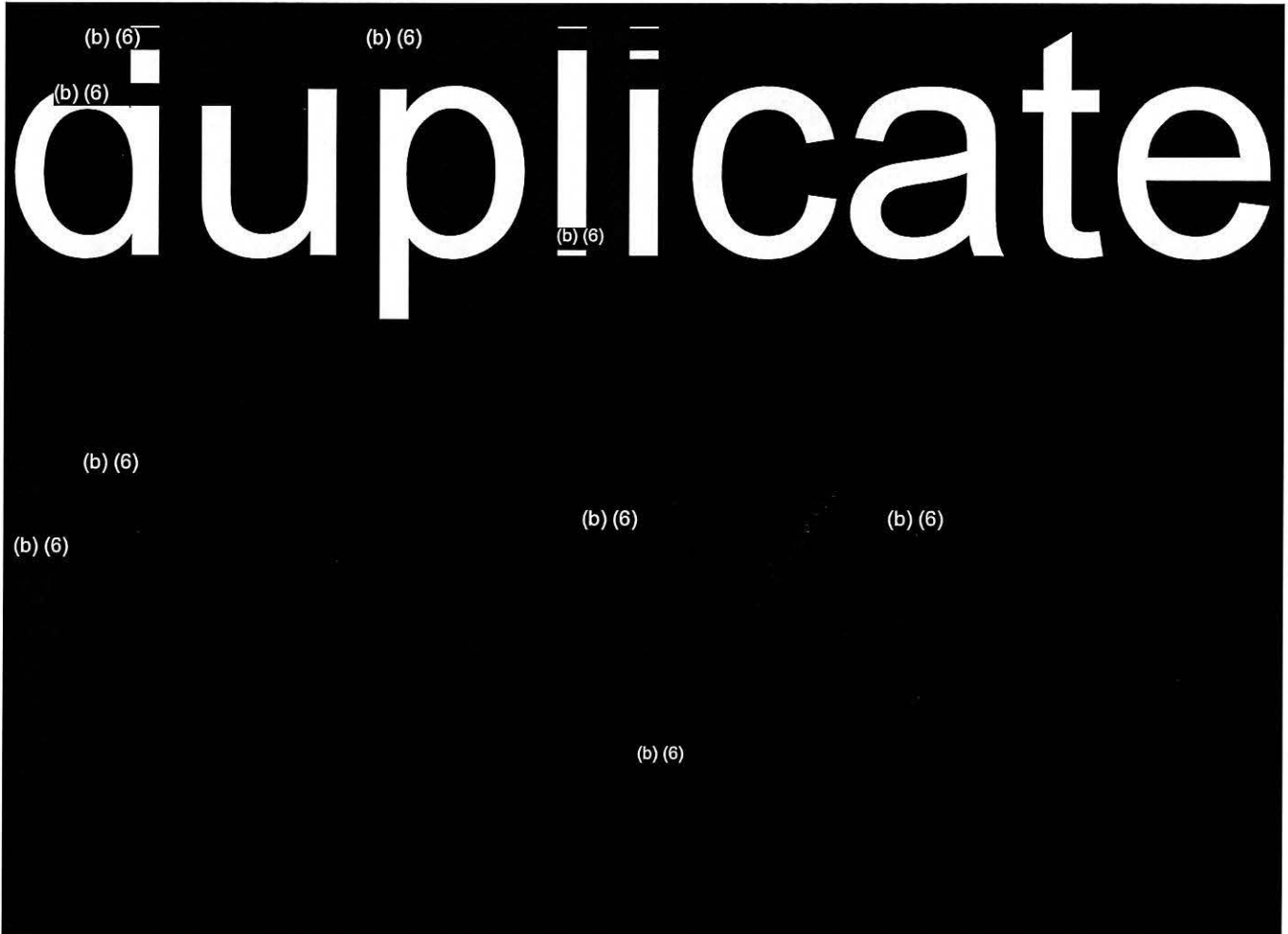
Headed down there now – thank you.

From: Singh, Anita (NSD)
Sent: Thursday, August 01, 2013 5:22 PM
To: Krass, Caroline D. (OLC) (b) (6) (NSD)
Cc: Anderson, Trisha (ODAG)
Subject: RE: PLEASE DISREGARD: Fax number for codeword doc

We've got it. I have been in meetings all afternoon, and just printed minutes ago. I can have someone run it to you now. Still in the SCIF?

From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 5:13 PM
To: Singh, Anita (NSD) (b) (6) (NSD)
Cc: Anderson, Trisha (ODAG)
Subject: FW: PLEASE DISREGARD: Fax number for codeword doc

Hi Anita – could you please let me know when this document comes through? Thanks very much -- Caroline



From: Koffsky, Daniel L (OLC)
Sent: Thursday, August 01, 2013 7:57 PM
To: Anderson, Trisha (ODAG)
Subject: Re:

Trisha: Has anyone called you?
--Dan

From: Anderson, Trisha (ODAG)
Sent: Thursday, August 01, 2013 06:56 PM
To: (b) (6) (NSD); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC) (b) (6) (NSD)
Subject:

I'm hoping to talk with someone who has been involved in PPG-related issues this week. Could one of you please give me a call? If I'm not at my desk, please try our SCIF: 6-1080. Many thanks!

From: Krass, Caroline D. (OLC)
Sent: Thursday, August 01, 2013 10:13 PM
To: Anderson, Trisha (ODAG)
Subject: Re:

Trisha - please let me know if you still need to talk to someone (b) (5)

(b) (6) duplicate (b) (6)

From: (b) (6) (OLC)
Sent: Monday, August 05, 2013 10:04 AM
To: Higginbotham, Ryan K (OLP)
Cc: (b) (6) (OLC); Krass, Caroline D. (OLC); Mizer, Benjamin (OLC)
Subject: RE: ICCPR Hard Qs and further update on ICCPR presentation

Tracking: **Recipient**
Higginbotham, Ryan K (OLP)
(b) (6) (OLC)
Krass, Caroline D. (OLC)
Mizer, Benjamin (OLC)

It doesn't seem like we're the lead on any of the questions, so I think we'd just be coordinating. If we could avoid having to review everything twice (before interagency coordination and again during interagency coordination), we'd be grateful.

From: Higginbotham, Ryan K (OLP)
Sent: Monday, August 05, 2013 10:01 AM
To: (b) (6) (OLC)
Cc: (b) (6) (OLC)
Subject: RE: ICCPR Hard Qs and further update on ICCPR presentation

(b) (6),

Yes, there will be interagency coordination. By "review at that point," are you saying that you won't have responses of your own, but you wish to review the responses of other components here and the responses of other agencies? If so, that is fine.

Ryan Higginbotham

From: (b) (6) (OLC)
Sent: Monday, August 05, 2013 9:50 AM
To: Higginbotham, Ryan K (OLP)
Cc: (b) (6) (OLC)
Subject: RE: ICCPR Hard Qs and further update on ICCPR presentation

Ryan—
I'm just checking back in on this. Also, I'm cc'ing (b) (6), who will be here next week and can help out if need be. Please include him on any emails going forward.
Thank you!
(b) (6)

From: (b) (6) (OLC)
Sent: Thursday, August 01, 2013 2:19 PM
To: Higginbotham, Ryan K (OLP)
Subject: RE: ICCPR Hard Qs and further update on ICCPR presentation

Ryan—

I'm trying to figure out logistics for this, particularly given that Caroline and I will be out of the office the week of August 12th. Will there be interagency coordination after we submit responses? If so, could we review at that point? Otherwise, we'll need extra time to review the responses before they go out (assuming that most people won't have responses done by the end of next week).

(b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Thursday, August 01, 2013 9:23 AM
To: Hostetler, Kelley Brooke (OLC)
Subject: FW: ICCPR Hard Qs and further update on ICCPR presentation

(b) (6) ,

Can you review (b) (5) ?

Thank you,

Ryan Higginbotham

From (b) (6) (NSD)
Sent: Wednesday, July 31, 2013 6:11 PM
To: Higginbotham, Ryan K (OLP)
Subject: RE: ICCPR Hard Qs and further update on ICCPR presentation

Hi Ryan,

I've sent this around, but just wanted to give you a heads up (b) (5)

Thanks,

Katherine

From: Higginbotham, Ryan K (OLP)
Sent: Wednesday, July 31, 2013 12:54 PM
To (b) (6) (CRM) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD)
Cc (b) (6) (NSD) (b) (6) (NSD)
Subject: FW: ICCPR Hard Qs and further update on ICCPR presentation

duplicate (b) (6)

(b) (6)

duplicate

(b) (6)

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(b) (6)

(b) (6)

(b) (6)

(b) (6)

duplicate

duplicate

(b) (6)

(b) (6)

From: Lucas, Daniel (JMD)
Sent: Wednesday, August 28, 2013 3:18 PM
To: Bies, John (OLC); Simpson, Tammi (OLA); Agrast, Mark D. (OLA)
Cc: Sullivan, Bill (JMD)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Hi John,

(b) (5) s.

Thanks for your comments and work on these QFRs.

Dan

From: Bies, John (OLC)
Sent: Wednesday, August 28, 2013 2:18 PM
To: Simpson, Tammi (OLA); Agrast, Mark D. (OLA); Lucas, Daniel (JMD)
Cc: Sullivan, Bill (JMD)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

(adding Mark)

Following up on my prior e-mail, I have attached the version of the questions we received as incoming, (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . Of course, happy to discuss.

Thanks,
John

OLC Legal Opinions regarding Targeted Killing Operations

I'd like to thank the Administration for earlier this year providing the Intelligence Committee and the Judiciary Committee access to all of the OLC opinions related to the targeted killing of Americans outside the United States and outside areas of active hostilities, such as Afghanistan. However, I want to continue to work with you and the Administration to get the other opinions we have not seen.

As you are aware, since 2010 the Senate Intelligence Committee has sent bipartisan letters to the Executive Branch requesting copies of all the OLC legal opinions concerning the U.S. government's targeted use of force by unmanned aerial vehicles so that we can understand and evaluate the Executive Branch's legal reasoning, pursuant to our oversight obligations. In fact, you were copied on one of our original letters on this topic, dated September 21, 2010, requesting these OLC documents.

- In his recent national security speech, the President said, "I have asked my Administration to review proposals to extend oversight of lethal actions outside of warzones that go beyond our reporting to Congress." He went on to say that he looks forward to "actively engaging Congress to explore these – and other – options for increased oversight." As part of this commitment to increased oversight, can I have your commitment that you will work to provide the Congress with all of the OLC opinions that have been requested (b) (5)
- Were any intelligence sources or methods compromised when the most recent OLC opinions were shared with Congress? If not, then why not share the remaining OLC opinions with us as we have requested (b) (5)
- As you may recall, some of the OLC opinions during the Bush Administration were withdrawn or superseded by the Department of Justice, often years after their issuance. If you do not provide all of the OLC opinions we have asked for, how can we ensure that today's Executive Branch is not repeating the mistakes of the past (b) (5)

John E. Bies
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice

(b) (6)

From: Bies, John (OLC)
Sent: Wednesday, August 28, 2013 1:40 PM
To: Simpson, Tammi (OLA); Lucas, Daniel (JMD)
Cc: Sullivan, Bill (JMD)
Subject: Re: Please call me at 7-5721 about the Senate Approps QFRs

(b) (5)

From: Simpson, Tammi (OLA)
Sent: Wednesday, August 28, 2013 01:14 PM
To: Lucas, Daniel (JMD); Bies, John (OLC)
Cc: Sullivan, Bill (JMD)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Seems like (b) might make the most sense here given the length of the response. Adding John to see if he has any concerns about that; if no concerns, will you make the changes to the QFRs and re-submit for review? Thanks.

From: Lucas, Daniel (JMD)
Sent: Wednesday, August 28, 2013 12:49 PM
To: Simpson, Tammi (OLA)
Cc: Sullivan, Bill (JMD)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

+ Bill

Thanks Tammi. While we'd certainly defe (b) (5)

Would there be a preference on either a or b?

Thanks,
Dan

From: Simpson, Tammi (OLA)
Sent: Wednesday, August 28, 2013 10:12 AM
To: Bies, John (OLC); Lucas, Daniel (JMD)
Cc: Agrast, Mark D. (OLA); Wilson, Karen L (OLA)
Subject: FW: Please call me at 7-5721 about the Senate Approps QFRs

I'm fine with this approach and the response. Adding Dan Lucas from JMD for his thoughts because he works more closely with staff from this committee. Thanks!

Dan (b) (5)

Thanks.

From: Bies, John (OLC)
Sent: Tuesday, August 27, 2013 4:52 PM
To: Simpson, Tammi (OLA)
Cc: Agrast, Mark D. (OLA); Wilson, Karen L (OLA)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

(b) (5)

(b) (5) [Redacted]

Happy to discuss.

Thanks,
John

From: Simpson, Tammi (OLA)
Sent: Tuesday, August 20, 2013 6:45 PM
To: Bies, John (OLC)
Cc: Agrast, Mark D. (OLA); Wilson, Karen L (OLA)
Subject: Re: Please call me at 7-5721 about the Senate Approps QFRs

That's fine (b) (5) [Redacted].

From: Bies, John (OLC)
Sent: Tuesday, August 20, 2013 06:36 PM Eastern Standard Time
To: Simpson, Tammi (OLA)
Cc: Agrast, Mark D. (OLA); Wilson, Karen L (OLA)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Tammi, I've circulated for thoughts internally here and will get back to you as soon as possible.

When we discussed last week, you thought (b) (5) [Redacted]

Thanks,
John

From: Simpson, Tammi (OLA)
Sent: Tuesday, August 20, 2013 5:56 PM
To: Bies, John (OLC)

Cc: Agrast, Mark D. (OLA)
Subject: Re: Please call me at 7-5721 about the Senate Approps QFRs

Thoughts? I'm being pinged. The QFRs are overdue for submission to leadership. Thanks.

From: Simpson, Tammi (OLA)
Sent: Tuesday, August 20, 2013 10:20 AM Eastern Standard Time
To: Bies, John (OLC)
Cc: Agrast, Mark D. (OLA)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Hi John,

Attached please find my suggested edits t (b) (5)

Mark can review and lend his thoughts on this.

Please edit as soon as possible and provide to Karen Wilson once you are done in case I am out of the office.

Thanks!

Tammi <<Senate AG QFRs to Policy Offices.TS edits.docx>>

From: Bies, John (OLC)
Sent: Monday, August 19, 2013 5:31 PM
To: Simpson, Tammi (OLA)
Cc: Wilson, Karen L (OLA)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Hey, Tammi,

Now that I am back in the office I wanted to touch base on this. Is there revised language you'd like us to take a look at? Do you need anything further from us?

Thanks,

John

From: Simpson, Tammi (OLA)
Sent: Monday, August 12, 2013 4:55 PM
To: Bies, John (OLC)
Cc: Wilson, Karen L (OLA)
Subject: RE: Please call me at 7-5721 about the Senate Approps QFRs

Hi John. Thanks so much for your call. Karen is going to confer with JMD about next steps and we'll keep you posted. Thanks again!

From: Simpson, Tammi (OLA)
Sent: Monday, August 12, 2013 4:23 PM
To: Bies, John (OLC)
Subject: Please call me at 7-5721 about the Senate Approps QFRs

From: (b) (6) (OLC)
Sent: Tuesday, September 10, 2013 5:07 PM
To: Burrows, Charlotte (ODAG); Higginbotham, Ryan K (OLP)
Cc: Krass, Caroline D. (OLC)
Subject: RE: ICCPR responses
Attachments: ICCPR QFRs assigned to NSD 9-10-13--olc.docx

Charlotte, Ryan--

Attached are OLC's comments in redline on the responses i (b) (5)

Please let me know if we can be of further assistance.

Thank you,

(b) (6)

-----Original Message-----

From: Burrows, Charlotte (ODAG)
Sent: Tuesday, September 10, 2013 11:57 AM
To: (b) (6) (OLC); Higginbotham, Ryan K (OLP)
Cc: Krass, Caroline D. (OLC)
Subject: RE: ICCPR responses

Thanks very much. I realize you all are swamped.

-----Original Message-----

From (b) (6) (OLC)
Sent: Tuesday, September 10, 2013 11:54 AM
To: Burrows, Charlotte (ODAG); Higginbotham, Ryan K (OLP)
Cc: Krass, Caroline D. (OLC)
Subject: RE: ICCPR responses

Of course. I'm working on a deadline right now, but will turn t (b) (5) shortly.

-----Original Message-----

From: Burrows, Charlotte (ODAG)
Sent: Tuesday, September 10, 2013 11:51 AM
To: Higginbotham, Ryan K (OLP) (b) (6) (OLC)
Subject: RE: ICCPR responses

Thanks, Ryan (b) (6), is it possible for OLC to take a look at those? If so, once you have a sense of them, I'd be would be great to get a rough estimate of your timing.

-----Original Message-----

From: Higginbotham, Ryan K (OLP)
Sent: Tuesday, September 10, 2013 11:19 AM
To: Burrows, Charlotte (ODAG) (b) (6) (OLC)

Subject: FW: ICCPR responses

Attached are NSD's responses to the model ICCPR questions. (b) (5)

-----Original Message-----

From (b) (6) (NSD)

Sent: Tuesday, September 10, 2013 11:16 AM

To: Higginbotham, Ryan K (OLP)

Cc (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD)

Subject: ICCPR responses

Hi Ryan,

Attached are NSD's responses to the ICCPR questions.

Thanks!

Katherine

From: Egan, Brian J. (b) (6)
Sent: Friday, September 13, 2013 8:27 AM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC);
(b) (6) (b) (6) Taylor, Robert S SES OSD OGC (US)
(b) (6) (b) (6) Allen, Charles A SES OSD OGC (US)
(b) (6) (b) (6) (b) (6); 'Gross, Richard
Clayton (Rich) BG USARMY JS (US)' (b) (6) LTC USARMY JS OCJCS (US);
Davidson, Eliana V SES OSD OGC (US) (b) (6);
'STEPHEW (b) (6)' (b) (6) 'robert.li (b) (6), (b) (3) (A)
Cc: Fonzone, Christopher (b) (6) Luftig, Charles
Subject: PPG paper for your review

(b) (5)

From: (b) (6) (OLC)
Sent: Friday, September 27, 2013 9:59 AM
To: Higginbotham, Ryan K (OLP)
Cc: Krass, Caroline D. (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC)
Subject: FW: Hard Qs and As - Final clearance on Sections A - E
Attachments: IA ICCPR Hard QAs - Sec A - Annotated olc edits.docx; IA ICCPR Hard QAs - Sec B - Annotated olc edits.docx; IA ICCPR Hard QAs - Sec C - Annotated--olc.docx; IA ICCPR Hard QAs - Sec E - Annotated-olc.docx; IA ICCPR Hard QAs - Sec D - Annotated-olc.docx

Tracking:

Recipient
Higginbotham, Ryan K (OLP)
Krass, Caroline D. (OLC)
Mizer, Benjamin (OLC)
(b) (6) (OLC)

Ryan—
With apologies for the delay, attached are OLC's comments on the first batch of documents.
Thank you,
(b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Wednesday, September 25, 2013 4:22 PM
To: (b) (6) (OLC) (b) (6) (NSD); Bollerman, Kerry A. (CIV); Jweied, Maha (A2J); Morales, Michelle (CRM); Opl, Legislation (CRM); Hyle, Kenneth (BOP); Thorley, Charles A. (FBI); See, William F. (FBI); Rumsey, Elissa (OJP); Sheehey, Kate (EOIR); Alder Reid, Lauren (EOIR); Mahoney, Kristen (OJP); Poston, Catherine M (OVW); Kaplan, Jennifer E (OVW); Stevens, Karen L (CRT); Monroe, Becky (CRT); Ramker, Gerard (OJP)
Subject: FW: Hard Qs and As - Final clearance on Sections A - E

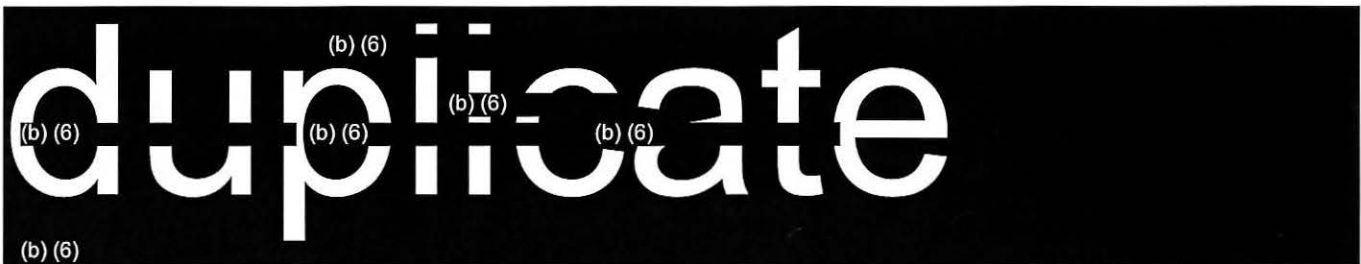
All:

I have annotated the final versions of the hard Qs and As with references to interested components and have attempted to note changes to our responses. I apologize for the delayed forward. State is requesting comments by COB Thursday.

You can use Ctrl-F to find your component annotations.

Thank you,

Ryan Higginbotham



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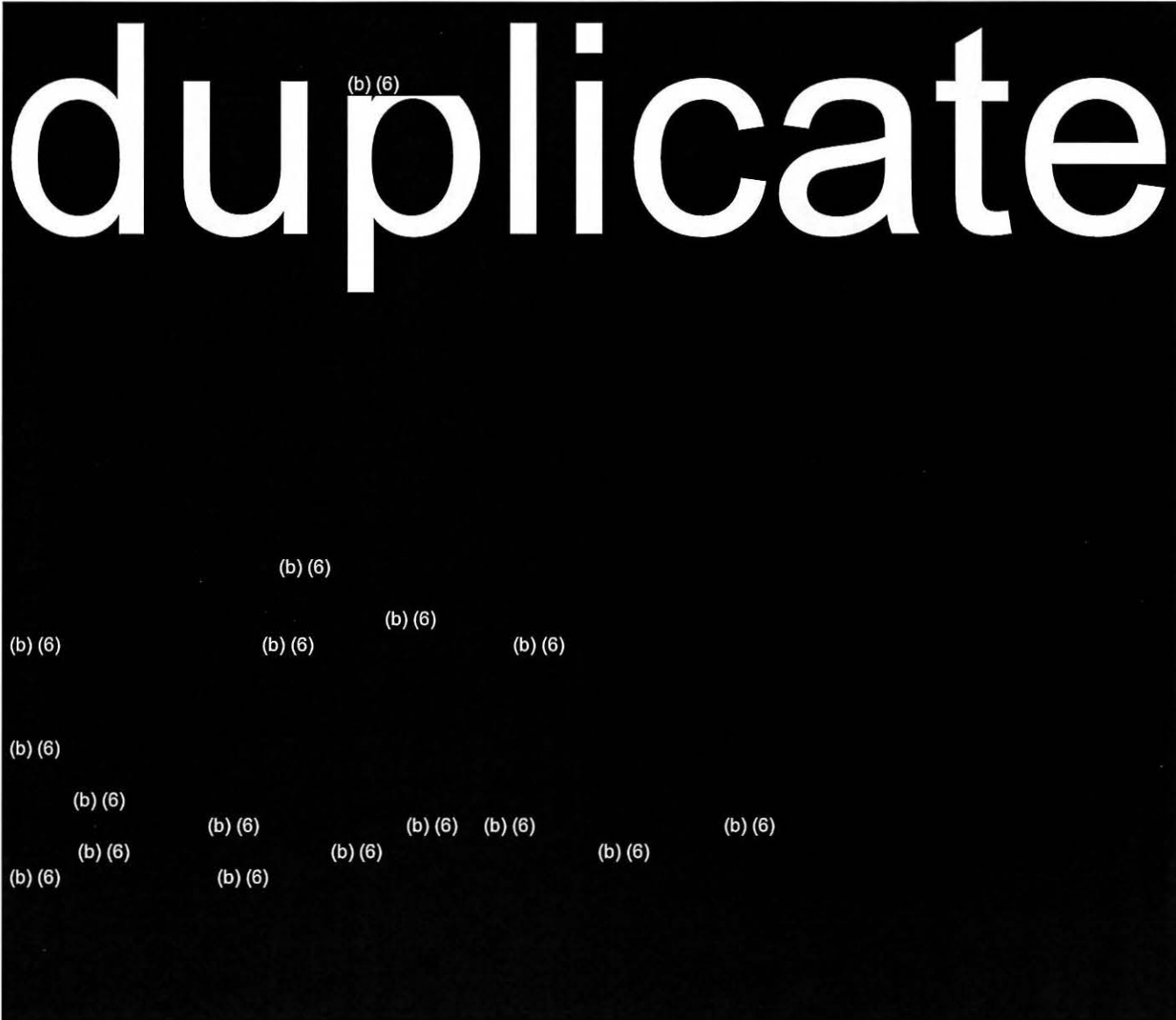
(b) (6)

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(b) (6)

From: (b) (6) (OLC)
Sent: Tuesday, October 01, 2013 1:44 PM
To: Siger, Steven B. (OLP)
Subject: FW: Hard Qs and As - Final clearance on Sections A - E
Attachments: IA ICCPR Hard QAs - Sec A - Annotated.docx; IA ICCPR Hard QAs - Sec B - Annotated.docx; IA ICCPR Hard QAs - Sec D - Annotated.docx; IA ICCPR Hard QAs - Sec E - Annotated.docx; IA ICCPR Hard QAs - Sec C - Annotated.docx

Tracking: **Recipient** **Read**
Siger, Steven B. (OLP) Read: 10/1/2013 1:47 PM



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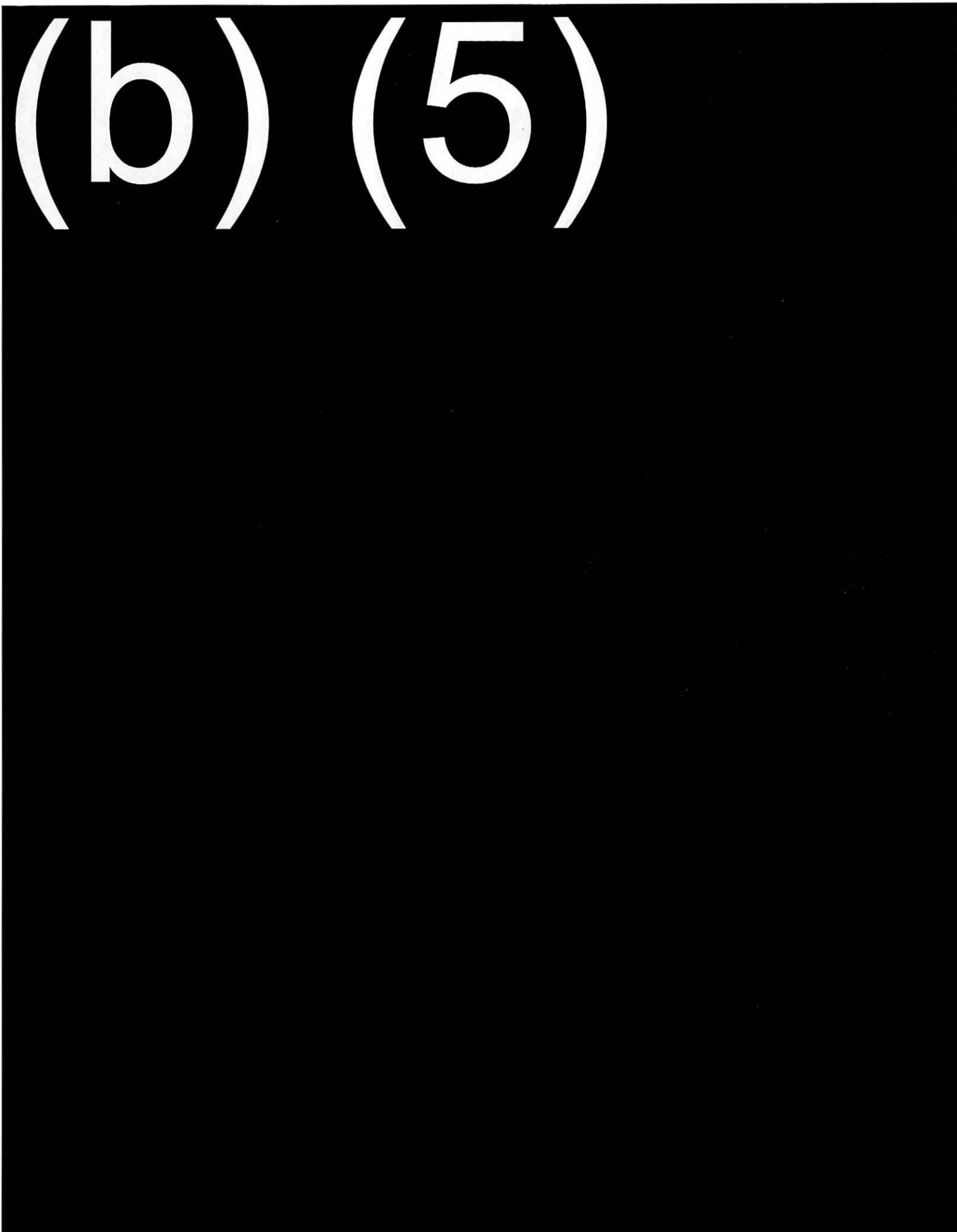
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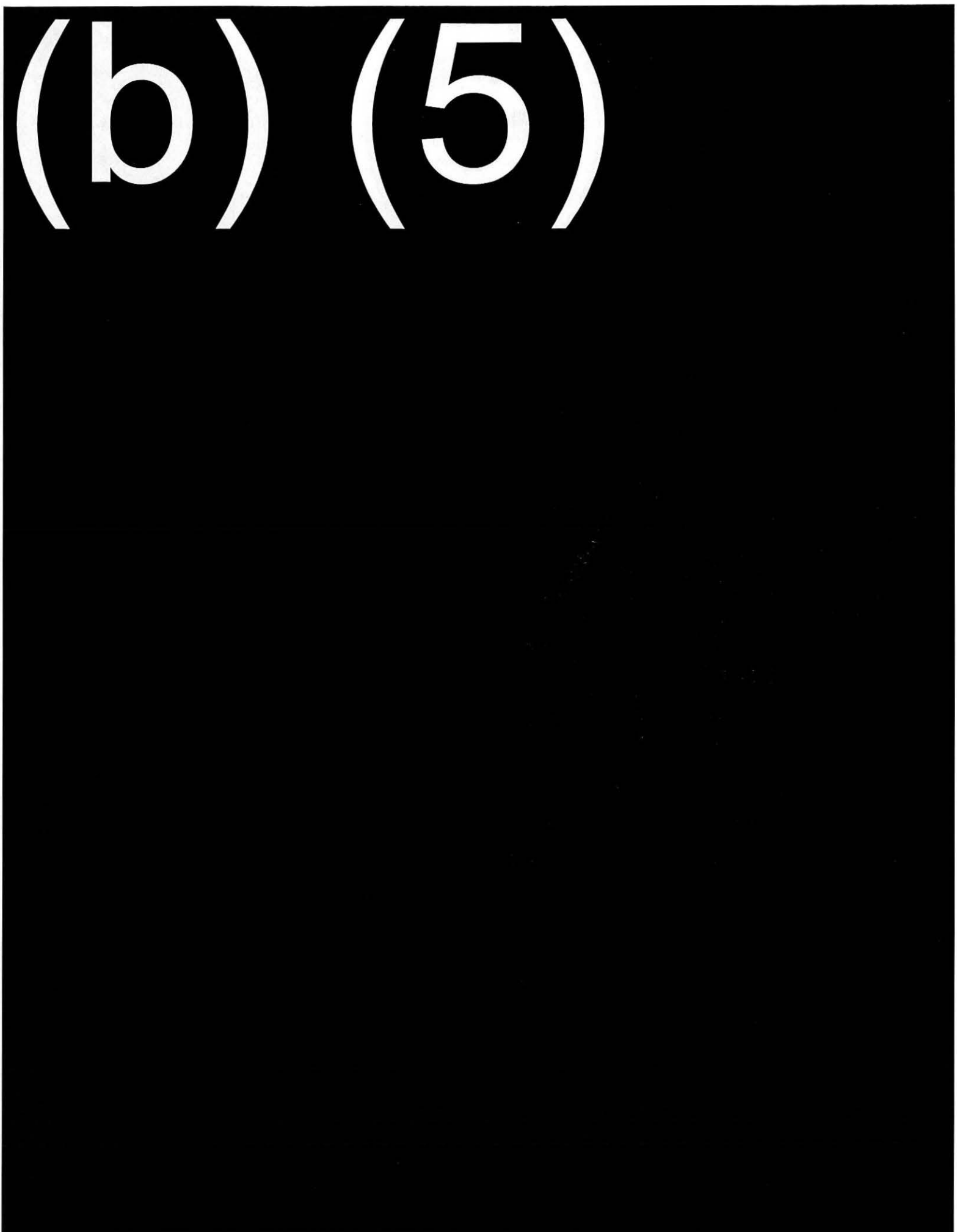
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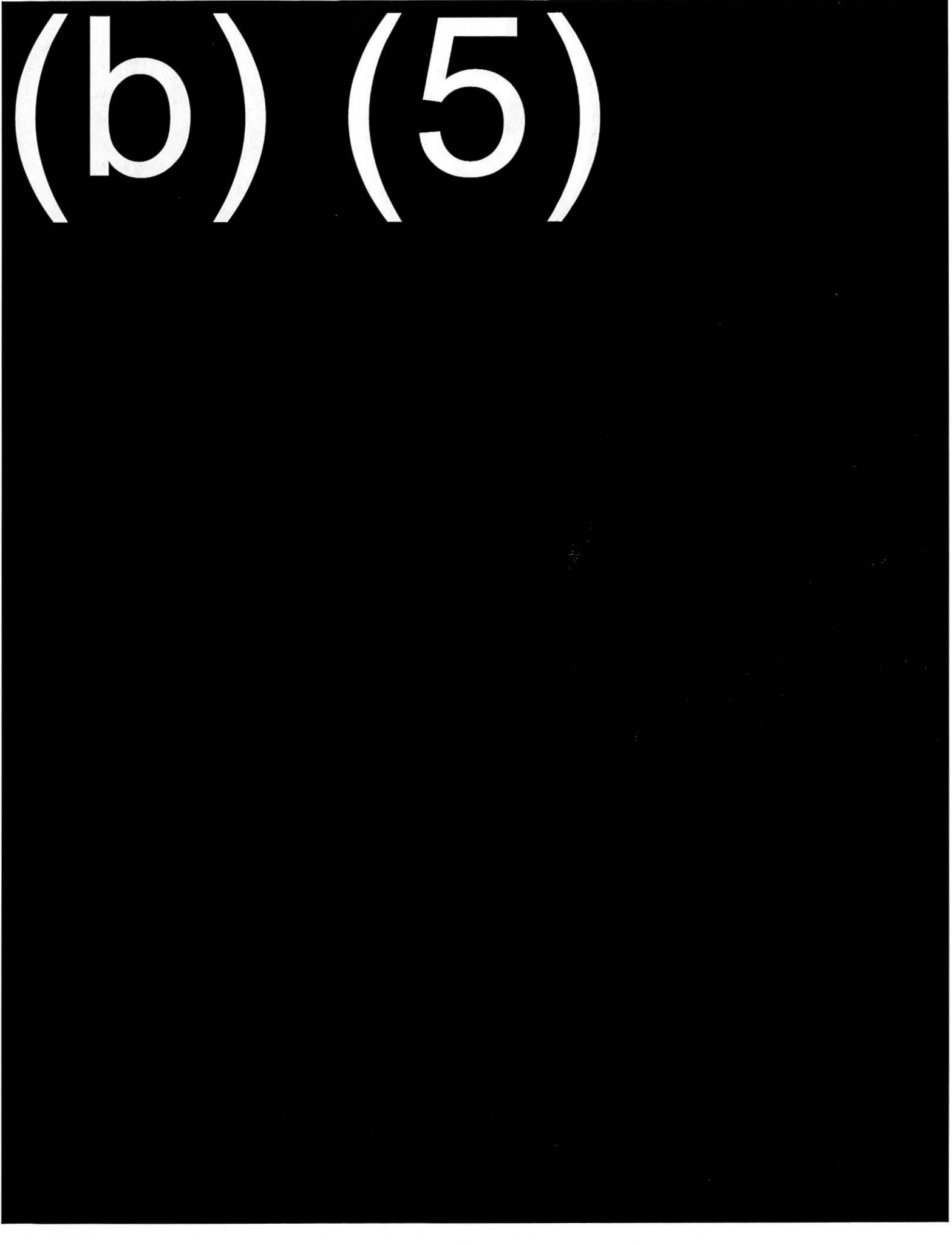
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From: Krass, Caroline D. (OLC)
Sent: Friday, October 04, 2013 5:59 PM
To: O'Neil, David (ODAG)
Cc: Bies, John (OLC); Seitz, Virginia A (OLC)
Subject: Fw (b) (5) Guidance
Attachments: Draf (b) (5) Guidance 100413 (revised).docx

Dave - sending this to you in Trisha's absence.

From: Bies, John (OLC)
Sent: Friday, October 04, 2013 05:57 PM
To: Anderson, Trisha (ODAG); Thompson, Karl (OAG)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: (b) (5) Guidance

Attached please find draft guidance and TPs regarding the privilege issues on unpublished advice. We welcome any thoughts or comments.

Thanks,

John

<<Draf (b) (5) Guidance 100413 (revised).docx>>

From: Bies, John (OLC)
Sent: Friday, October 04, 2013 6:01 PM
To: Richardson, Margaret (OAG)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Subject: FW (b) (5) Guidance

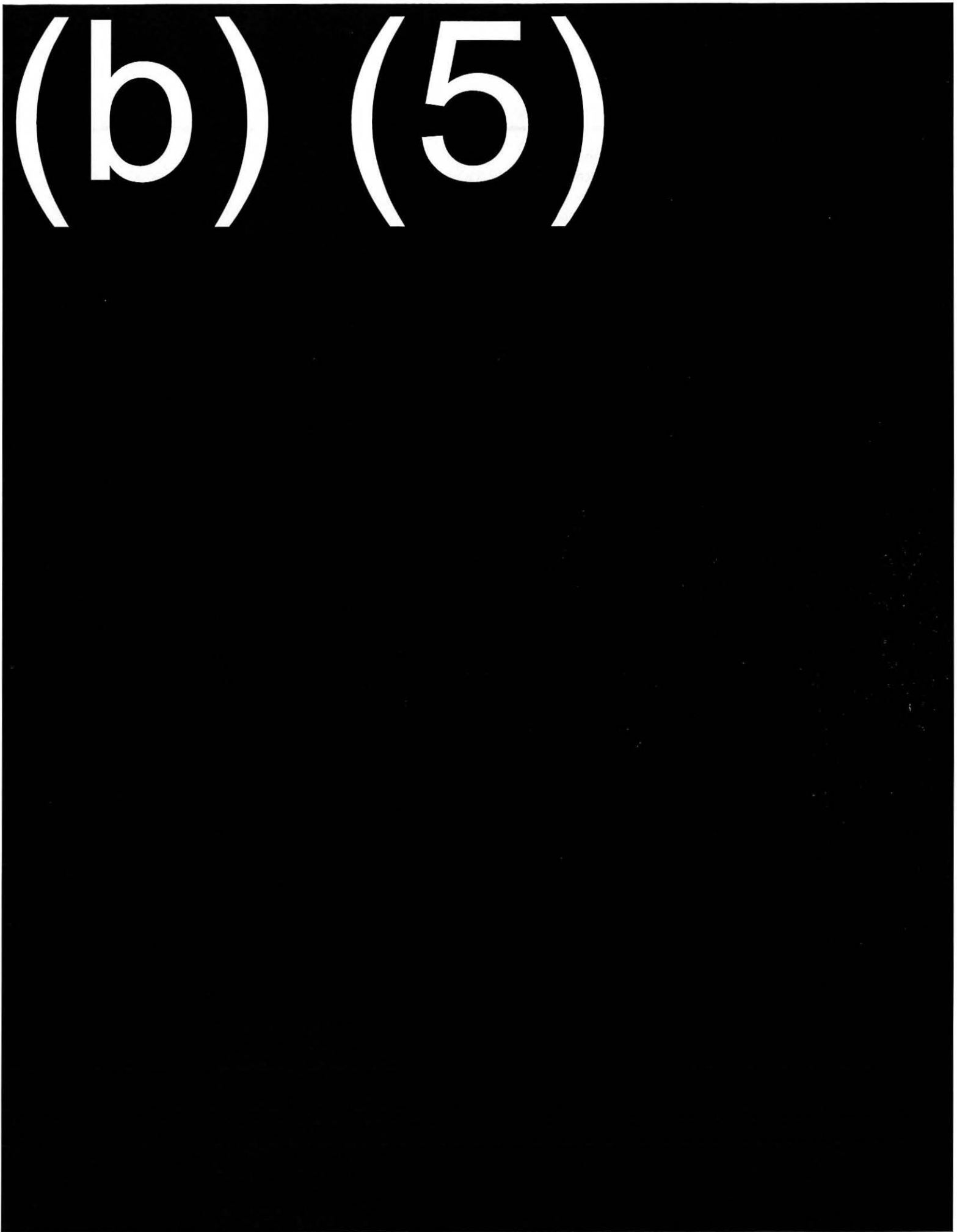
Tracking:	Recipient	Read
	Richardson, Margaret (OAG)	Read: 10/4/2013 6:10 PM
	Seitz, Virginia A (OLC)	Read: 10/4/2013 6:13 PM
	Krass, Caroline D. (OLC)	Read: 10/4/2013 6:03 PM

Margaret, hope you are well. Forwarding this to you in Karl's absence.

Thanks,
John

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(b) (5)

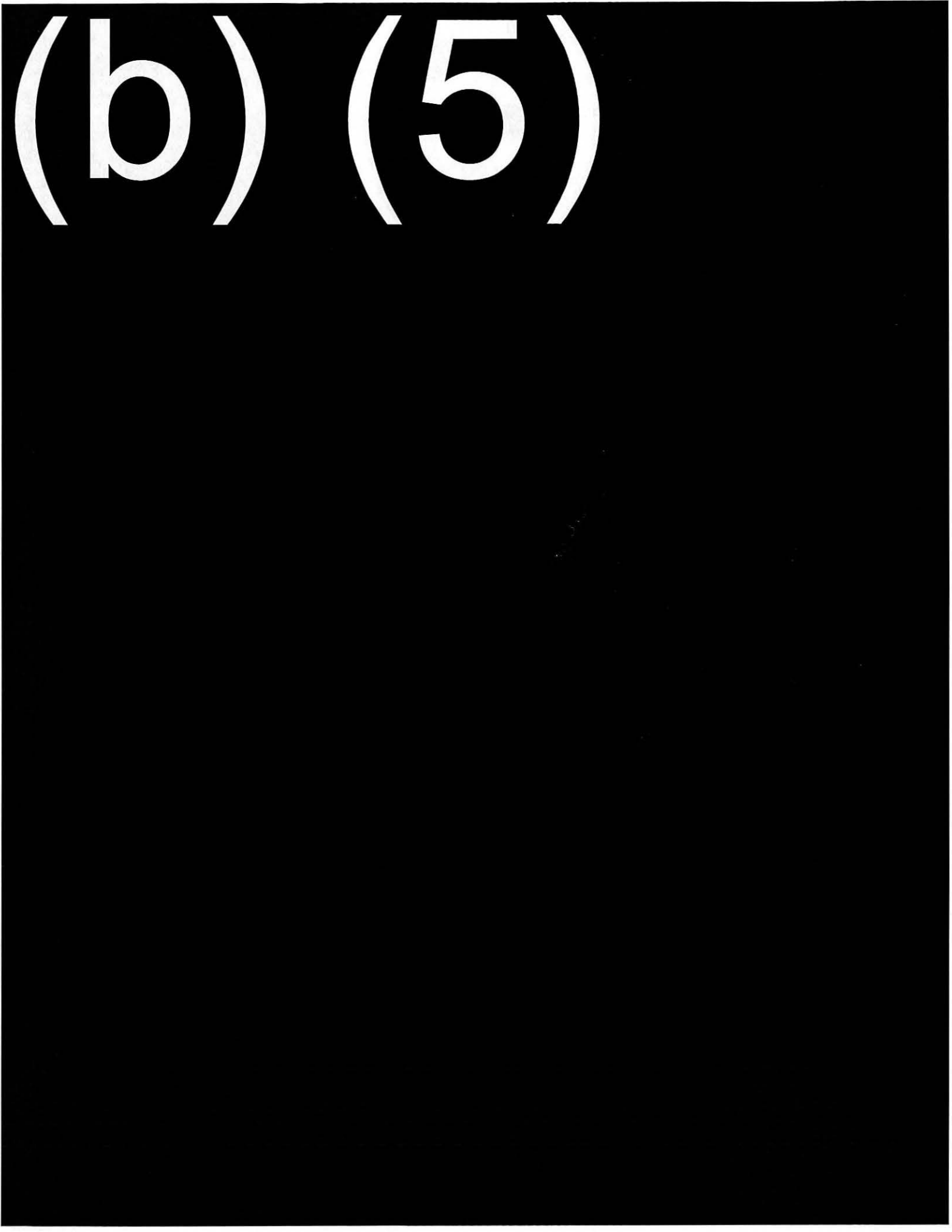


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From: Koffsky, Daniel L (OLC)
Sent: Thursday, October 17, 2013 4:42 PM
To: Thompson, Karl (OAG); Anderson, Trisha (ODAG)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Colborn, Paul P (OLC)
Subject: FW: As requested

Karl and Trisha: Virginia received a letter from Amnesty International (attached below), asking her to respond to a series of questions about supposed counter-terrorism operations, which Amnesty had also posed to the CIA Director. The attached draft repl (b) (5). Please let us know whether you think the approach in the draft works and whether you'd like any revisions to the language.

Thanks.

--Dan

 
AmnestyInternatio... Truscott Letter.pdf


CIAletter.pdf

Ref: TG AMR 51/2013.025

Virginia A. Seitz
Assistant Attorney General
Office of Legal Council
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530- 0001
U.S.A

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157
E: amnestyis@amnesty.org W: www.amnesty.org

03 September 2013

Dear Ms Seitz,

RE: US TARGETING OPERATION IN PAKISTAN

Please find enclosed a copy of a letter sent by Amnesty International to John Brennan, Director of the Central Intelligence Agency, requesting information regarding the US targeting operations in Pakistan and the legal standards, policies and procedures applicable to them. The information you provide will be included in a report Amnesty International is preparing on US targeting operations by unmanned aerial vehicles (UAVs) in the Federally Administered Tribal Areas of Pakistan between January 2012 and July 2013. We expect to release the report towards the end of October.

So that Amnesty International will be able to incorporate your responses in the report, we would be grateful for as much information as possible on the specific points below, **no later than 27 September 2013.**

Amnesty International considers your institution key in providing appropriate information for this report and would be grateful for as much information as possible.

Yours sincerely,

Polly Truscott
Deputy Director, Asia-Pacific Program

Ref: TG AMR 51/2013.007

John O. Brennan
Director
Central Intelligence Agency
Office of Public Affairs
Washington, D.C. 20505
U.S.A

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
Peter Benenson House, 1 Easton Street,
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157
E: amnesty@amnesty.org W: www.amnesty.org

2 September 2013

Dear Mr Brennan

I am writing to request information regarding US targeting operations in Pakistan and the legal standards, policies and procedures applicable to them. The information you provide will, as appropriate, be included in a report Amnesty International is preparing on US targeting operations by unmanned aerial vehicles (UAVs) in the Federally Administered Tribal Areas of Pakistan between January 2012 and July 2013. We expect to release the report towards the end of October.

So that Amnesty International will be able to incorporate your responses in the report, I would be grateful for as much information as possible on the specific points below, no later than 27 September 2013.

Deaths & Injuries following US Targeting Operations

1. Provide the date and location for all US targeting operations carried out in Pakistan using UAVs and total casualties (killed and seriously injured).
2. Provide a comprehensive explanation of legal standards, under international and US law, governing the following US targeting operations by UAVs carried out in North Waziristan, Pakistan:
 - a. Essokhel, also known as Hassukhel, Mir Ali subdivision; 24 May 2012
 - b. Miranshah Bazaar, Miranshah subdivision; 26 May 2012
 - c. Essokhel, also known as Hassukhel, Mir Ali subdivision; 4 June 2012
 - d. Zowi Sidgi, Miranshah subdivision; 6 July 2012
 - e. Darai Nishtar, Razmak subdivision for 23 July strike; 23 July 2012
 - f. Ghundi Kala, Miran Shah subdivision; 24 October 2012
 - g. Haider Khel, Mir Ali subdivision, 8 January 2013
 - h. Dandai Darpakhel, Miran Shah subdivision; 3 July 2013
 - i. Shinkai Narai, Shawal Valley, Razmak subdivision; 28 July 2013
3. Provide comprehensive factual information about the specific US targeting operations listed in point 2 above, and explain the measures taken to ensure that the information used in determining these targets was reliable. Please include in the information:
 - a. the context in which each strike took place
 - b. the intended target(s) of each strike
 - c. the basis for the decision to kill rather than capture the intended target(s)
 - d. the reason for each strike
 - e. the measures taken to ensure the lawfulness under international and US law of each strike
 - f. any investigation undertaken to determine the involvement and responsibility of state agents or persons acting on their behalf in any strike suspected to be unlawful, and the current status of such investigation(s), and
 - g. the measures undertaken to ensure the provision of effective remedy to victims of unlawful US targeting operations by UAV.

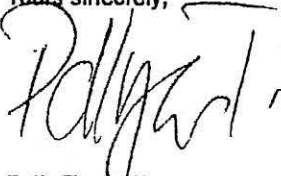
4. What procedures exist to make post-strike assessments of the identity of individuals killed or injured in US targeting operations in Pakistan?
5. What policies and procedures has the CIA established to investigate credible allegations of deaths and injuries resulting from unlawful attacks during US targeting operations? Please provide details of the investigating body and the legal and policy standards applied to investigating the legality of strikes and the investigatory body's procedures?
6. Has the Inspector General of the CIA or any other oversight body conducted investigations into targeting operations in Pakistan by the CIA?
7. Provide summaries, including the findings, of any investigations conducted into US targeting operations by UAVs or other use of lethal force in Pakistan, and information the CIA has compiled about the number and identity of individuals killed overall in CIA targeting operations.
8. US law requires the CIA to keep Congress "fully and currently informed of all covert actions." What measures does the CIA take to ensure that information provided to members of Congress, for example with video and audio recordings from drone strikes, enables a full and accurate depiction of the strikes and any resulting deaths and injuries?
9. What measures have been taken to protect individuals in Pakistan who assist the US in targeting operations from threats to life and other abuses by armed groups and Pakistan forces?

Law & Presidential Policy Directive (22 May 2013)

10. Provide an explanation of the practices of 'signature strike' and 'personality strike' and how these are consistent with international humanitarian law and international human rights law; and describe the criteria for determining whether individuals are civilians or "combatants/militants".
11. Do Department of Defense directives and policies apply to personnel conducting targeting operations under Title 50 authorities?
12. How does the CIA implement the "preference for capture" described in the Presidential Policy Directive issued in May 2013? Under what circumstances must US personnel seek to capture a "terrorist suspect," rather than use lethal force?
13. How does the CIA implement the criteria described in the Presidential Policy Directive that there be "[n]ear certainty that non-combatants will not be injured or killed" before a lethal action is taken? What steps do CIA personnel take to comply with the directive in this regard? Do Rules of Engagement applicable in Pakistan reflect this and other requirements of the Presidential Policy Directive?

I look forward to your responses to the questions above and would also be glad to meet with you to discuss these matters further.

Yours sincerely,



Polly Trussott
Deputy Director, Asia-Pacific Program

cc James Clapper, Director of National Intelligence

Central Intelligence Agency



Washington, D.C. 20505

2 October 2013

Polly Truscott
Deputy Director, Asia-Pacific Program
Amnesty International

Dear Ms. Truscott,

Thank you for your letter to Director Brennan dated 2 September 2013 and your forwarding letters to other Agency officers dated 3 September 2013. The CIA is not in a position to comment on the specific questions and allegations raised in these letters. Instead, we refer you to the President's speech on 23 May 2013 at the National Defense University and the fact sheet, titled "U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities," released by the White House on the same date. The President outlined in his address the conditions under which the U.S. Government would undertake lethal action abroad and the fact sheet provided further details. Questions on these policies should be directed to the White House.

Sincerely,

A handwritten signature in cursive script that reads "Dean Boyd".

Dean Boyd
Director of the Office of Public Affairs
Central Intelligence Agency

(b) (5)

From: Sarah Cleveland (b) (6) >
Sent: Tuesday, October 29, 2013 6:24 PM
To: Mary McLeod
Cc: Krass, Caroline D. (OLC); Daniel Bethlehem; Josh Dorosin; Greta Moseson; Harold Koh; (b) (6); Iain MacLeod (b) (6); Liesbeth Lijnzaad (b) (6); Paul McKell; Richard Gross; Rebecca Ingbe (b) (6); robert.li (b) (6), (b) (3) (A); (b) (6) (b) (6) (b) (6)
Subject: Re: Nov. 1 Meeting
Attachments: Nov. 1 Participants.docx; Nov. 1 readings.pdf

Apologies -- people apparently were having difficulty opening the readings. The pdf of the readings is reattached, below.

Sarah H. Cleveland
Louis Henkin Professor of Human and Constitutional Rights
Faculty Co-Director, Human Rights Institute
Columbia Law School
435 W. 116th St., Rm. 912
New York, N.Y. 10027
(b) (6)
(b) (6) -7946 (fax)
(b) (6)

From: Sarah Cleveland/CLS
To: "Mary McLeod" (b) (6); (b) (6) (b) (6); "Richard Gross" (b) (6); "Josh Dorosin" (b) (6); "Caroline Krass" (b) (6); robert.li (b) (6), (b) (3) (A); "Iain MacLeod" (b) (6); "Paul McKell" (b) (6); "Liesbeth Lijnzaad" (b) (6); (b) (6); "Daniel Bethlehem" (b) (6); "Harold Koh" (b) (6); "Rebecca Ingbe" (b) (6); (b) (6)
Cc: Greta Moseson/CLS@LAW
Date: 10/29/2013 03:34 PM
Subject: Nov. 1 Meeting

Dear all:

We are looking forward to hosting you in New York this Friday. I am attaching a current list of participants, and some background materials relevant to the discussion. These include the Fact Sheet and excerpts from the President's speech of May 2013, and a recent policy paper from the European Council on Foreign Relations. If you have time to glance at any of the materials, I would recommend these three. The other materials are relevant excerpts from prior Obama Administration speeches and Daniel Bethlehem's short paper on principles relating to self-defense. None of these are required readings and most will be familiar to this group. Hard copies will also be available at the meeting.

The discussion will run from 2 p.m. to 6 p.m. in Case Lounge, on the 7th floor of Columbia Law School. The main law school building (Jerome Greene Hall) is located at 435 W. 116th St. (Amsterdam & 116th). After the meeting, we will have drinks and dinner at Bar Boulud, 1900 Broadway (at 64th St.), (212) 595-0303. Transportation will be provided.

This is intended to be an informal, unofficial conversation, and we will not be circulating a detailed agenda. However, we would appreciate it if you could give some thought in advance to the current state of the public conversation relating to lethal targeting, including in your home jurisdiction. Dress is business casual.

Please let me know if you have any questions, and I look forward to seeing you on Friday!

All good wishes,

Sarah

Sarah H. Cleveland
Louis Henkin Professor of Human and Constitutional Rights
Faculty Co-Director, Human Rights Institute
Columbia Law School
435 W. 116th St., Rm. 912
New York, N.Y. 10027

(b) (6)

(b) (6) (fax)

(b) (6)

- DRAFT -

LEGAL ADVISER MEETING

**Columbia Law School
Jerome Greene Hall, 7th Floor, Case Lounge
Nov. 1, 2013, 2 p.m. – 6 p.m.**

PARTICIPANTS

Mr. Hugh Adsett
Deputy Legal Adviser and Director General
Legal Affairs Bureau
Canadian Ministry of Foreign Affairs, Trade and Development

Sir Daniel Bethlehem
Visiting Professor, Columbia Law School
Former Legal Adviser, United Kingdom Foreign & Commonwealth Office

Prof. Sarah Cleveland
Louis Henkin Professor of Human & Constitutional Rights,
Columbia Law School
Former Counselor on International Law to the Legal Adviser,
U.S. Department of State

Mr. Josh Dorosin
Assistant Legal Adviser for Political/Military Affairs
U.S. Department of State

Brig. Gen. Rich Gross
U.S. Army, Legal Counsel
Chairman of the Joint Chiefs of Staff

Ms. Rebecca Ingber
Associate in Law, Columbia Law School
Former Attorney Adviser for Political/Military Affairs
U.S. Department of State

Prof. Harold Hongju Koh
Visiting Scholar, Columbia Law School
Sterling Professor, Yale Law School
Former Legal Adviser, U.S. Department of State

Ms. Caroline Krass
Principal Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice

Ambassador Jonas Bering Liisberg
Legal Adviser
Denmark Ministry of Foreign Affairs

Prof. Dr. Liesbeth Lijnzaad
Legal Adviser
Netherlands Ministry of Foreign Affairs

Mr. Robert Litt
General Counsel
U.S. Office of the Director of National Intelligence

Mr. Iain Macleod
Legal Adviser
United Kingdom Foreign & Commonwealth Office

Mr. Paul McKell
Counselor, Permanent Mission of the United Kingdom to the United Nations
United Kingdom Foreign & Commonwealth Office

Ms. Mary McLeod
Acting Legal Adviser
U.S. Department of State

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Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities

Since his first day in office, President Obama has been clear that the United States will use all available tools of national power to protect the American people from the terrorist threat posed by al-Qa'ida and its associated forces. The President has also made clear that, in carrying on this fight, we will uphold our laws and values and will share as much information as possible with the American people and the Congress, consistent with our national security needs and the proper functioning of the Executive Branch. To these ends, the President has approved, and senior members of the Executive Branch have briefed to the Congress, written policy standards and procedures that formalize and strengthen the Administration's rigorous process for reviewing and approving operations to capture or employ lethal force against terrorist targets outside the United States and outside areas of active hostilities. Additionally, the President has decided to share, in this document, certain key elements of these standards and procedures with the American people so that they can make informed judgments and hold the Executive Branch accountable.

This document provides information regarding counterterrorism policy standards and procedures that are either already in place or will be transitioned into place over time. As Administration officials have stated publicly on numerous occasions, we are continually working to refine, clarify, and strengthen our standards and processes for using force to keep the nation safe from the terrorist threat. One constant is our commitment to conducting counterterrorism operations lawfully. In addition, we consider the separate question of whether force should be used as a matter of policy. The most important policy consideration, particularly when the United States contemplates using lethal force, is whether our actions protect American lives.

Preference for Capture

The policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect, because capturing a terrorist offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots. Capture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with all applicable law and consistent with our obligations to other sovereign states.

Standards for the Use of Lethal Force

Any decision to use force abroad – even when our adversaries are terrorists dedicated to

killing American citizens – is a significant one. Lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Lethal force will be used only to prevent or stop attacks against U.S. persons, and even then, only when capture is not feasible and no other reasonable alternatives exist to address the threat effectively. In particular, lethal force will be used outside areas of active hostilities only when the following preconditions are met:

First, there must be a legal basis for using lethal force, whether it is against a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.

Second, the United States will use lethal force only against a target that poses a continuing, imminent threat to U.S. persons. It is simply not the case that all terrorists pose a continuing, imminent threat to U.S. persons; if a terrorist does not pose such a threat, the United States will not use lethal force.

Third, the following criteria must be met before lethal action may be taken:

1. Near certainty that the terrorist target is present;
2. Near certainty that non-combatants^[1] will not be injured or killed;
3. An assessment that capture is not feasible at the time of the operation;
4. An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and
5. An assessment that no other reasonable alternatives exist to effectively address the threat to U.S. persons.

Finally, whenever the United States uses force in foreign territories, international legal principles, including respect for sovereignty and the law of armed conflict, impose important constraints on the ability of the United States to act unilaterally – and on the way in which the United States can use force. The United States respects national sovereignty and international law.

U.S. Government Coordination and Review

Decisions to capture or otherwise use force against individual terrorists outside the United States and areas of active hostilities are made at the most senior levels of the U.S. Government, informed by departments and agencies with relevant expertise and institutional roles. Senior national security officials – including the deputies and heads of key departments and agencies – will consider proposals to make sure that our policy standards are met, and attorneys – including the senior lawyers of key departments and agencies – will review and determine the legality of proposals.

These decisions will be informed by a broad analysis of an intended target's current and past role in plots threatening U.S. persons; relevant intelligence information the individual could provide; and the potential impact of the operation on ongoing terrorism

plotting, on the capabilities of terrorist organizations, on U.S. foreign relations, and on U.S. intelligence collection. Such analysis will inform consideration of whether the individual meets both the legal and policy standards for the operation.

Other Key Elements

U.S. Persons. If the United States considers an operation against a terrorist identified as a U.S. person, the Department of Justice will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States.

Reservation of Authority. These new standards and procedures do not limit the President's authority to take action in extraordinary circumstances when doing so is both lawful and necessary to protect the United States or its allies.

Congressional Notification. Since entering office, the President has made certain that the appropriate Members of Congress have been kept fully informed about our counterterrorism operations. Consistent with this strong and continuing commitment to congressional oversight, appropriate Members of the Congress will be regularly provided with updates identifying any individuals against whom lethal force has been approved. In addition, the appropriate committees of Congress will be notified whenever a counterterrorism operation covered by these standards and procedures has been conducted.

[1] Non-combatants are individuals who may not be made the object of attack under applicable international law. The term "non-combatant" does not include an individual who is part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense. Males of military age may be non-combatants; it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants.

**Remarks by the President at the National Defense University,
May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>**

Now, make no mistake, our nation is still threatened by terrorists. From Benghazi to Boston, we have been tragically reminded of that truth. But we have to recognize that the threat has shifted and evolved from the one that came to our shores on 9/11. With a decade of experience now to draw from, this is the moment to ask ourselves hard questions -- about the nature of today's threats and how we should confront them.

And these questions matter to every American.

For over the last decade, our nation has spent well over a trillion dollars on war, helping to explode our deficits and constraining our ability to nation-build here at home. Our servicemembers and their families have sacrificed far more on our behalf. Nearly 7,000 Americans have made the ultimate sacrifice. Many more have left a part of themselves on the battlefield, or brought the shadows of battle back home. From our use of drones to the detention of terrorist suspects, the decisions that we are making now will define the type of nation -- and world -- that we leave to our children.

So America is at a crossroads. We must define the nature and scope of this struggle, or else it will define us. We have to be mindful of James Madison's warning that "No nation could preserve its freedom in the midst of continual warfare." Neither I, nor any President, can promise the total defeat of terror. We will never erase the evil that lies in the hearts of some human beings, nor stamp out every danger to our open society. But what we can do -- what we must do -- is dismantle networks that pose a direct danger to us, and make it less likely for new groups to gain a foothold, all the while maintaining the freedoms and ideals that we defend. And to define that strategy, we have to make decisions based not on fear, but on hard-earned wisdom. That begins with understanding the current threat that we face.

Today, the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat. Their remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They've not carried out a successful attack on our homeland since 9/11.

Instead, what we've seen is the emergence of various al Qaeda affiliates. From Yemen to Iraq, from Somalia to North Africa, the threat today is more diffuse, with Al Qaeda's affiliates in the Arabian Peninsula -- AQAP -- the most active in plotting against our homeland. And while none of AQAP's efforts approach the scale of 9/11, they have continued to plot acts of terror, like the attempt to blow up an airplane on Christmas Day in 2009.

Unrest in the Arab world has also allowed extremists to gain a foothold in countries like Libya and Syria. But here, too, there are differences from 9/11. In some cases, we continue to confront state-sponsored networks like Hezbollah that engage in acts of terror

to achieve political goals. Other of these groups are simply collections of local militias or extremists interested in seizing territory. And while we are vigilant for signs that these groups may pose a transnational threat, most are focused on operating in the countries and regions where they are based. And that means we'll face more localized threats like what we saw in Benghazi, or the BP oil facility in Algeria, in which local operatives -- perhaps in loose affiliation with regional networks -- launch periodic attacks against Western diplomats, companies, and other soft targets, or resort to kidnapping and other criminal enterprises to fund their operations.

And finally, we face a real threat from radicalized individuals here in the United States. Whether it's a shooter at a Sikh Temple in Wisconsin, a plane flying into a building in Texas, or the extremists who killed 168 people at the Federal Building in Oklahoma City, America has confronted many forms of violent extremism in our history. Deranged or alienated individuals -- often U.S. citizens or legal residents -- can do enormous damage, particularly when inspired by larger notions of violent jihad. And that pull towards extremism appears to have led to the shooting at Fort Hood and the bombing of the Boston Marathon.

So that's the current threat -- lethal yet less capable al Qaeda affiliates; threats to diplomatic facilities and businesses abroad; homegrown extremists. This is the future of terrorism. We have to take these threats seriously, and do all that we can to confront them. But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.

In the 1980s, we lost Americans to terrorism at our Embassy in Beirut; at our Marine Barracks in Lebanon; on a cruise ship at sea; at a disco in Berlin; and on a Pan Am flight -- Flight 103 -- over Lockerbie. In the 1990s, we lost Americans to terrorism at the World Trade Center; at our military facilities in Saudi Arabia; and at our Embassy in Kenya. These attacks were all brutal; they were all deadly; and we learned that left unchecked, these threats can grow. But if dealt with smartly and proportionally, these threats need not rise to the level that we saw on the eve of 9/11.

Moreover, we have to recognize that these threats don't arise in a vacuum. Most, though not all, of the terrorism we faced is fueled by a common ideology -- a belief by some extremists that Islam is in conflict with the United States and the West, and that violence against Western targets, including civilians, is justified in pursuit of a larger cause. Of course, this ideology is based on a lie, for the United States is not at war with Islam. And this ideology is rejected by the vast majority of Muslims, who are the most frequent victims of terrorist attacks.

Nevertheless, this ideology persists, and in an age when ideas and images can travel the globe in an instant, our response to terrorism can't depend on military or law enforcement alone. We need all elements of national power to win a battle of wills, a battle of ideas. So what I want to discuss here today is the components of such a comprehensive counterterrorism strategy.

First, we must finish the work of defeating al Qaeda and its associated forces.

In Afghanistan, we will complete our transition to Afghan responsibility for that country's security. Our troops will come home. Our combat mission will come to an end. And we will work with the Afghan government to train security forces, and sustain a counterterrorism force, which ensures that al Qaeda can never again establish a safe haven to launch attacks against us or our allies.

Beyond Afghanistan, we must define our effort not as a boundless "global war on terror," but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America. In many cases, this will involve partnerships with other countries. Already, thousands of Pakistani soldiers have lost their lives fighting extremists. In Yemen, we are supporting security forces that have reclaimed territory from AQAP. In Somalia, we helped a coalition of African nations push al-Shabaab out of its strongholds. In Mali, we're providing military aid to French-led intervention to push back al Qaeda in the Maghreb, and help the people of Mali reclaim their future.

Much of our best counterterrorism cooperation results in the gathering and sharing of intelligence, the arrest and prosecution of terrorists. And that's how a Somali terrorist apprehended off the coast of Yemen is now in a prison in New York. That's how we worked with European allies to disrupt plots from Denmark to Germany to the United Kingdom. That's how intelligence collected with Saudi Arabia helped us stop a cargo plane from being blown up over the Atlantic. These partnerships work.

But despite our strong preference for the detention and prosecution of terrorists, sometimes this approach is foreclosed. Al Qaeda and its affiliates try to gain foothold in some of the most distant and unforgiving places on Earth. They take refuge in remote tribal regions. They hide in caves and walled compounds. They train in empty deserts and rugged mountains.

In some of these places -- such as parts of Somalia and Yemen -- the state only has the most tenuous reach into the territory. In other cases, the state lacks the capacity or will to take action. And it's also not possible for America to simply deploy a team of Special Forces to capture every terrorist. Even when such an approach may be possible, there are places where it would pose profound risks to our troops and local civilians -- where a terrorist compound cannot be breached without triggering a firefight with surrounding tribal communities, for example, that pose no threat to us; times when putting U.S. boots on the ground may trigger a major international crisis.

To put it another way, our operation in Pakistan against Osama bin Laden cannot be the norm. The risks in that case were immense. The likelihood of capture, although that was our preference, was remote given the certainty that our folks would confront resistance. The fact that we did not find ourselves confronted with civilian casualties, or embroiled in an extended firefight, was a testament to the meticulous planning and

professionalism of our Special Forces, but it also depended on some luck. And it was supported by massive infrastructure in Afghanistan.

And even then, the cost to our relationship with Pakistan -- and the backlash among the Pakistani public over encroachment on their territory -- was so severe that we are just now beginning to rebuild this important partnership.

So it is in this context that the United States has taken lethal, targeted action against al Qaeda and its associated forces, including with remotely piloted aircraft commonly referred to as drones.

As was true in previous armed conflicts, this new technology raises profound questions -- about who is targeted, and why; about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under U.S. and international law; about accountability and morality. So let me address these questions.

To begin with, our actions are effective. Don't take my word for it. In the intelligence gathered at bin Laden's compound, we found that he wrote, "We could lose the reserves to enemy's air strikes. We cannot fight air strikes with explosives." Other communications from al Qaeda operatives confirm this as well. Dozens of highly skilled al Qaeda commanders, trainers, bomb makers and operatives have been taken off the battlefield. Plots have been disrupted that would have targeted international aviation, U.S. transit systems, European cities and our troops in Afghanistan. Simply put, these strikes have saved lives.

Moreover, America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war -- a war waged proportionally, in last resort, and in self-defense.

And yet, as our fight enters a new phase, America's legitimate claim of self-defense cannot be the end of the discussion. To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance. For the same human progress that gives us the technology to strike half a world away also demands the discipline to constrain that power -- or risk abusing it. And that's why, over the last four years, my administration has worked vigorously to establish a framework that governs our use of force against terrorists -- insisting upon clear guidelines, oversight and accountability that is now codified in Presidential Policy Guidance that I signed yesterday.

In the Afghan war theater, we must -- and will -- continue to support our troops until the transition is complete at the end of 2014. And that means we will continue to take strikes against high value al Qaeda targets, but also against forces that are massing to support attacks on coalition forces. But by the end of 2014, we will no longer have the same need

for force protection, and the progress we've made against core al Qaeda will reduce the need for unmanned strikes.

Beyond the Afghan theater, we only target al Qaeda and its associated forces. And even then, the use of drones is heavily constrained. America does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our actions are bound by consultations with partners, and respect for state sovereignty.

America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured -- the highest standard we can set.

Now, this last point is critical, because much of the criticism about drone strikes -- both here at home and abroad -- understandably centers on reports of civilian casualties. There's a wide gap between U.S. assessments of such casualties and nongovernmental reports. Nevertheless, it is a hard fact that U.S. strikes have resulted in civilian casualties, a risk that exists in every war. And for the families of those civilians, no words or legal construct can justify their loss. For me, and those in my chain of command, those deaths will haunt us as long as we live, just as we are haunted by the civilian casualties that have occurred throughout conventional fighting in Afghanistan and Iraq.

But as Commander-in-Chief, I must weigh these heartbreaking tragedies against the alternatives. To do nothing in the face of terrorist networks would invite far more civilian casualties -- not just in our cities at home and our facilities abroad, but also in the very places like Sana'a and Kabul and Mogadishu where terrorists seek a foothold. Remember that the terrorists we are after target civilians, and the death toll from their acts of terrorism against Muslims dwarfs any estimate of civilian casualties from drone strikes. So doing nothing is not an option.

Where foreign governments cannot or will not effectively stop terrorism in their territory, the primary alternative to targeted lethal action would be the use of conventional military options. As I've already said, even small special operations carry enormous risks. Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage. And invasions of these territories lead us to be viewed as occupying armies, unleash a torrent of unintended consequences, are difficult to contain, result in large numbers of civilian casualties and ultimately empower those who thrive on violent conflict.

So it is false to assert that putting boots on the ground is less likely to result in civilian deaths or less likely to create enemies in the Muslim world. The results would be more U.S. deaths, more Black Hawks down, more confrontations with local populations, and

an inevitable mission creep in support of such raids that could easily escalate into new wars.

Yes, the conflict with al Qaeda, like all armed conflict, invites tragedy. But by narrowly targeting our action against those who want to kill us and not the people they hide among, we are choosing the course of action least likely to result in the loss of innocent life.

Our efforts must be measured against the history of putting American troops in distant lands among hostile populations. In Vietnam, hundreds of thousands of civilians died in a war where the boundaries of battle were blurred. In Iraq and Afghanistan, despite the extraordinary courage and discipline of our troops, thousands of civilians have been killed. So neither conventional military action nor waiting for attacks to occur offers moral safe harbor, and neither does a sole reliance on law enforcement in territories that have no functioning police or security services -- and indeed, have no functioning law.

Now, this is not to say that the risks are not real. Any U.S. military action in foreign lands risks creating more enemies and impacts public opinion overseas. Moreover, our laws constrain the power of the President even during wartime, and I have taken an oath to defend the Constitution of the United States. The very precision of drone strikes and the necessary secrecy often involved in such actions can end up shielding our government from the public scrutiny that a troop deployment invites. It can also lead a President and his team to view drone strikes as a cure-all for terrorism.

And for this reason, I've insisted on strong oversight of all lethal action. After I took office, my administration began briefing all strikes outside of Iraq and Afghanistan to the appropriate committees of Congress. Let me repeat that: Not only did Congress authorize the use of force, it is briefed on every strike that America takes. Every strike. That includes the one instance when we targeted an American citizen -- Anwar Awlaki, the chief of external operations for AQAP.

This week, I authorized the declassification of this action, and the deaths of three other Americans in drone strikes, to facilitate transparency and debate on this issue and to dismiss some of the more outlandish claims that have been made. For the record, I do not believe it would be constitutional for the government to target and kill any U.S. citizen -- with a drone, or with a shotgun -- without due process, nor should any President deploy armed drones over U.S. soil.

But when a U.S. citizen goes abroad to wage war against America and is actively plotting to kill U.S. citizens, and when neither the United States, nor our partners are in a position to capture him before he carries out a plot, his citizenship should no more serve as a shield than a sniper shooting down on an innocent crowd should be protected from a SWAT team.

That's who Anwar Awlaki was -- he was continuously trying to kill people. He helped oversee the 2010 plot to detonate explosive devices on two U.S.-bound cargo planes. He was involved in planning to blow up an airliner in 2009. When Farouk Abdulmutallab --

the Christmas Day bomber -- went to Yemen in 2009, Awlaki hosted him, approved his suicide operation, helped him tape a martyrdom video to be shown after the attack, and his last instructions were to blow up the airplane when it was over American soil. I would have detained and prosecuted Awlaki if we captured him before he carried out a plot, but we couldn't. And as President, I would have been derelict in my duty had I not authorized the strike that took him out.

Of course, the targeting of any American raises constitutional issues that are not present in other strikes -- which is why my administration submitted information about Awlaki to the Department of Justice months before Awlaki was killed, and briefed the Congress before this strike as well. But the high threshold that we've set for taking lethal action applies to all potential terrorist targets, regardless of whether or not they are American citizens. This threshold respects the inherent dignity of every human life. Alongside the decision to put our men and women in uniform in harm's way, the decision to use force against individuals or groups -- even against a sworn enemy of the United States -- is the hardest thing I do as President. But these decisions must be made, given my responsibility to protect the American people.

Going forward, I've asked my administration to review proposals to extend oversight of lethal actions outside of warzones that go beyond our reporting to Congress. Each option has virtues in theory, but poses difficulties in practice. For example, the establishment of a special court to evaluate and authorize lethal action has the benefit of bringing a third branch of government into the process, but raises serious constitutional issues about presidential and judicial authority. Another idea that's been suggested -- the establishment of an independent oversight board in the executive branch -- avoids those problems, but may introduce a layer of bureaucracy into national security decision-making, without inspiring additional public confidence in the process. But despite these challenges, I look forward to actively engaging Congress to explore these and other options for increased oversight.

I believe, however, that the use of force must be seen as part of a larger discussion we need to have about a comprehensive counterterrorism strategy -- because for all the focus on the use of force, force alone cannot make us safe. We cannot use force everywhere that a radical ideology takes root; and in the absence of a strategy that reduces the wellspring of extremism, a perpetual war -- through drones or Special Forces or troop deployments -- will prove self-defeating, and alter our country in troubling ways.

...

Now, all these issues remind us that the choices we make about war can impact -- in sometimes unintended ways -- the openness and freedom on which our way of life depends. And that is why I intend to engage Congress about the existing Authorization to Use Military Force, or AUMF, to determine how we can continue to fight terrorism without keeping America on a perpetual wartime footing.

The AUMF is now nearly 12 years old. The Afghan war is coming to an end. Core al Qaeda is a shell of its former self. Groups like AQAP must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible

threat to the United States. Unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don't need to fight, or continue to grant Presidents unbound powers more suited for traditional armed conflicts between nation states.

So I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF's mandate. And I will not sign laws designed to expand this mandate further. Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That's what history advises. That's what our democracy demands....

Obama Administration Speeches

(Excerpts)

Below are relevant excerpts from speeches of various Obama Administration officials regarding the use of force. The full text of each speech is also accessible through the hyperlink.

1. **Harold K. Koh, Legal Adviser to the Department of State, Address to the American Society of International Law, "The Obama Administration and International Law," March 25, 2010.**

The Law of 9/11

Let me focus the balance of my remarks on that aspect of my job that I call "The Law of 9/11." In this area, as in the other areas of our work, we believe, in the President's words, that "living our values doesn't make us weaker, it makes us safer and it makes us stronger."

We live in a time, when, as you know, the United States finds itself engaged in several armed conflicts. As the President has noted, one conflict, in Iraq, is winding down. He also reminded us that the conflict in Afghanistan is a "conflict that America did not seek, one in which we are joined by forty-three other countries...in an effort to defend ourselves and all nations from further attacks." In the conflict occurring in Afghanistan and elsewhere, we continue to fight the perpetrators of 9/11: a non-state actor, al-Qaeda (as well as the Taliban forces that harbored al-Qaeda).

Everyone here at this meeting is committed to international law. But as President Obama reminded us, "the world must remember that it was not simply international institutions -- not just treaties and declarations -- that brought stability to a post-World War II world. ...[T]he instruments of war do have a role to play in preserving the peace."

With this background, let me address a question on many of your minds: how has this Administration determined to conduct these armed conflicts and to defend our national security, consistent with its abiding commitment to international law? ***Let there be no doubt: the Obama Administration is firmly committed to complying with all applicable law, including the laws of war, in all aspects of these ongoing armed conflicts.*** As the President reaffirmed in his Nobel Prize Lecture, "Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct ... [E]ven as we confront a vicious adversary that abides by no rules ... the United States of America must remain a standard bearer in the conduct of war. That is what makes us different from those whom we fight. That is the source of our strength." We in the Obama Administration have worked hard since we entered office to ensure that we conduct all aspects of these armed conflicts – in particular, detention operations, targeting, and prosecution of terrorist suspects – in a manner consistent not just with the applicable laws of war, but also with the Constitution and laws of the United States.

...

B. Use of Force

In the same way, in all of our operations involving the *use of force*, including those in the armed conflict with al-Qaeda, the Taliban and associated forces, the Obama Administration is committed by word and deed to conducting ourselves in accordance with all applicable law. With respect to the subject of targeting, which has been much commented upon in the media and international legal circles, there are obviously limits to what I can say publicly. What I can say *is that it is the considered view of this Administration—and it has certainly been my experience during my time as Legal Adviser—that U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war.*

The United States agrees that it must conform its actions to all applicable law. As I have explained, as a matter of international law, the United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defense under international law. As a matter of domestic law, Congress authorized the use of all necessary and appropriate force through the 2001 Authorization for Use of Military Force (AUMF). These domestic and international legal authorities continue to this day.

As recent events have shown, al-Qaeda has not abandoned its intent to attack the United States, and indeed continues to attack us. Thus, in this ongoing armed conflict, the United States has the authority under international law, and the responsibility to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks. As you know, this is a conflict with an organized terrorist enemy that does not have conventional forces, but that plans and executes its attacks against us and our allies while hiding among civilian populations. That behavior simultaneously makes the application of international law more difficult and more critical for the protection of innocent civilians. Of course, whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses. In particular, this Administration has carefully reviewed the rules governing targeting operations to ensure that these operations are conducted consistently with law of war principles, including:

- First, the principle of *distinction*, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack; and
- Second, the principle of *proportionality*, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.

In U.S. operations against al-Qaeda and its associated forces-- including lethal operations conducted with the use of unmanned aerial vehicles-- great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum.

Recently, a number of legal objections have been raised against U.S. targeting practices. While today is obviously not the occasion for a detailed legal opinion responding to each of these objections, let me briefly address four:

First, some have suggested that the *very act of targeting* a particular leader of an enemy force in an armed conflict must violate the laws of war. But individuals who are part of such an armed group are belligerents and, therefore, lawful targets under international law. During World War II, for example, American aviators tracked and shot down the airplane carrying the architect of the Japanese attack on Pearl Harbor, who was also the leader of enemy forces in the Battle of Midway. This was a lawful operation then, and would be if conducted today. Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects.

Second, some have challenged *the very use of advanced weapons systems*, such as unmanned aerial vehicles, for lethal operations. But the rules that govern targeting do not turn on the type of weapon system used, and there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict-- such as pilotless aircraft or so-called smart bombs-- so long as they are employed in conformity with applicable laws of war. Indeed, using such advanced technologies can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations.

Third, some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes *unlawful extrajudicial killing*. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force. Our procedures and practices for identifying lawful targets are extremely robust, and advanced technologies have helped to make our targeting even more precise. In my experience, the principles of distinction and proportionality that the United States applies are not just recited at meetings. They are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law.

Fourth and finally, some have argued that our targeting practices violate *domestic law*, in particular, the long-standing *domestic ban on assassinations*. But under domestic law, the use of lawful weapons systems—consistent with the applicable laws of war—for precision targeting of specific high-level belligerent leaders when acting in self-defense or during an armed conflict is not unlawful, and hence does not constitute “assassination.”

In sum, let me repeat: as in the area of detention operations, this Administration is committed to ensuring that the targeting practices that I have described are lawful.

2. Harold Hongju Koh, Legal Adviser, “The Lawfulness of the U.S. Operation Against Osama Bin Laden,” Opinio Juris blog, May 19, 2011.

Given bin Laden’s unquestioned leadership position within al Qaeda and his clear continuing operational role, there can be no question that he was the leader of an enemy force and a legitimate target in our armed conflict with al Qaeda. In addition, bin Laden continued to pose an imminent threat to the United States that engaged our right to use force, a threat that materials seized during the raid have only further documented. Under these circumstances, there is no question that he presented a lawful target for the use of lethal force. By enacting the AUMF, Congress expressly authorized the President to use military force “against ... *persons* [such as bin Laden, whom the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 ... in order to prevent any future acts of international terrorism against the United States by such ... persons” (emphasis added). Moreover, the manner in which the U.S. operation was conducted—taking great pains both to distinguish between legitimate military objectives and civilians and to avoid excessive incidental injury to the latter—followed the principles of distinction and proportionality described above, and was designed specifically to preserve those principles, even if it meant putting U.S. forces in harm’s way. Finally, consistent with the laws of armed conflict and U.S. military doctrine, the U.S. forces were prepared to capture bin Laden if he had surrendered in a way that they could safely accept. The laws of armed conflict require acceptance of a genuine offer of surrender that is clearly communicated by the surrendering party and received by the opposing force, under circumstances where it is feasible for the opposing force to accept that offer of surrender. But where that is not the case, those laws authorize use of lethal force against an enemy belligerent, under the circumstances presented here.

In sum, the United States acted lawfully in carrying out its mission against Osama bin Laden.

3. John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, “Strengthening Our Security by Adhering to Our Values and Laws,” Address at Harvard Law School, September 16, 2011.

Obviously, the death of Usama Bin Laden marked a strategic milestone in our effort to defeat al-Qa’ida. Unfortunately, Bin Laden’s death, and the death and capture of many other al-Qa’ida leaders and operatives, does not mark the end of that terrorist organization or its efforts to attack the United States and other countries. Indeed, al-Qa’ida, its affiliates and its adherents remain the preeminent security threat to our nation.

The core of al-Qa'ida—its leadership based in Pakistan—though severely crippled, still retains the intent and capability to attack the United States and our allies. Al-Qa'ida's affiliates—in places like Pakistan, Yemen, and countries throughout Africa—carry out its murderous agenda. And al-Qa'ida adherents – individuals, sometimes with little or no contact with the group itself – have succumbed to its hateful ideology and work to facilitate or conduct attacks here in the United States, as we saw in the tragedy at Fort Hood.

Guiding principles

In the face of this ongoing and evolving threat, the Obama Administration has worked to establish a counterterrorism framework that has been effective in enhancing the security of our nation. This framework is guided by several core principles.

First, our highest priority is – and always will be – the safety and security of the American people. As President Obama has said, we have no greater responsibility as a government.

Second, we will use every lawful tool and authority at our disposal. No single agency or department has sole responsibility for this fight because no single department or agency possesses all the capabilities needed for this fight.

Third, we are pragmatic, not rigid or ideological – making decisions not based on preconceived notions about which action seems “stronger,” but based on what will actually enhance the security of this country and the safety of the American people. We address each threat and each circumstance in a way that best serves our national security interests, which includes building partnerships with countries around the world.

Fourth—and the principle that guides all our actions, foreign and domestic—we will uphold the core values that define us as Americans, and that includes adhering to the rule of law. And when I say “all our actions,” that includes covert actions, which we undertake under the authorities provided to us by Congress. President Obama has directed that all our actions—even when conducted out of public view—remain consistent with our laws and values.

For when we uphold the rule of law, governments around the globe are more likely to provide us with intelligence we need to disrupt ongoing plots, they're more likely to join us in taking swift and decisive action against terrorists, and they're more likely to turn over suspected terrorists who are plotting to attack us, along with the evidence needed to prosecute them.

When we uphold the rule of law, our counterterrorism tools are more likely to withstand the scrutiny of our courts, our allies, and the American people. And when we uphold the rule of law it provides a powerful alternative to the twisted worldview offered by al-Qa'ida. Where terrorists offer injustice, disorder and destruction, the United States and its allies stand for freedom, fairness, equality, hope, and opportunity.

In short, we must not cut corners by setting aside our values and flouting our laws, treating them like luxuries we cannot afford. Indeed, President Obama has made it clear—we must reject the false choice between our values and our security. We are constantly working to optimize both. Over the past two and a half years, we have put in place an approach—both here at home and abroad—that will enable this Administration and its successors, in cooperation with key partners overseas, to deal with the threat from al-Qa'ida, its affiliates, and its adherents in a forceful, effective and lasting way.

In keeping with our guiding principles, the President's approach has been pragmatic—neither a wholesale overhaul nor a wholesale retention of past practices. Where the methods and tactics of the previous administration have proven effective and enhanced our security, we have maintained them. Where they did not, we have taken concrete steps to get us back on course.

Unfortunately, much of the debate around our counterterrorism policies has tended to obscure the extraordinary progress of the past few years. So with the time I have left, I want to touch on a few specific topics that illustrate how our adherence to the rule of law advances our national security.

Nature and geographic scope of the conflict

First, our definition of the conflict. As the President has said many times, we are at war with al-Qa'ida. In an indisputable act of aggression, al-Qa'ida attacked our nation and killed nearly 3,000 innocent people. And as we were reminded just last weekend, al-Qa'ida seeks to attack us again. Our ongoing armed conflict with al-Qa'ida stems from our right—recognized under international law—to self defense.

An area in which there is some disagreement is the geographic scope of the conflict. The United States does not view our authority to use military force against al-Qa'ida as being restricted solely to “hot” battlefields like Afghanistan. Because we are engaged in an armed conflict with al-Qa'ida, the United States takes the legal position that—in accordance with international law—we have the authority to take action against al-Qa'ida and its associated forces without doing a separate self-defense analysis each time. And as President Obama has stated on numerous occasions, we reserve the right to take unilateral action if or when other governments are unwilling or unable to take the necessary actions themselves.

That does not mean we can use military force whenever we want, wherever we want. International legal principles, including respect for a state's sovereignty and the laws of war, impose important constraints on our ability to act unilaterally—and on the way in which we can use force—in foreign territories.

Others in the international community—including some of our closest allies and partners—take a different view of the geographic scope of the conflict, limiting it only to the “hot” battlefields. As such, they argue that, outside of these two active theatres, the United States can only act in self-defense against al-Qa'ida when they are planning,

engaging in, or threatening an armed attack against U.S. interests if it amounts to an “imminent” threat.

In practice, the U.S. approach to targeting in the conflict with al-Qa’ida is far more aligned with our allies’ approach than many assume. This Administration’s counterterrorism efforts outside of Afghanistan and Iraq are focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qa’ida and its associated forces. Practically speaking, then, the question turns principally on how you define “imminence.”

We are finding increasing recognition in the international community that a more flexible understanding of “imminence” may be appropriate when dealing with terrorist groups, in part because threats posed by non-state actors do not present themselves in the ways that evidenced imminence in more traditional conflicts. After all, al-Qa’ida does not follow a traditional command structure, wear uniforms, carry its arms openly, or mass its troops at the borders of the nations it attacks. Nonetheless, it possesses the demonstrated capability to strike with little notice and cause significant civilian or military casualties. Over time, an increasing number of our international counterterrorism partners have begun to recognize that the traditional conception of what constitutes an “imminent” attack should be broadened in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations.

The convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies—who, in ways public and private, take great risks to aid us in this fight. But their participation must be consistent with their laws, including their interpretation of international law. Again, we will never abdicate the security of the United States to a foreign country or refrain from taking action when appropriate. But we cannot ignore the reality that cooperative counterterrorism activities are a key to our national defense. The more our views and our allies’ views on these questions converge, without constraining our flexibility, the safer we will be as a country....

4. Jeh C. Johnson, General Counsel, Department of Defense, “National Security Law, Lawyers and Lawyering in the Obama Administration,” Address at Yale Law School, February 22, 2012.

Tonight I want to summarize for you, in this one speech, some of the basic legal principles that form the basis for the U.S. military's counterterrorism efforts against Al Qaeda and its associated forces. These are principles with which the top national security lawyers in our Administration broadly agree. My comments are general in nature about the U.S. military's legal authority, and I do not comment on any operation in particular.

First: in the conflict against an *unconventional* enemy such as al Qaeda, we must consistently apply *conventional* legal principles. We must apply, and we have applied, the law of armed conflict, including applicable provisions of the Geneva Conventions and customary international law, core principles of distinction and proportionality, historic precedent, and traditional principles of statutory construction. Put another way, we must not make it up to suit the moment.

Against an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge. As I told the Heritage Foundation last October, over-reaching with military power can result in national security setbacks, not gains. Particularly when we attempt to extend the reach of the military on to U.S. soil, the courts resist, consistent with our core values and our American heritage – reflected, no less, in places such as the Declaration of Independence, the Federalist Papers, the Third Amendment, and in the 1878 federal criminal statute, still on the books today, which prohibits willfully using the military as a posse comitatus unless expressly authorized by Congress or the Constitution.

Second: in the conflict against al Qaeda and associated forces, the bedrock of the military's domestic legal authority continues to be the Authorization for the Use of Military Force passed by the Congress one week after 9/11.[2] "The AUMF," as it is often called, is Congress' authorization to the President to:

use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Ten years later, the AUMF remains on the books, and it is still a viable authorization today.

In the detention context, we in the Obama Administration have interpreted this authority to include:

those persons who were part of, or substantially supported, Taliban or al-Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners.[3]

This interpretation of our statutory authority has been adopted by the courts in the habeas cases brought by Guantanamo detainees,[4] and in 2011 Congress joined the Executive and Judicial branches of government in embracing this interpretation when it codified it almost word-for-word in Section 1021 of this year's National Defense Authorization Act, 10 years after enactment of the original AUMF.[5] (A point worth noting here: contrary to some reports, neither Section 1021 nor any other detainee-related provision in this

year's Defense Authorization Act creates or expands upon the authority for the military to detain a U.S. citizen.)

But, the AUMF, the statutory authorization from 2001, is not open-ended. It does not authorize military force against anyone the Executive labels a "terrorist." Rather, it encompasses only those groups or people with a link to the terrorist attacks on 9/11, or associated forces.

Nor is the concept of an "associated force" an open-ended one, as some suggest. This concept, too, has been upheld by the courts in the detention context,[6] and it is based on the well-established concept of co-belligerency in the law of war. The concept has become more relevant over time, as al Qaeda has, over the last 10 years, become more de-centralized, and relies more on associates to carry out its terrorist aims.

An "associated force," as we interpret the phrase, has two characteristics to it: (1) an organized, armed group that has entered the fight alongside al Qaeda, and (2) is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. In other words, the group must not only be aligned with al Qaeda. It must have also entered the fight against the United States or its coalition partners. Thus, an "associated force" is not any terrorist group in the world that merely embraces the al Qaeda ideology. More is required before we draw the legal conclusion that the group fits within the statutory authorization for the use of military force passed by the Congress in 2001.

Third: there is nothing in the wording of the 2001 AUMF or its legislative history that restricts this statutory authority to the "hot" battlefields of Afghanistan. Afghanistan was plainly the focus when the authorization was enacted in September 2001, but the AUMF authorized the use of necessary and appropriate force against the organizations and persons connected to the September 11th attacks – al Qaeda and the Taliban — without a geographic limitation.

The legal point is important because, in fact, over the last 10 years al Qaeda has not only become more decentralized, it has also, for the most part, migrated away from Afghanistan to other places where it can find safe haven.

However, this legal conclusion too has its limits. It should not be interpreted to mean that we believe we are in any "Global War on Terror," or that we can use military force whenever we want, wherever we want. International legal principles, including respect for a state's sovereignty and the laws of war, impose important limits on our ability to act unilaterally, and on the way in which we can use force in foreign territories.

Fourth: I want to spend a moment on what some people refer to as "targeted killing." Here I will largely repeat Harold's much-quoted address to the American Society of International Law in March 2010. In an armed conflict, lethal force against known, individual members of the enemy is a long-standing and long-legal practice. What is new is that, with advances in technology, we are able to target military objectives with much

more precision, to the point where we can identify, target and strike a single military objective from great distances.

Should the legal assessment of targeting a single identifiable military objective be any different in 2012 than it was in 1943, when the U.S. Navy targeted and shot down over the Pacific the aircraft flying Admiral Yamamoto, the commander of the Japanese navy during World War Two, with the specific intent of killing him? Should we take a dimmer view of the legality of lethal force directed against individual members of the enemy, because modern technology makes our weapons more precise? As Harold stated two years ago, the rules that govern targeting do not turn on the type of weapon system used, and there is no prohibition under the law of war on the use of technologically advanced weapons systems in armed conflict, so long as they are employed in conformity with the law of war. Advanced technology can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations.

On occasion, I read or hear a commentator loosely refer to lethal force against a valid military objective with the pejorative term "assassination." Like any American shaped by national events in 1963 and 1968, the term is to me one of the most repugnant in our vocabulary, and it should be rejected in this context. Under well-settled legal principles, lethal force against a valid *military* objective, in an armed conflict, is consistent with the law of war and does not, by definition, constitute an "assassination."

Fifth: as I stated at the public meeting of the ABA Standing Committee on Law and National Security, belligerents who also happen to be U.S. citizens do not enjoy immunity where non-citizen belligerents are valid military objectives. Reiterating principles from *Ex Parte Quirin* in 1942,[7] the Supreme Court in 2004, in *Hamdi v. Rumsfeld*,[8] stated that "[a] citizen, no less than an alien, can be 'part of or supporting forces hostile to the United States or coalition partners' and 'engaged in an armed conflict against the United States.'"

Sixth: contrary to the view of some, targeting decisions are not appropriate for submission to a court. In my view, they are core functions of the Executive Branch, and often require real-time decisions based on an evolving intelligence picture that only the Executive Branch may timely possess. I agree with Judge Bates of the federal district court in Washington, who ruled in 2010 that the judicial branch of government is simply not equipped to become involved in targeting decisions.[9]

As I stated earlier in this address, within the Executive Branch the views and opinions of the lawyers on the President's national security team are debated and heavily scrutinized, and a legal review of the application of lethal force is the weightiest judgment a lawyer can make. (And, when these judgments start to become easy, it is time for me to return to private law practice.)

[2] Pub. L. No. 107-40, 115 Stat. 224 (2001).

[3] See Respondent's Memorandum Regarding the Government's Detention Authority Relative to Detainees Held at Guantanamo Bay, *In re: Guantanamo Bay Detainee Litig.*, Misc. No. 08-0442, at 1 (D.D.C. March 13, 2009).

[4] See e.g., *Al-Adahi v. Obama*, 613 F.3d 1102, 1103 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 1001 (2011); *Awad v. Obama*, 608 F.3d 1, 11-12 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 1814 (2011).

[5] Section 1021 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81 (December 31, 2011).

[6] See, e.g., *Barhoumi v. Obama*, 609 F.3d 416, 432 (D.C. Cir. 2010); *Hamlily v. Obama*, 616 F. Supp. 2d 63, 74-75 (D.D.C. 2009); *Gherebi v. Obama*, 609 F. Supp. 2d 43, 69 (D.D.C. 2009).

[7] 317 U.S. 1 (1942).

[8] 542 U.S. 507 (2004).

[9] *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010).

[10] See "The Freeman Field Mutiny: A Study in Leadership," A Research Paper Presented to the Research Department Air Command and Staff College by Major John D. Murphy (March 1997).

5. Eric Holder, Attorney General, Department of Justice, "Address at Northwestern University School of Law," March 5, 2012.

Now, I realize I have gone into considerable detail about tools we use to identify suspected terrorists and to bring captured terrorists to justice. It is preferable to capture suspected terrorists where feasible – among other reasons, so that we can gather valuable intelligence from them – but we must also recognize that there are instances where our government has the clear authority – and, I would argue, the responsibility – to defend the United States through the appropriate and lawful use of lethal force.

This principle has long been established under both U.S. and international law. In response to the attacks perpetrated – and the continuing threat posed – by al Qaeda, the Taliban, and associated forces, Congress has authorized the President to use all necessary and appropriate force against those groups. Because the United States is in an armed conflict, we are authorized to take action against enemy belligerents under international law. The Constitution empowers the President to protect the nation from any imminent

threat of violent attack. And international law recognizes the inherent right of national self-defense. None of this is changed by the fact that we are not in a conventional war.

Our legal authority is not limited to the battlefields in Afghanistan. Indeed, neither Congress nor our federal courts has limited the geographic scope of our ability to use force to the current conflict in Afghanistan. We are at war with a stateless enemy, prone to shifting operations from country to country. Over the last three years alone, al Qaeda and its associates have directed several attacks – fortunately, unsuccessful – against us from countries other than Afghanistan. Our government has both a responsibility and a right to protect this nation and its people from such threats.

This does not mean that we can use military force whenever or wherever we want. International legal principles, including respect for another nation’s sovereignty, constrain our ability to act unilaterally. But the use of force in foreign territory would be consistent with these international legal principles if conducted, for example, with the consent of the nation involved – or after a determination that the nation is unable or unwilling to deal effectively with a threat to the United States.

Furthermore, it is entirely lawful – under both United States law and applicable law of war principles – to target specific senior operational leaders of al Qaeda and associated forces. This is not a novel concept. In fact, during World War II, the United States tracked the plane flying Admiral Isoroku Yamamoto – the commander of Japanese forces in the attack on Pearl Harbor and the Battle of Midway – and shot it down specifically because he was on board. As I explained to the Senate Judiciary Committee following the operation that killed Osama bin Laden, the same rules apply today.

Some have called such operations “assassinations.” They are not, and the use of that loaded term is misplaced. Assassinations are unlawful killings. Here, for the reasons I have given, the U.S. government’s use of lethal force in self defense against a leader of al Qaeda or an associated force who presents an imminent threat of violent attack would not be unlawful — and therefore would not violate the Executive Order banning assassination or criminal statutes.

Now, it is an unfortunate but undeniable fact that some of the threats we face come from a small number of United States citizens who have decided to commit violent attacks against their own country from abroad. Based on generations-old legal principles and Supreme Court decisions handed down during World War II, as well as during this current conflict, it’s clear that United States citizenship alone does not make such individuals immune from being targeted. But it does mean that the government must take into account all relevant constitutional considerations with respect to United States citizens – even those who are leading efforts to kill innocent Americans. Of these, the most relevant is the Fifth Amendment’s Due Process Clause, which says that the government may not deprive a citizen of his or her life without due process of law.

The Supreme Court has made clear that the Due Process Clause does not impose one-size-fits-all requirements, but instead mandates procedural safeguards that depend on

specific circumstances. In cases arising under the Due Process Clause – including in a case involving a U.S. citizen captured in the conflict against al Qaeda – the Court has applied a balancing approach, weighing the private interest that will be affected against the interest the government is trying to protect, and the burdens the government would face in providing additional process. Where national security operations are at stake, due process takes into account the realities of combat.

Here, the interests on both sides of the scale are extraordinarily weighty. An individual's interest in making sure that the government does not target him erroneously could not be more significant. Yet it is imperative for the government to counter threats posed by senior operational leaders of al Qaeda, and to protect the innocent people whose lives could be lost in their attacks.

Any decision to use lethal force against a United States citizen – even one intent on murdering Americans and who has become an operational leader of al-Qaeda in a foreign land – is among the gravest that government leaders can face. The American people can be – and deserve to be – assured that actions taken in their defense are consistent with their values and their laws. So, although I cannot discuss or confirm any particular program or operation, I believe it is important to explain these legal principles publicly.

Let me be clear: an operation using lethal force in a foreign country, targeted against a U.S. citizen who is a senior operational leader of al Qaeda or associated forces, and who is actively engaged in planning to kill Americans, would be lawful at least in the following circumstances: First, the U.S. government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States; second, capture is not feasible; and third, the operation would be conducted in a manner consistent with applicable law of war principles.

The evaluation of whether an individual presents an “imminent threat” incorporates considerations of the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks against the United States. As we learned on 9/11, al Qaeda has demonstrated the ability to strike with little or no notice – and to cause devastating casualties. Its leaders are continually planning attacks against the United States, and they do not behave like a traditional military – wearing uniforms, carrying arms openly, or massing forces in preparation for an attack. Given these facts, the Constitution does not require the President to delay action until some theoretical end-stage of planning – when the precise time, place, and manner of an attack become clear. Such a requirement would create an unacceptably high risk that our efforts would fail, and that Americans would be killed.

Whether the capture of a U.S. citizen terrorist is feasible is a fact-specific, and potentially time-sensitive, question. It may depend on, among other things, whether capture can be accomplished in the window of time available to prevent an attack and without undue risk to civilians or to U.S. personnel. Given the nature of how terrorists act and where they tend to hide, it may not always be feasible to capture a United States citizen terrorist who

presents an imminent threat of violent attack. In that case, our government has the clear authority to defend the United States with lethal force.

Of course, any such use of lethal force by the United States will comply with the four fundamental law of war principles governing the use of force. The principle of necessity requires that the target have definite military value. The principle of distinction requires that only lawful targets – such as combatants, civilians directly participating in hostilities, and military objectives – may be targeted intentionally. Under the principle of proportionality, the anticipated collateral damage must not be excessive in relation to the anticipated military advantage. Finally, the principle of humanity requires us to use weapons that will not inflict unnecessary suffering.

These principles do not forbid the use of stealth or technologically advanced weapons. In fact, the use of advanced weapons may help to ensure that the best intelligence is available for planning and carrying out operations, and that the risk of civilian casualties can be minimized or avoided altogether.

Some have argued that the President is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of al Qaeda or associated forces. This is simply not accurate. “Due process” and “judicial process” are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process.

The conduct and management of national security operations are core functions of the Executive Branch, as courts have recognized throughout our history. Military and civilian officials must often make real-time decisions that balance the need to act, the existence of alternative options, the possibility of collateral damage, and other judgments – all of which depend on expertise and immediate access to information that only the Executive Branch may possess in real time. The Constitution’s guarantee of due process is ironclad, and it is essential – but, as a recent court decision makes clear, it does not require judicial approval before the President may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war – even if that individual happens to be a U.S. citizen.

That is not to say that the Executive Branch has – or should ever have – the ability to target any such individuals without robust oversight. Which is why, in keeping with the law and our constitutional system of checks and balances, the Executive Branch regularly informs the appropriate members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.

Now, these circumstances are sufficient under the Constitution for the United States to use lethal force against a U.S. citizen abroad – but it is important to note that the legal requirements I have described may not apply in every situation – such as operations that take place on traditional battlefields.

The unfortunate reality is that our nation will likely continue to face terrorist threats that – at times – originate with our own citizens. When such individuals take up arms against this country – and join al Qaeda in plotting attacks designed to kill their fellow Americans – there may be only one realistic and appropriate response. We must take steps to stop them – in full accordance with the Constitution. In this hour of danger, we simply cannot afford to wait until deadly plans are carried out – and we will not.

This is an indicator of our times – not a departure from our laws and our values. For this Administration – and for this nation – our values are clear. We must always look to them for answers when we face difficult questions, like the ones I have discussed today. As the President reminded us at the National Archives, “our Constitution has endured through secession and civil rights, through World War and Cold War, because it provides a foundation of principles that can be applied pragmatically; it provides a compass that can help us find our way.”

Our most sacred principles and values – of security, justice and liberty for all citizens – must continue to unite us, to guide us forward, and to help us build a future that honors our founding documents and advances our ongoing – uniquely American – pursuit of a safer, more just, and more perfect union. In the continuing effort to keep our people secure, this Administration will remain true to those values that inspired our nation’s founding and, over the course of two centuries, have made America an example of strength and a beacon of justice for all the world. This is our pledge.

6. John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, “The Ethics and Efficacy of the President’s Counterterrorism Strategy,” Woodrow Wilson International Center for Scholars, Washington DC, April 30, 2012.

Al-Qa’ida leaders continue to struggle to communicate with subordinates and affiliates. Under intense pressure in the tribal regions of Pakistan, they have fewer places to train and groom the next generation of operatives. They’re struggling to attract new recruits. Morale is low, with intelligence indicating that some members are giving up and returning home, no doubt aware that this is a fight they will never win. In short, al-Qa’ida is losing, badly. And bin Laden knew it. In documents we seized, he confessed to “disaster after disaster.” He even urged his leaders to flee the tribal regions, and go to places, “away from aircraft photography and bombardment.”

For all these reasons, it is harder than ever for the al-Qa’ida core in Pakistan to plan and execute large-scale, potentially catastrophic attacks against our homeland. Today, it is increasingly clear that—compared to 9/11—the core al-Qa’ida leadership is a shadow of its former self. Al-Qa’ida has been left with just a handful of capable leaders and operatives, and with continued pressure is on the path to its destruction. And for the first time since this fight began, we can look ahead and envision a world in which the al-Qa’ida core is simply no longer relevant.

Nevertheless, the dangerous threat from al-Qa'ida has not disappeared. As the al-Qa'ida core falters, it continues to look to its affiliates and adherents to carry on its murderous cause. Yet these affiliates continue to lose key commanders and capabilities as well. In Somalia, it is indeed worrying to witness al-Qa'ida's merger with al-Shabaab, whose ranks include foreign fighters, some with U.S. passports. At the same time, al-Shabaab continues to focus primarily on launching regional attacks, and ultimately, this is a merger between two organizations in decline.

In Yemen, al-Qa'ida in the Arabian Peninsula, or AQAP, continues to feel the effects of the death last year of Anwar al-Awlaki, its leader of external operations who was responsible for planning and directing terrorist attacks against the United States. Nevertheless, AQAP continues to be al-Qa'ida's most active affiliate, and it continues to seek the opportunity to strike our homeland. We therefore continue to support the government of Yemen in its efforts against AQAP, which is being forced to fight for the territory it needs to plan attacks beyond Yemen.

In North and West Africa, another al-Qa'ida affiliate, al-Qa'ida in the Islamic Maghreb, or AQIM, continues its efforts to destabilize regional governments and engages in kidnapping of Western citizens for ransom activities designed to fund its terrorist agenda. And in Nigeria, we are monitoring closely the emergence of Boko Haram, a group that appears to be aligning itself with al-Qa'ida's violent agenda and is increasingly looking to attack Western interests in Nigeria in addition to Nigerian government targets.

More broadly, al-Qa'ida's killing of innocents—mostly Muslim men, women and children—has badly tarnished its image and appeal in the eyes of Muslims around the world. Even bin Laden and his lieutenants knew this. His propagandist, Adam Gadahn, admitted that they were now seen “as a group that does not hesitate to take people's money by falsehood, detonating mosques, [and] spilling the blood of scores of people.” Bin Laden agreed that “a large portion” of Muslims around the world “have lost their trust” in al-Qa'ida.

So damaged is al-Qa'ida's image that bin Laden even considered changing its name. And one of the reasons? As bin Laden said himself, U.S. officials “have largely stopped using the phrase ‘the war on terror’ in the context of not wanting to provoke Muslims.” Simply calling them al-Qa'ida, bin Laden said, “reduces the feeling of Muslims that we belong to them.” To which I would add, that is because al-Qa'ida does not belong to Muslims. Al-Qa'ida is the antithesis of the peace, tolerance and humanity that is at the heart of Islam.

Despite the great progress we've made against al-Qa'ida, it would be a mistake to believe this threat has passed. Al-Qa'ida and its associated forces still have the intent to attack the United States. And we have seen lone individuals, including American citizens—often inspired by al-Qa'ida's murderous ideology—kill innocent Americans and seek to do us harm.

Still, the damage that has been inflicted on the leadership core in Pakistan, combined with how al-Qa'ida has alienated itself from so much of the world, allows us to look forward. Indeed, if the decade before 9/11 was the time of al-Qa'ida's rise, and the decade after 9/11 was the time of its decline, then I believe this decade will be the one that sees its demise.

...

Given these efforts, I venture to say that the United States government has never been so open regarding its counterterrorism policies and their legal justification. Still, there continues to be considerable public and legal debate surrounding these technologies and how they are sometimes used in our fight against al-Qa'ida.

Now, I want to be very clear. In the course of the war in Afghanistan and the fight against al-Qa'ida, I think the American people expect us to use advanced technologies, for example, to prevent attacks on U.S. forces and to remove terrorists from the battlefield. We do, and it has saved the lives of our men and women in uniform.

What has clearly captured the attention of many, however, is a different practice, beyond hot battlefields like Afghanistan—identifying specific members of al-Qa'ida and then targeting them with lethal force, often using aircraft remotely operated by pilots who can be hundreds if not thousands of miles away. This is what I want to focus on today.

Jack Goldsmith—a former assistant attorney general in the administration of George W. Bush and now a professor at Harvard Law School—captured the situation well. He wrote:

The government needs a way to credibly convey to the public that its decisions about who is being targeted — especially when the target is a U.S. citizen — are sound.... First, the government can and should tell us more about the process by which it reaches its high-value targeting decisions...The more the government tells us about the eyeballs on the issue and the robustness of the process, the more credible will be its claims about the accuracy of its factual determinations and the soundness of its legal ones. All of this information can be disclosed in some form without endangering critical intelligence.

Well, President Obama agrees. And that is why I am here today.

I stand here as someone who has been involved with our nation's security for more than thirty years. I have a profound appreciation for the truly remarkable capabilities of our counterterrorism professionals—and our relationships with other nations—and we must never compromise them. I will not discuss the sensitive details of any specific operation today. I will not, nor will I ever, publicly divulge sensitive intelligence sources and methods. For when that happens, our national security is endangered and lives can be lost.

At the same time, we reject the notion that any discussion of these matters is to step onto a slippery slope that inevitably endangers our national security. Too often, that fear can become an excuse for saying nothing at all—which creates a void that is then filled with

myths and falsehoods. That, in turn, can erode our credibility with the American people and with foreign partners, and it can undermine the public's understanding and support for our efforts. In contrast, President Obama believes that—done carefully, deliberately and responsibly—we can be more transparent and still ensure our nation's security.

So let me say it as simply as I can. Yes, in full accordance with the law—and in order to prevent terrorist attacks on the United States and to save American lives—the United States Government conducts targeted strikes against specific al-Qa'ida terrorists, sometimes using remotely piloted aircraft, often referred to publicly as drones. And I'm here today because President Obama has instructed us to be more open with the American people about these efforts.

Broadly speaking, the debate over strikes targeted at individual members of al-Qa'ida has centered on their legality, their ethics, the wisdom of using them, and the standards by which they are approved. With the remainder of my time today, I would like to address each of these in turn.

First, these targeted strikes are legal. Attorney General Holder, Harold Koh and Jeh Johnson have all addressed this question at length. To briefly recap, as a matter of domestic law, the Constitution empowers the President to protect the nation from any imminent threat of attack. The Authorization for Use of Military Force—the AUMF—passed by Congress after the September 11th attacks authorizes the president “to use all necessary and appropriate force” against those nations, organizations and individuals responsible for 9/11. There is nothing in the AUMF that restricts the use of military force against al-Qa'ida to Afghanistan.

As a matter of international law, the United States is in an armed conflict with al-Qa'ida, the Taliban, and associated forces, in response to the 9/11 attacks, and we may also use force consistent with our inherent right of national self-defense. There is nothing in international law that bans the use of remotely piloted aircraft for this purpose or that prohibits us from using lethal force against our enemies outside of an active battlefield, at least when the country involved consents or is unable or unwilling to take action against the threat.

Second, targeted strikes are ethical. Without question, the ability to target a specific individual—from hundreds or thousands of miles away—raises profound questions. Here, I think it's useful to consider such strikes against the basic principles of the law of war that govern the use of force.

Targeted strikes conform to the principle of necessity—the requirement that the target have definite military value. In this armed conflict, individuals who are part of al-Qa'ida or its associated forces are legitimate military targets. We have the authority to target them with lethal force just as we targeted enemy leaders in past conflicts, such as German and Japanese commanders during World War II.

Targeted strikes conform to the principle of distinction—the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted. With the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qa'ida terrorist and innocent civilians.

Targeted strikes conform to the principle of proportionality—the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage. By targeting an individual terrorist or small numbers of terrorists with ordnance that can be adapted to avoid harming others in the immediate vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft.

For the same reason, targeted strikes conform to the principle of humanity which requires us to use weapons that will not inflict unnecessary suffering. For all these reasons, I suggest to you that these targeted strikes against al-Qa'ida terrorists are indeed ethical and just.

Of course, even if a tool is legal and ethical, that doesn't necessarily make it appropriate or advisable in a given circumstance. This brings me to my next point.

Targeted strikes are wise. Remotely piloted aircraft in particular can be a wise choice because of geography, with their ability to fly hundreds of miles over the most treacherous terrain, strike their targets with astonishing precision, and then return to base. They can be a wise choice because of time, when windows of opportunity can close quickly and there may be just minutes to act.

They can be a wise choice because they dramatically reduce the danger to U.S. personnel, even eliminating the danger altogether. Yet they are also a wise choice because they dramatically reduce the danger to innocent civilians, especially considered against massive ordinance that can cause injury and death far beyond its intended target.

In addition, compared against other options, a pilot operating this aircraft remotely — with the benefit of technology and with the safety of distance—might actually have a clearer picture of the target and its surroundings, including the presence of innocent civilians. It's this surgical precision—the ability, with laser-like focus, to eliminate the cancerous tumor called an al-Qa'ida terrorist while limiting damage to the tissue around it—that makes this counterterrorism tool so essential.

There's another reason that targeted strikes can be a wise choice—the strategic consequences that inevitably come with the use of force. As we've seen, deploying large armies abroad won't always be our best offense. Countries typically don't want foreign soldiers in their cities and towns. In fact, large, intrusive military deployments risk playing into al-Qa'ida's strategy of trying to draw us into long, costly wars that drain us

financially, inflame anti-American resentment and inspire the next generation of terrorists. In comparison, there is the precision of targeted strikes.

I acknowledge that we—as a government—along with our foreign partners, can and must do a better job of addressing the mistaken belief among some foreign publics that we engage in these strikes casually, as if we are simply unwilling to expose U.S. forces to the dangers faced every day by people in those regions. For, as I'll describe today, there is absolutely nothing casual about the extraordinary care we take in making the decision to pursue an al-Qa'ida terrorist, and the lengths to which we go to ensure precision and avoid the loss of innocent life.

Still, there is no more consequential a decision than deciding whether to use lethal force against another human being—even a terrorist dedicated to killing American citizens. So in order to ensure that our counterterrorism operations involving the use of lethal force are legal, ethical and wise, President Obama has demanded that we hold ourselves to the highest possible standards and processes.

This reflects his approach to broader questions regarding the use of force. In his speech in Oslo accepting the Nobel Peace Prize, the President said that “all nations, strong and weak alike, must adhere to standards that govern the use of force.” And he added:

Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. And even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war. That is what makes us different from those whom we fight. That is a source of our strength.

The United States is the first nation to regularly conduct strikes using remotely piloted aircraft in an armed conflict. Other nations also possess this technology. Many more nations are seeking it, and more will succeed in acquiring it. President Obama and those of us on his national security team are very mindful that as our nation uses this technology, we are establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians.

If we want other nations to use these technologies responsibly, we must use them responsibly. If we want other nations to adhere to high and rigorous standards for their use, then we must do so as well. We cannot expect of others what we will not do ourselves. President Obama has therefore demanded that we hold ourselves to the highest possible standards—that, at every step, we be as thorough and deliberate as possible.

This leads me to the final point I want to discuss today — the rigorous standards and process of review to which we hold ourselves today when considering and authorizing strikes against a specific member of al-Qa'ida outside the “hot” battlefield of Afghanistan. What I hope to do is to give you a general sense, in broad terms, of the high

bar we require ourselves to meet when making these profound decisions today. That includes not only whether a specific member of al-Qa'ida can legally be pursued with lethal force, but also whether he should be.

Over time, we've worked to refine, clarify, and strengthen this process and our standards, and we continue to do so. If our counterterrorism professionals assess, for example, that a suspected member of al-Qa'ida poses such a threat to the United States as to warrant lethal action, they may raise that individual's name for consideration. The proposal will go through a careful review and, as appropriate, will be evaluated by the very most senior officials in our government for decision.

First and foremost, the individual must be a legitimate target under the law. Earlier, I described how the use of force against members of al-Qa'ida is authorized under both international and U.S. law, including both the inherent right of national self-defense and the 2001 Authorization for Use of Military Force, which courts have held extends to those who are part of al-Qa'ida, the Taliban, and associated forces. If, after a legal review, we determine that the individual is not a lawful target, end of discussion. We are a nation of laws, and we will always act within the bounds of the law.

Of course, the law only establishes the outer limits of the authority in which counterterrorism professionals can operate. Even if we determine that it is lawful to pursue the terrorist in question with lethal force, it doesn't necessarily mean we should. There are, after all, literally thousands of individuals who are part of al-Qa'ida, the Taliban, or associated forces—thousands. Even if it were possible, going after every single one of these individuals with lethal force would neither be wise nor an effective use of our intelligence and counterterrorism resources.

As a result, we have to be strategic. Even if it is lawful to pursue a specific member of al-Qa'ida, we ask ourselves whether that individual's activities rise to a certain threshold for action, and whether taking action will, in fact, enhance our security.

For example, when considering lethal force we ask ourselves whether the individual poses a significant threat to U.S. interests. This is absolutely critical, and it goes to the very essence of why we take this kind of exceptional action. We do not engage in lethal action in order to eliminate every single member of al-Qa'ida in the world. Most times, and as we have done for more than a decade, we rely on cooperation with other countries that are also interested in removing these terrorists with their own capabilities and within their own laws. Nor is lethal action about punishing terrorists for past crimes; we are not seeking vengeance. Rather, we conduct targeted strikes because they are necessary to mitigate an actual ongoing threat — to stop plots, prevent future attacks, and save American lives.

And what do we mean by a significant threat? I am not referring to some hypothetical threat—the mere possibility that a member of al-Qa'ida might try to attack us at some point in the future. A significant threat might be posed by an individual who is an operational leader of al-Qa'ida or one of its associated forces. Or perhaps the individual

is himself an operative—in the midst of actually training for or planning to carry out attacks against U.S. interests. Or perhaps the individual possesses unique operational skills that are being leveraged in a planned attack. The purpose of a strike against a particular individual is to stop him before he can carry out his attack and kill innocents. The purpose is to disrupt his plots and plans before they come to fruition.

In addition, our unqualified preference is to only undertake lethal force when we believe that capturing the individual is not feasible. I have heard it suggested that the Obama Administration somehow prefers killing al-Qa'ida members rather than capturing them. Nothing could be further from the truth. It is our preference to capture suspected terrorists whenever feasible.

For one reason, this allows us to gather valuable intelligence that we might not be able to obtain any other way. In fact, the members of al-Qa'ida that we or other nations have captured have been one of our greatest sources of information about al-Qa'ida, its plans, and its intentions. And once in U.S. custody, we often can prosecute them in our federal courts or reformed military commissions—both of which are used for gathering intelligence and preventing terrorist attacks.

You see our preference for capture in the case of Ahmed Warsame, a member of al-Shabaab who had significant ties to al-Qa'ida in the Arabian Peninsula. Last year, when we learned that he would be traveling from Yemen to Somalia, U.S. forces captured him in route and we subsequently charged him in federal court.

The reality, however, is that since 2001 such unilateral captures by U.S. forces outside of “hot” battlefields, like Afghanistan, have been exceedingly rare. This is due in part to the fact that in many parts of the world our counterterrorism partners have been able to capture or kill dangerous individuals themselves.

Moreover, after being subjected to more than a decade of relentless pressure, al-Qa'ida's ranks have dwindled and scattered. These terrorists are skilled at seeking remote, inhospitable terrain—places where the United States and our partners simply do not have the ability to arrest or capture them. At other times, our forces might have the ability to attempt capture, but only by putting the lives of our personnel at too great a risk. Often times, attempting capture could subject civilians to unacceptable risks. There are many reasons why capture might not be feasible, in which case lethal force might be the only remaining option to address the threat and prevent an attack.

Finally, when considering lethal force we are of course mindful that there are important checks on our ability to act unilaterally in foreign territories. We do not use force whenever we want, wherever we want. International legal principles, including respect for a state's sovereignty and the laws of war, impose constraints. The United States of America respects national sovereignty and international law.

Those are some of the questions we consider; the high standards we strive to meet. And in the end, we make a decision—we decide whether a particular member of al-Qa'ida

warrants being pursued in this manner. Given the stakes involved and the consequence of our decision, we consider all the information available to us, carefully, responsibly.

We review the most up-to-date intelligence, drawing on the full range of our intelligence capabilities. And we do what sound intelligence demands—we challenge it, we question it, including any assumptions on which it might be based. If we want to know more, we may ask the Intelligence Community to go back and collect additional intelligence or refine its analysis so that a more informed decision can be made.

We listen to departments and agencies across our national security team. We don't just hear out differing views, we ask for them and encourage them. We discuss. We debate. We disagree. We consider the advantages and disadvantages of taking action. We also carefully consider the costs of inaction and whether a decision not to carry out a strike could allow a terrorist attack to proceed and potentially kill scores of innocents.

Nor do we limit ourselves narrowly to counterterrorism considerations. We consider the broader strategic implications of any action, including what effect, if any, an action might have on our relationships with other countries. And we don't simply make a decision and never revisit it again. Quite the opposite. Over time, we refresh the intelligence and continue to consider whether lethal force is still warranted.

In some cases—such as senior al-Qa'ida leaders who are directing and planning attacks against the United States—the individual clearly meets our standards for taking action. In other cases, individuals have not met our standards. Indeed, there have been numerous occasions where, after careful review, we have, working on a consensus basis, concluded that lethal force was not justified in a given case.

Finally, as the President's counterterrorism advisor, I feel that it is important for the American people to know that these efforts are overseen with extraordinary care and thoughtfulness. The President expects us to address all of the tough questions I have discussed today. Is capture really not feasible? Is this individual a significant threat to U.S. interests? Is this really the best option? Have we thought through the consequences, especially any unintended ones? Is this really going to help protect our country from further attacks? Is it going to save lives?

Our commitment to upholding the ethics and efficacy of this counterterrorism tool continues even after we decide to pursue a specific terrorist in this way. For example, we only authorize a particular operation against a specific individual if we have a high degree of confidence that the individual being targeted is indeed the terrorist we are pursuing. This is a very high bar. Of course, how we identify an individual naturally involves intelligence sources and methods, which I will not discuss. Suffice it to say, our Intelligence Community has multiple ways to determine, with a high degree of confidence, that the individual being targeted is indeed the al-Qa'ida terrorist we are seeking.

In addition, we only authorize a strike if we have a high degree of confidence that innocent civilians will not be injured or killed, except in the rarest of circumstances. The unprecedented advances we have made in technology provide us greater proximity to targets for a longer period of time, and as a result allow us to better understand what is happening in real time on the ground in ways that were previously impossible. We can be much more discriminating and we can make more informed judgments about factors that might contribute to collateral damage.

I can tell you today that there have indeed been occasions when we have decided against conducting a strike in order to avoid the injury or death of innocent civilians. This reflects our commitment to doing everything in our power to avoid civilian casualties—even if it means having to come back another day to take out that terrorist, as we have done. And I would note that these standards—for identifying a target and avoiding the loss of innocent civilians—exceed what is required as a matter of international law on a typical battlefield. That’s another example of the high standards to which we hold ourselves.

Our commitment to ensuring accuracy and effectiveness continues even after a strike. In the wake of a strike, we harness the full range of our intelligence capabilities to assess whether the mission in fact achieved its objective. We try to determine whether there was any collateral damage, including civilian deaths. There is, of course, no such thing as a perfect weapon, and remotely piloted aircraft are no exception.

As the President and others have acknowledged, there have indeed been instances when—despite the extraordinary precautions we take—civilians have been accidentally injured, or worse, killed in these strikes. It is exceedingly rare, but it has happened. When it does, it pains us and we regret it deeply, as we do any time innocents are killed in war. And when this happens we take it seriously. We go back and review our actions. We examine our practices. And we constantly work to improve and refine our efforts so that we are doing everything in our power to prevent the loss of innocent life. This too is a reflection of our values as Americans.

Ensuring the ethics and efficacy of these strikes also includes regularly informing appropriate members of Congress and the committees who have oversight of our counterterrorism programs. Indeed, our counterterrorism programs—including the use of lethal force—have grown more effective over time because of congressional oversight and our ongoing dialogue with Members and staff.

This is the seriousness, the extraordinary care, that President Obama and those of us on his national security team bring to this weightiest of questions—whether to pursue lethal force against a terrorist who is plotting to attack our country.

When that person is a U.S. citizen, we ask ourselves additional questions. Attorney General Holder has already described the legal authorities that clearly allow us to use lethal force against an American citizen who is a senior operational leader of al-Qa’ida. He has discussed the thorough and careful review, including all relevant

constitutional considerations, that is to be undertaken by the U.S. government when determining whether the individual poses an imminent threat of violent attack against the United States.

To recap, the standards and processes I've described today—which we have refined and strengthened over time—reflect our commitment to: ensuring the individual is a legitimate target under the law; determining whether the individual poses a significant threat to U.S. interests; determining that capture is not feasible; being mindful of the important checks on our ability to act unilaterally in foreign territories; having that high degree of confidence, both in the identity of the target and that innocent civilians will not be harmed; and, of course, engaging in additional review if the al-Qa'ida terrorist is a U.S. citizen.

Going forward, we'll continue to strengthen and refine these standards and processes. As we do, we'll look to institutionalize our approach more formally so that the high standards we set for ourselves endure over time, including as an example for other nations that pursue these capabilities. As the President said at Oslo, in the conduct of war, America must be the standard bearer.

This includes our continuing commitment to greater transparency. With that in mind, I have made a sincere effort today to address some of the main questions that citizens and scholars have raised regarding the use of targeted lethal force against al-Qa'ida. I suspect there are those, perhaps some in this audience, who feel we have not been transparent enough. I suspect there are those—both inside and outside our government—who feel I have been perhaps too open. If both groups feel a little unsatisfied, then I've probably struck the right balance.

Again, there are some lines we simply will not and cannot cross because, at times, our national security demands secrecy. But we are a democracy. The people are sovereign. And our counterterrorism tools do not exist in a vacuum. They are stronger and more sustainable when the American people understand and support them. They are weaker and less sustainable when the American people do not. As a result of my remarks today, I hope the American people have a better understanding of this critical tool—why we use it, what we do, how carefully we use it, and why it is absolutely essential to protecting our country and our citizens.

I would just like to close on a personal note. I know that for many people—in our government and across the country—the issue of targeted strikes raised profound moral questions. It forces us to confront deeply held personal beliefs and our values as a nation. If anyone in government who works in this area tells you they haven't struggled with this, then they haven't spent much time thinking about it. I know I have, and I will continue to struggle with it as long as I remain involved in counterterrorism.

But I am certain about one thing. We are at war. We are at war against a terrorist organization called al-Qa'ida that has brutally murdered thousands of Americans—men, women and children—as well as thousands of other innocent people around the world. In

recent years, with the help of targeted strikes we have turned al-Qa'ida into a shadow of what it once was. They are on the road to destruction.

Until that finally happens, however, there are still terrorists in hard-to-reach places who are actively planning attacks against us. If given the chance, they will gladly strike again and kill more of our citizens. And the President has a Constitutional and solemn obligation to do everything in his power to protect the safety and security of the American people.

7. John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, "U.S. Policy Toward Yemen," Council on Foreign Relations, New York City, August 8, 2012.

When the subject of Yemen comes up, it's often through the prism of the terrorist threat that is emanating from within its borders. And for good reason: Al-Qaida in the Arabian Peninsula, or AQAP, is al-Qaida's most active affiliate. It has assassinated Yemeni leaders, murdered Yemeni citizens, kidnapped and killed aid workers, targeted American interests, encouraged attacks in the United States and attempted repeated attacks against U.S. aviation. Likewise, discussion of Yemeni and American counterterrorism efforts tend to focus almost exclusively on the use of one counterterrorism tool in particular: targeted strikes.

...
President Obama understands that Yemen's challenges are grave and intertwined. He has insisted that our policy emphasize governance and development as much as security and focus on a clear goal to facilitate a democratic transition while helping Yemen advance political, economic and security reforms so it can support its citizens and counter AQAP.... Today I want to walk through the key pillars of our approach.

...
This brings me to the final pillar of our comprehensive approach to Yemen: improving security and combating the threat of AQAP. Put simply, Yemen cannot succeed politically, economically, socially so long as the cancerous growth of AQAP remains.

Ultimately, the long-term battle against AQAP in Yemen must be fought — fought and won by Yemenis. To their great credit, President Hadi and his government, including Defense Minister Ali, Chief of Army Staff Ashwal and Interior Minister Qatan (sp), have made combating AQAP a top priority and have forced AQAP out of their stronghold in southern Yemen.

So long as AQAP seeks to implement its murderous agenda, we will be a close partner with Yemen in meeting this common threat. And just as our approach to Yemen is multidimensional, our counterterrorism approach involves many different tools — diplomatic, intelligence, military, homeland security, law enforcement and justice. With our Yemeni and international partners, we have put unprecedented pressure on AQAP. Recruits seeking to travel to Yemen have been disruptive — disrupted. Operatives

deployed from Yemen have been detained. Plots have been thwarted. And key AQAP leaders who have targeted U.S. and Yemeni interest have met their demise, including Anwar al-Awlaki, AQAP's chief of external operations.

Of course, the tension has often focused on one counterterrorism tool in particular, targeted strikes, sometimes using remotely-piloted aircraft, often referred to publicly as drones. In June the Obama administration declassified the fact that in Yemen, our joint efforts have resulted in direct action against AQAP operatives and senior leaders. This spring, I addressed the subject of targeted strikes at length and why such strikes are legal, ethical, wise and highly effective.

Today I'd simply say that all our CT efforts in Yemen are conducted in concert with the Yemeni government. When direct action is taken, every effort is made to avoid any civilian casualty. And contrary to conventional wisdom, we see little evidence that these actions are generating widespread anti-American sentiment or recruits for AQAP. In fact, we see the opposite, our Yemeni partners are more eager to work with us. Yemenese citizens who have been freed from the hellish grip of AQAP are more eager, not less, to work with the Yemeni government. In short, targeted strikes against the most senior and most dangerous AQAP terrorists are not the problem, they are part of the solution.

Even as we partner against the immediate threat posed by AQAP, we're helping Yemen build its capacity for its own security. We are spearheading the international effort to help reform and restructure Yemen's military into a professional, unified force under civilian control. In fact, the \$159 million in security assistance we are providing to Yemen this year, almost all of it is for training and equipment to build capacity. We are empowering the Yemenese with the tools they need to conduct precise intelligence-driven operations to locate operatives and disrupt plots, and the training they need to ensure counterterrorism operations are conducted lawfully in manner that respects human rights and makes every effort to avoid civilian casualties.

Finally, I'd note that our approach to Yemen is reinforced by broad support from the international community. Throughout the last year, the Gulf Cooperation Council, especially Saudi Arabia, the G-10, the Friends of Yemen, the United Nations and the diplomatic community in Sana'a have come together to push for a peaceful solution of the crisis and to facilitate a successful transition. The international community has threatened U.N. sanctions against those who would undermine the transition, provided humanitarian relief and offered assistance for the national dialogue and electoral reform. International partners, including the U.K., Germany, China, Russia, India, the EU and the UAE have pledged aid. Saudi Arabia alone offered \$3.25 billion on top of the significant fuel grants it gave Yemen to offset the losses caused by attacks against oil infrastructure. As such, close coordination with our international partners will be critical in the years ahead.

These are the pillars of our comprehensive approach to Yemen: supporting the transition, strengthening governance and institutions, providing humanitarian relief, encouraging economic reform and development, and improving security and combatting AQAP.

Taken together, our efforts send an unmistakable message to the Yemeni people: The United States is committed to your success. We share the vision that guides so many Yemenese, a Yemen where all its citizens — Shia and Sunni, northern and southerner, man and woman, rural villager and city dweller, old and young — have a government that is democrat, responsive and just.

SELF-DEFENSE AGAINST AN IMMINENT OR ACTUAL ARMED ATTACK BY NONSTATE ACTORS

*By Daniel Bethlehem**

There has been an ongoing debate over recent years about the scope of a state's right of self-defense against an imminent or actual armed attack by nonstate actors. The debate predates the Al Qaeda attacks against the World Trade Center and elsewhere in the United States on September 11, 2001, but those events sharpened its focus and gave it greater operational urgency. While an important strand of the debate has taken place in academic journals and public forums, there has been another strand, largely away from the public gaze, within governments and between them, about what the appropriate principles are, and ought to be, in respect of such conduct. Insofar as these discussions have informed the practice of states and their appreciations of legality, they carry particular weight, being material both to the crystallization and development of customary international law and to the interpretation of treaties.

Aspects of these otherwise largely intra- and intergovernmental discussions have periodically become visible publicly through official statements and speeches, evidence to governmental committees, reports of such committees, and similar documents. Other aspects have to be deduced from the practice of states—which, given the sensitivities, is sometimes opaque. In recent years, in a U.S. context, elements of this debate have been illuminated by the public remarks of senior Obama administration legal and counterterrorism officials,¹ including Harold Koh, the Department of State legal adviser,² John Brennan, the assistant to the president for homeland security and counterterrorism,³ Jeh Johnson, the Department of Defense general counsel,⁴ Attorney General Eric Holder,⁵ and Stephen Preston, the Central Intelligence Agency general counsel.⁶

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¹ For a public statement of the position as it came to be in the second term of the Bush administration, see the remarks by John B. Bellinger III, the then Department of State legal adviser, at the London School of Economics: Legal Issues in the War on Terrorism (Oct. 31, 2006), at http://www2.lse.ac.uk/PublicEvents/pdf/20061031_JohnBellinger.pdf.

² Harold Hongju Koh, Legal Adviser, U.S. Dep't of State, Remarks at the Annual Meeting of the American Society of International Law: The Obama Administration and International Law (Mar. 25, 2010), at <http://www.state.gov/s/l/releases/remarks/139119.htm>.

³ John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, Remarks at the Harvard Law School Program on Law and Security: Strengthening Our Security by Adhering to Our Values and Laws (Sept. 16, 2011), at <http://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>; John O. Brennan, Speech at the Woodrow Wilson International Center for Scholars: The Ethics and Efficacy of the President's Counterterrorism Strategy (Apr. 30, 2012), at <http://www.wilsoncenter.org/event/the-ethics-and-ethics-us-counterterrorism-strategy>.

⁴ Jeh Johnson, General Counsel, U.S. Dep't of Defense, Dean's Lecture at Yale Law School: National Security Law, Lawyers and Lawyering in the Obama Administration (Feb. 22, 2012), at <http://www.lawfareblog.com/2012/02/jeh-johnson-speech-at-yale-law-school>.

⁵ Eric Holder, Attorney General, Remarks at Northwestern University Law School (Mar. 5, 2012), at <http://www.lawfareblog.com/2012/03/text-of-the-attorney-generals-national-security-speech/#mare-6236>.

⁶ Stephen Preston, General Counsel, Central Intelligence Agency, Speech at Harvard Law School: CIA and the Rule of Law (Apr. 10, 2012), at <http://www.cfr.org/rule-of-law/cia-general-counsel-stephen-prestons-remarks-rule-law-april-2012/p27912>.

While there has been no similar flurry of speeches elsewhere, important elements of this debate have also attracted comment in the United Kingdom over the years. For example, between 2002 and 2006, the UK House of Commons Foreign Affairs Committee published a series of reports, entitled *Foreign Policy Aspects of the War Against Terrorism*, in which important elements of this debate were addressed.⁷ In the first of its two reports from the 2002–03 session, for example, the committee addressed the doctrine of preemption contained in the Bush administration’s then recently published *National Security Strategy*:⁸

We conclude that the notion of ‘imminence’ should be reconsidered in light of new threats to international peace and security—regardless of whether the doctrine of pre-emptive self-defence is a distinctively new legal development. We recommend that the Government work to establish a clear international consensus on the circumstances in which military action may be taken by states on a pre-emptive basis.⁹

Subsequently, in a debate in the House of Lords in April 2004, in response to a question put to the UK government on “whether [it] accept[s] the legitimacy of pre-emptive armed attack as a constituent of the inherent right of individual or collective self-defence under Article 51 of the UN Charter; and, if so, whether [the government] will define the principles upon which it will be exercised,”¹⁰ the then attorney general, Lord Goldsmith, answered as follows:

Article 51 of the charter provides that,

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.”

It is argued by some that the language of Article 51 provides for a right of self-defence only in response to an actual armed attack. However, it has been the consistent position of successive United Kingdom Governments over many years that the right of self-defence under international law includes the right to use force where an armed attack is imminent. It is clear that the language of Article 51 was not intended to create a new right of self-defence. Article 51 recognises the inherent right of self-defence that states enjoy under international law. That can be traced back to the “Caroline” incident in 1837. . . . It is not a new invention. The charter did not therefore affect the scope of the right of self-defence existing at that time in customary international law, which included the right to use force in anticipation of an imminent armed attack.

The Government’s position is supported by the records of the international conference at which the UN charter was drawn up and by state practice since 1945. It is therefore the Government’s view that international law permits the use of force in self-defence against an imminent attack but does not authorise the use of force to mount a pre-emptive strike

⁷ The reports and publications of the UK House of Commons Foreign Affairs Committee are available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/Publications/>. The reports cited here are available at <http://www.parliament.uk/business/committees/committees-archive/foreign-affairs-committee/fac-list-of-old-wat-reports/>.

⁸ WHITE HOUSE, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA* 12–16 (2002), at http://www.au.af.mil/au/awc/awcgate/nss/nss_sep2002.pdf.

⁹ HOUSE OF COMMONS, *FOREIGN AFFAIRS COMMITTEE, FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM, 2002–03*, H.C. 196, para. 1.

¹⁰ 21 Apr. 2004, *PARL. DEB., H.L.* (2004) 356 (Lord Thomas of Gresford, statement opening the debate on international self-defence), at <http://www.publications.parliament.uk/pa/ld200304/ldhansrd/vo040421/text/40421-07.htm>.

against a threat that is more remote. However, those rules must be applied in the context of the particular facts of each case. That is important.

The concept of what constitutes an “imminent” armed attack will develop to meet new circumstances and new threats. For example, the resolutions passed by the Security Council in the wake of 11 September 2001 recognised both that large-scale terrorist action could constitute an armed attack that will give rise to the right of self-defence and that force might, in certain circumstances, be used in self-defence against those who plan and perpetrate such acts and against those harbouring them, if that is necessary to avert further such terrorist acts. It was on that basis that United Kingdom forces participated in military action against Al’Qaeda and the Taliban in Afghanistan. It must be right that states are able to act in self-defence in circumstances where there is evidence of further imminent attacks by terrorist groups, even if there is no specific evidence of where such an attack will take place or of the precise nature of the attack.

Two further conditions apply where force is to be used in self-defence in anticipation of an imminent armed attack. First, military action should be used only as a last resort. It must be necessary to use force to deal with the particular threat that is faced. Secondly, the force used must be proportionate to the threat faced and must be limited to what is necessary to deal with the threat.

In addition, Article 51 of the charter requires that if a state resorts to military action in self-defence, the measures it has taken must be immediately reported to the Security Council. The right to use force in self-defence continues until the Security Council has taken measures necessary to maintain international peace and security. That is the answer to the Question as posed.¹¹

In emphasizing that each case must be analyzed in context and that the concept of “imminence” will develop to meet new circumstances and new threats, Lord Goldsmith’s statement underlined that self-defence is not a static concept but rather one that must be reasonable and appropriate to the threats and circumstances of the day.

In a subsequent report by the House of Commons Foreign Affairs Committee in its *Foreign Policy Aspects of the War Against Terrorism* series, the committee, taking into account the statement quoted above, as well as other evidence before it,¹² went on to conclude that

the concept of ‘imminence’ in anticipatory self-defence may require reassessment in the light of the [weapons of mass destruction] threat but that the Government should be very cautious to limit the application of the doctrine of anticipatory self-defence so as to prevent abuse by states pursuing their national interest. We recommend that in its response to this Report the Government set out how, in the event of the legitimisation of the doctrine of anticipatory self-defence, it will persuade its allies to limit the use of the doctrine to a “threat of catastrophic attack”. We also recommend that the Government explain its position on the ‘proportionality’ of a response to a catastrophic attack, and how to curtail the

¹¹ *Id.* at 370–71 (Lord Goldsmith).

¹² See, e.g., Select Committee on Foreign Affairs, H.C., Written Evidence Submitted by Daniel Bethlehem QC, Director of the Lauterpacht Research Centre for International Law, University of Cambridge, “International Law and the Use of Force: The Law as It Is and as It Should Be” (June 7, 2004), at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmfaaff/441/4060808.htm>.

abuse of that principle in the event of the acceptance of the doctrine of anticipatory self-defence by the international community.¹³

In parallel to these reports and statements, a good deal of scholarly writing has addressed the scope of the right of self-defense against imminent and actual armed attacks by non-state actors. These writings have illuminated the complexity of the issues as well as the doctrinal divide that continues to beset the debate—between those who favor a restrictive approach to the law on self-defense and those who take the view that the credibility of the law depends ultimately upon its ability to address effectively the realities of contemporary threats.

This scholarship faces significant challenges, however, when it comes to shaping the operational thinking of those within governments and the military who are required to make decisions in the face of significant terrorist threats emanating from abroad. There is little intersection between the academic debate and the operational realities. And on those few occasions when such matters have come under scrutiny in court, the debate is seldom advanced. The reality of the threats, the consequences of inaction, and the challenges of both strategic appreciation and operational decision making in the face of such threats frequently trump a doctrinal debate that has yet to produce a clear set of principles that effectively address the specific operational circumstances faced by states.

This situation is unsatisfactory. Particularly in this area of law, it is important that principle is sensitive to the practical realities of the circumstances that it addresses, even as it endeavors to prohibit excess and the egregious pursuit of national interest. The challenge is to formulate principles, capable of attracting a broad measure of agreement, that apply, or ought to apply, to the use of force in self-defense against an imminent or actual armed attack by nonstate actors. To this end, the sixteen principles set out below are proposed with the intention of stimulating a wider debate on these issues.

The principles do not reflect a settled view of any state. They are published under my responsibility alone. They have nonetheless been informed by detailed discussions over recent years with foreign ministry, defense ministry, and military legal advisers from a number of states who have operational experience in these matters. The hope, therefore, is that the principles may attract a measure of agreement about the contours of the law relevant to the actual circumstances in which states are faced with an imminent or actual armed attack by nonstate actors.

These principles are not intended to be enabling of the use of force. They are intended to work with the grain of the UN Charter as well as customary international law, in which resides the inherent right of self-defense, including anticipatory self-defense, usually traced back to the Webster-Ashburton correspondence of 1842 concerning the *Caroline* incident. The customary international law on state responsibility may also have a bearing on these issues.

This said, some of the principles will undoubtedly prove controversial. There is little scholarly consensus on what is properly meant by “imminence” in the context of contemporary threats. Similarly, there is little consensus on who may properly be targetable within the non-

¹³ HOUSE OF COMMONS, FOREIGN AFFAIRS COMMITTEE, FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM, 2003–04, H.C., 441-I, para. 429.

state-actor continuum of those planning, threatening, perpetrating, and providing material support essential to an armed attack. Principles 6, 7, and 8 are therefore likely to attract comment, as no doubt also will others.

The reality, however, is that these principles address the kinds of circumstances that many states face today (and have been facing for some time)—which often require difficult decisions concerning the use of force. And it is not just the United States, the United Kingdom, and other Western states that face such threats. States ranging from Colombia to Kenya to Turkey, among others, have had to confront similar issues in recent years.

It is by now reasonably clear and accepted that states have a right of self-defense against attacks by nonstate actors—as reflected, for example, in UN Security Council Resolutions 1368 and 1373 of 2001, adopted following the 9/11 attacks in the United States. There is, however, a paucity of considered and authoritative guidance on the parameters and application of that right in the kinds of circumstances that states are now having to address. These circumstances include those of (1) successive attacks or threats of attack against a state or its interests, (2) attacks or threats of attack emanating from more than one territorial jurisdiction, and (3) attacks or threats of attack by a nonstate actor operating either as a distinct entity or in affiliation with a larger nonstate movement.

Separate from the above, while “imminence” continues to be a key element of the law relevant to anticipatory self-defense in response to a threat of attack, the concept needs to be further refined and developed to take into account the new circumstances and threats from nonstate actors that states face today.

In considering the principles, it is important to bear in mind three types of circumstances in which they might apply: (1) circumstances in which any given state might consider that it would have an imperative to act, (2) circumstances in which another state, with potentially opposing interests to the first, might consider that it would have an imperative to act, and (3) circumstances in which one state might consider that it had an imperative to act in support of another state, thereby engaging considerations either of collective self-defense or of state responsibility relevant to the provision of aid or assistance. An essential element of any legal principle is that it must be capable of objective application and must not be seen as self-serving—that is, in the interests of one state, or small group of states, alone.

The principles are intended to be indicative, rather than exhaustive, of elements of a state’s right of self-defense against an imminent or actual armed attack by nonstate actors. They address only the *jus ad bellum* (the law relevant to the resort to armed force) rather than the *jus in bello* (the law relevant to the conduct of military operations). As such, the principles address the threshold for the use of armed force in self-defense rather than the use of force in ongoing military operations. Any use of force in self-defense would be subject to applicable *jus in bello* principles governing the conduct of military operations.

The principles are offered for debate without any accompanying explanatory memorandum or commentary to situate them within the academic discussion or jurisprudence. Their intent is to address a strategic and operational reality with which states are faced, and to formulate principles that reflect, as well as shape, the conduct of states in the particular circumstances in question.

*Principles Relevant to the Scope of a State's Right of Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors**

1. States have a right of self-defense against an imminent or actual armed attack by nonstate actors.
2. Armed action in self-defense should be used only as a last resort in circumstances in which no other effective means are reasonably available to address an imminent or actual armed attack.
3. Armed action in self-defense must be limited to what is necessary to address an imminent or actual armed attack and must be proportionate to the threat that is faced.
4. The term "armed attack" includes both discrete attacks and a series of attacks that indicate a concerted pattern of continuing armed activity. The distinction between discrete attacks and a series of attacks may be relevant to considerations of the necessity to act in self-defense and the proportionality of such action.
5. An appreciation that a series of attacks, whether imminent or actual, constitutes a concerted pattern of continuing armed activity is warranted in circumstances in which there is a reasonable and objective basis^a for concluding that those threatening^b or perpetrating such attacks are acting in concert.
6. Those acting in concert include those planning, threatening, and perpetrating armed attacks and those providing material support essential to those attacks, such that they can be said to be taking a direct part in those attacks.^c
7. Armed action in self-defense may be directed against those actively planning, threatening, or perpetrating armed attacks. It may also be directed against those in respect of whom there is a strong,^d reasonable, and objective basis for concluding that they are taking a direct part in those attacks through the provision of material support essential to the attacks.
8. Whether an armed attack may be regarded as "imminent" will fall to be assessed by reference to all relevant circumstances, including (a) the nature and immediacy of the threat, (b) the probability of an attack, (c) whether the anticipated attack is part of a concerted pattern of continuing armed activity, (d) the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of mitigating action, and (e) the likelihood that there will be other opportunities to undertake effective action in

* As the introduction accompanying these principles and setting them in context makes clear, they are proposed with the intention of stimulating debate on the issues. They do not purport to reflect a settled view of the law or the practice of any state.

^a The "reasonable and objective basis" formula—in paragraphs 5, 7, 8, 11, and 12—requires that the conclusion is capable of being reliably supported with a high degree of confidence on the basis of credible and all reasonably available information.

^b The term "threatening"—in paragraphs 5, 6, 7, and 9—refers to conduct that, absent mitigating action, there is a reasonable and objective basis for concluding is capable of completion and that there is an intention on the part of the putative perpetrators to complete. Whether a threatened attack gives rise to a right of self-defense will fall to be assessed by reference to the factors set out *inter alia* in paragraph 8.

^c The concept of direct participation in attacks draws on, but is distinct from, the *jus in bello* concept of direct participation in hostilities.

^d The addition of the adjective "strong" to the "reasonable and objective basis" formula—in paragraphs 7 and 12—raises the standard that is required for the conclusion in question, given that this assessment would form the basis for taking armed action against persons other than those planning, threatening, or perpetrating an armed attack.

self-defense that may be expected to cause less serious collateral injury, loss, or damage. The absence of specific evidence of where an attack will take place or of the precise nature of an attack does not preclude a conclusion that an armed attack is imminent for purposes of the exercise of a right of self-defense, provided that there is a reasonable and objective basis for concluding that an armed attack is imminent.

9. States are required to take all reasonable steps to ensure that their territory is not used by nonstate actors for purposes of armed activities—including planning, threatening, perpetrating, or providing material support for armed attacks—against other states and their interests.
10. Subject to the following paragraphs, a state may not take armed action in self-defense against a nonstate actor in the territory or within the jurisdiction of another state (“the third state”) without the consent of that state. The requirement for consent does not operate in circumstances in which there is an applicable resolution of the UN Security Council authorizing the use of armed force under Chapter VII of the Charter or other relevant and applicable legal provision of similar effect. Where consent is required, all reasonable good faith efforts must be made to obtain consent.
11. The requirement for consent does not operate in circumstances in which there is a reasonable and objective basis for concluding that the third state is colluding^e with the nonstate actor or is otherwise unwilling^f to effectively restrain the armed activities of the nonstate actor such as to leave the state that has a necessity to act in self-defense with no other reasonably available effective means to address an imminent or actual armed attack. In the case of a colluding or a harboring state, the extent of the responsibility of that state for aiding or assisting the nonstate actor in its armed activities may be relevant to considerations of the necessity to act in self-defense and the proportionality of such action, including against the colluding or harboring state.
12. The requirement for consent does not operate in circumstances in which there is a reasonable and objective basis for concluding that the third state is unable^g to effectively restrain the armed activities of the nonstate actor such as to leave the state that has a necessity to act in self-defense with no other reasonably available effective means to address an imminent or actual armed attack. In such circumstances, in addition to the preceding requirements, there must also be a strong, reasonable, and objective basis for concluding that the seeking of consent would be likely to materially undermine the effectiveness of action in self-defense, whether for reasons of disclosure, delay, incapacity to act, or otherwise, or would increase the risk of armed attack, vulnerability to future attacks, or other development that would give rise to an independent imperative to act in self-defense. The seeking of consent must provide an opportunity for the reluctant host to agree to a reasonable and effective plan of action, and to take such action, to address the armed activities of the nonstate actor operating in its territory or within its jurisdiction. The failure or refusal to agree to a reasonable and effective plan of action, and to take such action, may support a conclusion that the state in question is to be regarded as a colluding or a harboring state.

^e Referred to as a “colluding state.”

^f Referred to as a “harboring state.”

^g As here described, referred to as a “reluctant host.”

13. Consent may be strategic or operational, generic or ad hoc, express or implied. The relevant consideration is that it must be reasonable to regard the representation(s) or conduct as authoritative of the consent of the state on whose territory or within whose jurisdiction the armed action in self-defense will be taken. There is a rebuttable presumption against the implication of consent simply on the basis of historic acquiescence. Whether, in any case, historic acquiescence is sufficient to convey consent will fall to be assessed by reference to all relevant circumstances, including whether acquiescence has operated in the past in circumstances in which it would have been reasonable to have expected that an objection would have been expressly declared and, as appropriate, acted upon, and there is no reason to consider that some other compelling ground operated to exclude objection.
14. These principles are without prejudice to the application of the UN Charter, including applicable resolutions of the UN Security Council relating to the use of force, or of customary international law relevant to the use of force and to the exercise of the right of self-defense by states, including as applicable to collective self-defense.
15. These principles are without prejudice to any right of self-defense that may operate in other circumstances in which a state or its imperative interests may be the target of imminent or actual attack.
16. These principles are without prejudice to the application of any circumstance precluding wrongfulness or any principle of mitigation that may be relevant.



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DRONES AND TARGETED KILLING: DEFINING A EUROPEAN POSITION

Anthony Dworkin

SUMMARY

The era of drone warfare is underway, but the European Union has been largely passive in its response. It has not reacted publicly to the US campaign of drone strikes or tried to develop an alternative standard for the use of lethal force. As EU states seek to acquire drones themselves, and with the technology spreading around the world, the EU should take a more active stance. A European initiative would be timely because changes in US policy mean there may be a greater chance for a constructive dialogue on this subject within the transatlantic alliance.

The EU should base its position on the idea that lethal force should only be used outside theatres of conventional military operations against individuals posing a serious and imminent threat to innocent life. President Barack Obama has now embraced a similar standard for US policy, though he interprets it in a far more permissive way, and retains the underlying idea of a global armed conflict against al-Qaeda. The EU should press Obama to follow through on his rhetoric by further restricting US strikes and begin discussions to explore the idea of self-defence as the basis for lethal strikes outside the battlefield. It should also encourage greater transparency and accountability from the US and work to end the anomalous notion of an unbounded war with a loose network of terrorist groups.

Since the United States carried out the first lethal drone strike, in Afghanistan in October 2001, drones have emerged from obscurity to become the most contentious aspect of modern warfare. Armed drones or unmanned aerial vehicles (UAVs) are now the United States' weapons platform of choice in its military campaign against the dispersed terrorist network of al-Qaeda. They offer an unprecedented ability to track and kill individuals with great precision, without any risk to the lives of the forces that use them, and at a much lower cost than traditional manned aircraft. But although the military appeal of remotely piloted UAVs is self-evident, they have also attracted enormous controversy and public concern. In particular, the regular use of drones to kill people who are located far from any zone of conventional hostilities strikes many people as a disturbing development that threatens to undermine the international rule of law.

Although the United Kingdom and Israel have also employed armed UAVs, the US has carried out the vast majority of drone strikes, especially those outside battlefield conditions. These attacks have been directed at suspected terrorists or members of armed groups in a series of troubled or lawless regions across a sweep of countries around the wider Middle East, encompassing Pakistan, Yemen, and Somalia, that are not otherwise theatres of US military operations. The US recently opened a new drone base in Niger, raising fears that armed drones might at some point be used in the Sahel or North Africa, though so far the base appears to be used only for surveillance flights. Since entering the White House in 2008, President Barack Obama has dramatically increased

the use of remotely piloted aircraft to kill alleged enemies of the US. According to one estimate, his administration is responsible for almost 90 percent of the drone attacks that the US has carried out.¹

The US use of drones for targeted killing away from any battlefield has become the focus of increasing attention and concern in Europe. In a recent opinion poll, people in all European countries sampled were opposed to the use of drones to kill extremists outside the battlefield and a large majority of European legal scholars reject the legal justification offered for these attacks.² But European leaders and officials have responded to the US campaign of drone strikes in a muted and largely passive way. Although some European officials have made their disagreement with the legal claims underlying US policies clear in closed-door dialogues and bilateral meetings, EU member state representatives have said almost nothing in public about US drone strikes.³ The EU has so far failed to set out any vision of its own about when the use of lethal force against designated individuals is legitimate. Nor is there any indication that European states have made a serious effort to influence the development of US policy or to begin discussions on formulating common standards for the kinds of military operations that UAVs facilitate.

Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable. Moreover, where in the past the difference between US and European conceptions of the fight against al-Qaeda seemed like an insurmountable obstacle to agreement on a common framework on the use of lethal force, the evolution of US policy means that there may now be a greater scope for a productive dialogue with the Obama administration on drones.

This policy brief sketches the outline of a common European position, rooted in the idea that outside zones of conventional hostilities, the deliberate taking of human life must be justified on an individual basis according to the imperative necessity of acting in order to prevent either the loss of other lives or serious harm to the life of the nation. It argues that such a position would now offer a basis for

renewed engagement with the Obama administration, which has endorsed a similar standard as a matter of policy, even if its interpretation of many key terms remains unclear and its underlying legal arguments remain different. Finally, it suggests that European states will need to clarify their own understanding and reach agreement among themselves on some parts of the relevant legal framework as they refine their position and pursue discussions with the United States. None of these efforts will necessarily be easy. But unless the EU defines a position on remotely piloted aircraft and targeted killing, it risks neglecting its own interests and missing an opportunity to help shape global standards in an area that is vital to international peace and security.

Arguments for a European stance

There are several ways in which the EU has an interest in the elaboration of a clearer position on drone strikes and targeted killing, and in a broader effort to promulgate more restrictive international standards in this area. The EU is committed to put human rights and the rule of law at the centre of its foreign policy, and many Europeans are likely to consider the widespread use of drones outside battlefield conditions incompatible with these principles. The EU has in the past condemned Israeli targeted killing of Palestinians. For instance, in March 2004, the European Council issued a statement describing the recent Israeli strike against Hamas leader Sheikh Ahmed Yassin as an “extra-judicial killing”. It added: “Not only are extra-judicial killings contrary to international law, they undermine the concept of the rule of law which is a key element in the fight against terrorism.”⁴ Although there are, of course, differences in the contexts of US and Israeli actions, the EU should continue to use its influence to work against the spread of a practice that it has previously opposed.

In addition, there is a significant body of evidence that drone strikes in these regions have a damaging impact on local life and political opinion that can fuel anti-US and anti-Western sentiment. A detailed study of drone strikes in Pakistan found that they deterred humanitarian assistance to victims (because of the alleged practice of “double-tap” targeting in which two missiles are launched successively at the same target), caused financial hardship to victims’ extended families, exerted a psychological toll on communities, and inhibited social gatherings and community meetings.⁵ A careful study by the International Crisis Group found some evidence that “there is less opposition within FATA [the Federally Administered Tribal Areas] to drone strikes than among activists and commentators in the country’s

¹ “These figures cover Pakistan and Yemen, where the vast majority of US out-of-theatre drone strikes have taken place; they are taken from the database maintained by the National Security Studies Program, New America Foundation, available at <http://natsec.newamerica.net/> (hereafter, National Security Studies Program database).

² “Global Opinion of Obama Slips, International Policies Faulted”, Pew Research Global Attitudes Project, 13 June 2012, available at <http://www.pewglobal.org/2012/06/13/chapter-1-views-of-the-u-s-and-american-foreign-policy-4/#drones>.

³ The most critical comment that I have found by a European official about a US drone strike was made in 2002 by the then Swedish foreign minister, Anna Lindh, who described the killing of suspected al-Qaeda member Ali Qaed Sinan al-Harithi in Yemen as “a summary execution that violates human rights”. See Brian Whitaker and Oliver Burkeman, “Killing probes the frontiers of robotics and legality”, *Guardian*, 6 November 2002, available at <http://www.guardian.co.uk/world/2002/nov/06/usa.alqaeda>.

⁴ “Council Conclusions on Assassination of Sheikh Ahmed Yassin”, European Council, 22 March 2004, available at http://europa.eu/rapid/press-release_PRES-04-80_en.htm.

⁵ “Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan”, International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 2012, pp. 73–101, available at <http://www.livingunderdrones.org/download-report/>.

urban centres”, but concluded that the drone programme was exploited by hardliners in Pakistan to ignite anti-US sentiment and encouraged a harmful dependence of the US on the Pakistani military as its primary counterterrorism partner.⁶ Some Western diplomats in Yemen argue that drone strikes are not broadly unpopular, but scholars who have studied the issue contend that a more focused and restrained use of strikes against high-level members of armed groups would limit civilian casualties and be more effective in reinforcing US national security.⁷ A young Yemeni activist who testified before the US Senate Judiciary Committee in April 2013 said that drones had become “the face of America to many Yemenis” and complicated the internal political dynamics in his country.⁸

US drone strike practices also complicate intelligence co-operation between EU member states and the US, because of the risk that information handed over by Europeans will be used as the basis for lethal strikes that might be considered illegal in the source countries. In December 2012, the British High Court dismissed a case brought by a young Pakistani man whose father was killed by a drone strike, seeking to establish whether information provided by British intelligence services was used by the CIA’s drone programme; the case is currently under appeal.⁹ The German government came under strong domestic criticism after a US drone strike killed a German citizen of Turkish descent in Pakistan in October 2010 amid claims that the German police had provided US intelligence agencies with information about his movements.¹⁰ A federal prosecutor is investigating the legality of the killing, and in the meantime the German government has instituted a policy of not passing information to the US that could be used for targeted killing outside battlefield conditions, but activists argue that it is impossible to know whether any piece of information might form part of a mosaic used in targeting decisions.¹¹ In Denmark, a public controversy has blown up over claims by a Danish citizen, Morten Storm, that he acted as a Western agent inside Yemeni jihadist circles and helped the CIA track the radical cleric Anwar al-Awlaki, who was killed by a drone strike in September 2011, with the knowledge of Danish intelligence services.

Meanwhile, European governments are increasingly acquiring armed drones for their own military forces and, in some cases, encountering strong public or political opposition. German Defence Minister Thomas de Maizière’s announcement of his wish to purchase armed UAVs for the Bundeswehr prompted campaigning groups to launch an appeal entitled “No Combat Drones” and provoked criticism from opposition parties. In the UK, the shift of control of British drones from Nevada to a Royal Air Force base in Lincolnshire led to a demonstration of several hundred people. Italy, the Netherlands, and Poland are among other EU member states that are seeking or considering the purchase of armed drones, and European defence consortia are exploring the possibility of manufacturing both surveillance and armed UAVs in Europe. To defuse public suspicion of drones in Europe, EU governments have an interest in reducing the controversy provoked by US actions and developing a clearer European line about when lethal strikes against individuals are permissible.

Armed drones are proliferating (and developing in sophistication) rapidly beyond Europe. Perhaps the strongest reason for the EU to define a clearer position on drones and targeted killing is to prevent the expansive and opaque policies followed by the US until now from setting an unchallenged global precedent. Already Chinese state media have reported that the country’s Public Security Ministry developed a plan to carry out a drone strike against a Burmese drug trafficker implicated in the killing of several Chinese sailors, though the suggestion was apparently overruled.¹² As well as China, which has an active drone programme, Russia, Saudi Arabia, and Turkey are either developing or have announced an intention to purchase armed UAVs. The US assertion that it can lawfully target members of a group with whom it declares itself to be at war, even outside battlefield conditions, could become a reference point for these and other countries. It will be difficult for the EU to condemn such use of drones if it fails to define its own position more clearly at this point.

In considering the development of EU policy on armed UAVs and targeted killing, it is important to distinguish between the different issues involved. Some critics of drones are opposed to any use of armed UAVs and would like European countries to forswear their acquisition and work against their proliferation. Campaigners argue that the development of drones “lowers the threshold to armed aggression” and is associated with an unacceptable level of civilian deaths.¹³ One study of combat operations in Afghanistan found that strikes involving UAVs were “an order of magnitude more likely to result in civilian casualties per engagement” and attributed this in part to a lower level of training for UAV

6 “Drones: Myths and Reality in Pakistan”, International Crisis Group, Asia Report No. 247, 21 May 2013, pp. 25, 34, available at <http://www.crisisgroup.org/-/media/Files/asia/south-asia/pakistan/247-drones-myths-and-reality-in-pakistan.pdf>.

7 Author interview with senior Western diplomat, 8 November 2012; “Gregory Johnsen on Yemen, the US, and Drones”, OpenCanada.Org, 14 December 2012, available at <http://opencanada.org/features/the-think-tank/interviews/gregory-johnsen-on-yemen-the-u-s-and-drones/>.

8 “Statement of Farea Al-Muslimi”, United States Senate Judiciary Committee, 23 April 2013, available at <http://www.judiciary.senate.gov/pdf/04-23-13Al-MuslimiTestimony.pdf>.

9 “Drone victim to appeal ruling over UK support for CIA strikes in Pakistan”, press release, Leigh Day, 21 December 2012, available at <http://www.leighday.co.uk/News/2012/December-2012/Drone-victim-to-appeal-ruling-over-UK-support-for-;Ravi%20Somaia,%20Drone%20Strike%20Prompts%20Suit,%20Raising%20Fears%20for%20US%20Allies%20-%20The%20New%20York%20Times>, 30 January 2013, available at http://www.nytimes.com/2013/01/31/world/drone-strike-lawsuit-raises-concerns-on-intelligence-sharing.html?_r=0.

10 Herbert Gude, “Raining Death: German Jihadist Killed in US Drone Attack”, *Spiegel Online*, 30 April 2012, available at <http://www.spiegel.de/international/world/german-citizen-killed-in-us-air-strike-after-joining-the-jihad-a-830585.html>.

11 Author interview with official in the German Federal Foreign Office, 30 May 2012; author interview with Andreas Schüller, 17 May 2013.

12 Christopher Bodeen, “China Emerging as New Force in Drone Warfare”, *Associated Press*, 3 May 2013, available at <http://bigstory.ap.org/article/china-emerging-new-force-drone-warfare>.

13 See, for instance, “Appeal: No Combat Drones!”, *Drohnen-Kampagne*, available at <http://drohnen-kampagne.de/appell-keine-kampfdrohnen/international/appeal-no-combat-drones-english-version/>.

operators in minimising civilian harm.¹⁴ But other analysts have argued that the use of drones in circumstances where armed forces face a choice between different weapons platforms reduces civilian casualties because of the greater precision of UAVs.¹⁵

In any case, the outcry over the level of civilian casualties in drone attacks is focused primarily on their non-battlefield use, where there is enormous dispute over who might be a legitimate target, and where many people understandably feel that there should be a much lower tolerance of civilian death than in conventional zones of hostilities. Remotely piloted drones are troubling because, by facilitating the killing of targeted individuals outside battlefield conditions, they extend the use of force into areas and even countries where it might not traditionally have been contemplated. The impersonality of UAVs seems to give them a less intrusive quality than manned aircraft, let alone missions involving the placement of troops on the ground, and in this way lower the barrier to the killing of individuals in countries where conventional military operations are not underway. The possibility that states could claim that they too are entitled in principle to kill any member of an armed group with which they declare themselves to be at war adds to the concerns to which the technology gives rise. Moreover, drones allow lethal force to be used in a particularly covert and unaccountable way, raising the prospect of a future where it becomes hard to know which country or organisation has carried out an attack.

Yet seeking to ban the use of armed UAVs would not be an effective way to deal with these problems. There is little if any prospect of such a campaign gaining traction. Moreover, it would deprive European countries of a military and surveillance platform that many regard as attractive. For these reasons, the most constructive way for Europeans to address the dangers posed by UAVs is likely to be through working towards a clearer international standard for the use of force outside battlefield conditions, covering substantive questions of targeting as well as transparency and accountability, both through discussions within the EU and dialogue with the US.

The legal basis of US policy

It would be particularly timely for the EU to clarify its position on the use of lethal force against members of non-state groups because US policy is now evolving. Obama has spoken of the importance of “creating a legal structure, processes, with oversight checks on how we use unmanned weapons [...] partly because technology may evolve fairly

rapidly for other countries as well”.¹⁶ A number of retired US military officers have warned that an excessive reliance on drones could be counterproductive for US national security, and the administration has reduced the number of drone strikes sharply in recent months.¹⁷ In his major counterterrorism speech of 23 May, Obama said that the US was at a crossroads in its campaign against al-Qaeda, that the fight was entering a new phase, and that it was important to “discipline our thinking, our definitions, our actions” lest the US “be drawn into more wars we don’t need to fight, or continue to grant Presidents unbound powers more suited for traditional armed conflicts between nation states”.¹⁸

Former administration officials have said the US is at fault for not doing more to work with allies to develop global rules on drone strikes. Former State Department legal adviser Harold Koh said recently that the administration “should be more willing to discuss international legal standards for use of drones, so that our actions do not inadvertently empower other nations and actors who would use drones inconsistent with the law”.¹⁹ EU member states are in a position to use their influence to support those groups within the administration who are pushing for improved standards and greater internationalisation. As one former Obama administration official put it, the US government is subject to few domestic checks on its interpretation of international law in this area, so the reaction of allies is “the main test and constraint for the administration [...] if other states don’t object, the conclusion is that they are not concerned”.²⁰

In order to understand the inflection points in US policy, and the way in which the EU could most usefully intervene, it may be helpful to look more closely at the evolution and proclaimed legal basis for US policy. The targeted killing programme began as part of a broader campaign to “find, fix, and finish” members of the terrorist network responsible for the attacks of September 11, a covert global manhunt operated both by the CIA and US Special Forces. Although no clear record of US drone strikes exists, one investigative group estimates that the US has carried out 370 strikes in Pakistan, killing in the range of 2,500–3,500 people; around 50 strikes in Yemen, killing 240–349 people; and between three and nine strikes in Somalia, killing 7–27 people.²¹ For several years the drone programme was not officially acknowledged, but in the last three years administration officials have gradually revealed some of the legal basis and

¹⁴ “Drone Strikes: Civilian Casualty Considerations”, Joint and Coalition Operational Analysis (JCOA), 18 June 2013, document on file with author.
¹⁵ Daniel Byman, “Why Drones Work”, *Foreign Affairs*, Jul/Aug 2013, pp. 37–8; William Saletan, “In Defence of Drones”, *Slate*, 19 February 2013, available at http://www.slate.com/articles/health_and_science/human_nature/2013/02/drones_war_and_civilian_casualties_how_unmanned_aircraft_reduce_collateral.html.

¹⁶ Mark Bowden, *The Finish* (New York: Atlantic Monthly Press, 2002), quoted in Micah Zenko, “Reforming US Drone Strike Policies”, Council on Foreign Relations, January 2013, p. 24, available at http://i.cfr.org/content/publications/attachments/Drones_CSR65.pdf.
¹⁷ Scott Shane, “Debate Aside, Number of Drone Strikes Drops Sharply”, *The New York Times*, 21 May 2013, available at <http://www.nytimes.com/2013/05/22/us/debate-aside-drone-strikes-drop-sharply.html>.
¹⁸ Barack Obama, speech at the National Defense University, Washington DC, 23 May 2013, available at <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (hereafter, Obama, speech at National Defense University).
¹⁹ Harold Koh, “How to End the Forever War?”, speech at the Oxford Union, Oxford, 7 May 2013, p. 14, available at <http://www.lawfareblog.com/wp-content/uploads/2013/05/2013-5-7-corrected-koh-oxford-union-speech-as-delivered.pdf>.
²⁰ Author interview with former US administration official, 22 February 2013.
²¹ Figures from the Bureau of Investigative Journalism; see <http://www.thebureauinvestigates.com/2013/06/03/may-2013-update-us-covert-actions-in-pakistan-yemen-and-somalia/>.

procedures for drone strikes, and some official documents have been published or leaked to the media. Nevertheless, several important aspects of the legal justification and policy guidelines for US drone strikes remain unclear.

US officials have at times offered two different legal justifications for the use of lethal force without being clear about the precise boundary between them. The first and most important justification relies on the claim that the US is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces, authorised for the purpose of US domestic law by a Congressional resolution (the Authorization for Use of Military Force, or AUMF) passed on 14 September 2001. While administration officials admit that the international laws governing such a conflict against an external non-state group are unclear, they contend that the rules should be understood by analogy with more traditional forms of conflict to allow the targeting of all members of enemy forces wherever they are found. At the same time, they recognise that other parts of international law, concerning state sovereignty, limit the scope for US action: when alleged enemy fighters are located on the territory of a state with whom the US is not at war, strikes can only be carried out with the consent of that state, or when it is unable or unwilling to suppress the threat posed by the fighters itself.

At times, however, administration officials have appeared to add an additional or alternative justification: the US can act in self-defence against imminent threats to its national security. For example, John Brennan, at the time Obama's top counterterrorism adviser, said in April 2012 that "the United States is in an armed conflict with al-Qaida, the Taliban, and associated forces, in response to the 9/11 attacks, and we may *also* use force consistent with our inherent right of national self-defence" (emphasis added). This justification seems to address situations where the US feels the need to use lethal force outside the boundaries of an existing armed conflict; it looks back to earlier cases where the US used military force in response to terrorist acts, such as President Ronald Reagan's strike against Libya in 1986 and President Bill Clinton's attack on supposed al-Qaeda facilities in Sudan and Afghanistan in 1998. However, in the present context, it appears to intermingle or conflate a number of different notions: first, the concept of self-defence under the principles of *jus ad bellum* (the laws governing the use of force between states) as a justification for violating the sovereignty of another state, traditionally assessed by reference to the so-called "Caroline criteria" elaborated by the US in 1842; second, the threat to innocent life as a justification for the deliberate killing of an individual person (perhaps with reference to some conception of human rights law or principles); third, perhaps, some idea that an actual or imminent armed attack by a non-state group provides a justification for the targeted state to use force against that group as a collective entity.

Because the administration has not been clear about the precise justification for the strikes it has carried out so far,

we cannot be certain whether all of them fall within the scope of the "armed conflict" justification. Some scholars who have followed the administration's pronouncements closely believe this to be the case.²² Another possible explanation for the apparent ambiguity in the US position is that there were disagreements within the administration about the scope of the alleged armed conflict, and that the formula of alternative justifications was chosen to allow flexibility between differing views.²³ In any case, the question of who can lawfully be targeted under the armed conflict justification has been left vague in two crucial respects. First, the administration has given little indication of how it assesses membership of the enemy forces, a concept that is far from clear in the case of non-military organisations such as al-Qaeda.²⁴ Second, the administration has given very little information about how it defines the "associated forces" that are said to be part of the enemy in the armed conflict against al-Qaeda. The testimony of senior US military officers before a recent hearing of the Senate Committee on Armed Services revealed a remarkable degree of confusion on this question, including on whether such forces had merely to be affiliated to al-Qaeda or had also to be involved in planning attacks against the US.²⁵ It is through the concept of "associated forces" that the targeted killing campaign has been extended to Yemen and Somalia, where the core al-Qaeda grouping responsible for the September 11 attacks has no presence.

The significance of the distinction between the armed conflict and self-defence justifications can best be understood with reference to the different paradigms to which they appeal. The armed conflict justification is based on what could be described as a logic of collective membership: individuals can be targeted on the basis of their status as members of a group against which the US is engaged in hostilities. The self-defence justification is based on a logic of individual threat: individuals can be killed only after a determination in their individual case that a strike is necessary to avoid an imminent threat to life that cannot be prevented in any other way. The second justification thus seems to entail a significantly higher threshold to be met before targeted killing can be authorised – though the Obama administration's use of behavioural criteria to determine membership of al-Qaeda and its associated forces means the distinction is not in practice a hard-and-fast one.

Two further points are worth noting. First, the administration has acknowledged that in the case of American citizens, even when they are involved in the armed conflict, the

²² Kenneth Anderson and Benjamin Wittes, *Speaking the Law: The Obama Administration's Addresses on National Security Law* (Stanford, CA: Hoover Institution Press, 2013), p. 28, available at <http://www.hoover.org/taskforces/national-security/speaking-the-law/>.

²³ According to reports, State Department legal adviser Harold Koh opposed extending the armed conflict model outside Afghanistan and Pakistan; see Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (New York: Houghton Mifflin, 2012), pp. 140, 219–220.

²⁴ See Ryan Goodman, "The Drone Question Obama Hasn't Answered", the *New York Times*, 8 March 2013, available at <http://www.nytimes.com/2013/03/09/opinion/the-drone-question-obama-hasnt-answered.html>.

²⁵ Rosa Brooks, "The War Professor", *Foreign Policy*, 23 May 2013, available at http://www.foreignpolicy.com/articles/2013/05/22/the_war_professor.

US Constitution imposes additional requirements of due process that bring the threshold for targeted killing close to that involved in a self-defence analysis. These requirements were listed in a Department of Justice white paper that became public earlier this year.²⁶ Second, the administration has at times suggested that even in the case of non-Americans its policy is to concentrate its efforts against individuals who pose a significant and imminent threat to the US. For example, John Brennan said in his Harvard speech in September 2011 that the administration's counterterrorism efforts outside Afghanistan and Iraq were "focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qaeda and its associated forces".²⁷

However, the details that have emerged about US targeting practices in the past few years raise questions about how closely this approach has been followed in practice. An analysis published by McClatchy Newspapers in April, based on classified intelligence reports, claimed that 265 out of 482 individuals killed in Pakistan in a 12-month period up to September 2011 were not senior al-Qaeda operatives but instead were assessed as Afghan, Pakistani, and unknown extremists.²⁸ It has been widely reported that in both Pakistan and Yemen the US has at times carried out "signature strikes" or "Terrorist Attack Disruption Strikes" in which groups are targeted based not on knowledge of their identity but on a pattern of behaviour that complies with a set of indicators for militant activity. It is widely thought that these attacks have accounted for many of the civilian casualties caused by drone strikes. In both Pakistan and Yemen, there may have been times when some drone strikes – including signature strikes – could perhaps best be understood as counterinsurgency actions in support of government forces in an internal armed conflict or civil war, and in this way lawful under the laws of armed conflict. Some attacks in Pakistan may also have been directly aimed at preventing attacks across the border on US forces in Afghanistan. However, by presenting its drone programme overall as part of a global armed conflict, the Obama administration continues to set an expansive precedent that is damaging to the international rule of law.

Obama's new policy on drones

It is against this background that Obama's recent counterterrorism speech and the policy directive he announced at the same time should be understood. On

the subject of remotely piloted aircraft and targeted killing, there were two key aspects to his intervention. First, he suggested that the military element in US counterterrorism may be scaled back further in the coming months, and that he envisages a time in the not-too-distant future when the fight against the al-Qaeda network will no longer qualify as an armed conflict. He said that "the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat" and that while al-Qaeda franchises and other terrorists continued to plot against the US, "the scale of this threat closely resembles the types of attacks we faced before 9/11".²⁹ Obama promised that he would not sign legislation that expanded the mandate of the AUMF, and proclaimed that the United States' "systematic effort to dismantle terrorist organizations must continue [...] but this war, like all wars, must end". The tone of Obama's speech contrasted strongly with that of US military officials who testified before the Senate Committee on Armed Services the week before; Michael Sheehan, the Assistant Secretary of Defence for Special Operations and Low-Intensity Conflict, said then that the end of the armed conflict was "a long way off" and appeared to say that it might continue for 10 to 20 years.³⁰

Second, the day before his speech, Obama set out regulations for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes "that are either already in place or will be transitioned into place overtime".³¹ Outside areas of active hostilities, lethal force will only be used "when capture is not feasible and no other reasonable alternatives exist to address the threat effectively". It will only be used against a target "that poses a continuing, imminent threat to US persons". And there must be "near certainty that non-combatants will not be injured or killed".

In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how "areas of active hostilities" should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach.

²⁶ "Lawfulness of a Lethal Operation Directed Against a US Citizen Who is a Senior Operational Leader of Al-Qa'ida or an Associated Force", US Department of Justice, available at http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf (hereafter, "Lawfulness of a Lethal Operation", US Department of Justice).

²⁷ "Obama reflects on drone warfare", *CNN Security Clearance*, 5 September 2012, available at <http://security.blogs.cnn.com/2012/09/05/obama-reflects-on-drone-warfare/>.

²⁸ Jonathan S. Landay, "Obama's drone war kills 'others', not just al Qaeda leaders", *McClatchy Newspapers*, 9 April 2013, available at <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html#.UaTvtLVCs0>.

²⁹ Obama, speech at National Defense University.

³⁰ "Hearing to Receive Testimony on the Law of Armed Conflict, the Use of Military Force and the 2001 Authorization for Use of Military Force", US Senate Committee on Armed Services, 16 May 2013, pp. 10, 18, available at <http://www.armed-services.senate.gov/Transcripts/2013/05%20May/13-43%20-%205-16-13.pdf>.

³¹ This and succeeding quotations in this paragraph are from "Fact Sheet: US Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities", Office of the Press Secretary, The White House, 23 May 2013, available at <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.

In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.³² The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.³³

However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.³⁴ The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.³⁵

It is also notable that the new standards announced by Obama represent a policy decision by the US rather than a revised interpretation of its legal obligations. In his speech, Obama drew a distinction between legality and morality, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The background assertion that the US is engaged in an armed conflict with al-Qaeda and associated forces, and might therefore lawfully kill any member of the opposing forces wherever they were found, remains in place to serve as a precedent for other states that wish to claim it.

Looking forward, Obama’s speech strongly suggests that the time leading up to the withdrawal of most US forces from Afghanistan by the end of 2014 could be a crucial period for

the evolution of US policy, and a significant window for the EU to pursue discussions with the US. When US troops are no longer fighting on the ground in Afghanistan, there will be no conventional military operations against al-Qaeda or the Taliban around which a notional armed conflict can be focused and no zone of hostilities in which status-based targeting is clearly justified. Nor will it be possible to justify drone strikes in Pakistan as necessary to prevent attacks on US forces in Afghanistan. Much of the language of Obama’s speech suggests that he regards the withdrawal of troops from Afghanistan both as a likely justification for further reducing drone strikes and perhaps also as a logical moment to reconsider the nature of the campaign against al-Qaeda more broadly. There is no guarantee that Obama will be ready to declare the armed conflict over at that point, or even to rethink the legal prerogatives he claims in the conflict, but he has clearly flagged these questions for consideration.

A basis for European engagement with the US

If this is the US position, what about the EU? EU member states have not yet tried to formulate a common position on the use of lethal force outside battlefield conditions. Some EU member states may not have settled views on the subject, they may incline to different answers to some unresolved questions of law, and they are subject to somewhat different restrictions through their domestic legal frameworks. While European countries have not taken public positions, Germany, Austria, and some Nordic countries are among those that have tended to be more direct in their criticism of US policy in private meetings, while France and the UK probably have greater sympathy with the US. Other EU member states that do not face a serious threat from international terrorism or deploy military forces in overseas operations against non-state groups may not have felt any need to consider their views on these issues at all.

Nevertheless, it seems possible to construct a central core of agreement that would be broadly shared across the EU. The foundation of this common vision would be the rejection of the notion of a de-territorialised global armed conflict between the US and al-Qaeda. Across the EU there would be agreement that the confrontation between a state and a non-state group only rises to the level of an armed conflict if the non-state group meets a threshold for organisation, and if there are intense hostilities between the two parties.³⁶ The consensus view within the EU would be that these conditions require that fighting be concentrated within a specific zone (or zones) of hostilities. Instead of a global war, Europeans would tend to see a series of discrete situations, each of which needs to be evaluated on its own merits to decide whether it qualifies as an armed conflict.

Outside an armed conflict, the default European assumption would be that the threat of terrorism should be confronted within a law enforcement framework. This framework would not absolutely prohibit the deliberate killing of

³² For an argument that the new guidelines render the existence of an armed conflict irrelevant for targeting purposes, see Robert Chesney, “Does the Armed-Conflict Model Matter in Practice Anymore?”, *Lawfare Blog*, 24 May 2013, available at <http://www.lawfareblog.com/2013/05/does-the-armed-conflict-model-matter-in-practice-anymore/>.

³³ Peter Baker, “In Terror Shift, Obama Took a Long Path”, the *New York Times*, 27 May 2013, available at http://www.nytimes.com/2013/05/28/us/politics/in-terror-shift-obama-took-a-long-path.html?hp&_r=0.

³⁴ “Lawfulness of a Lethal Operation”, US Department of Justice, p. 7.

³⁵ National Security Studies Program database.

individuals, but it would set an extremely high threshold for its use – for example, it might be permitted where strictly necessary to prevent an imminent threat to human life or a particularly serious crime involving a grave threat to life.³⁷ Where the threat was sufficiently serious, the state's response might legitimately include the use of military force, but every use of lethal force would have to be justified as a necessary and proportionate response to an imminent threat. In any action that involved the deliberate taking of human life, there would have to be a rigorous and impartial post-strike assessment, with the government disclosing the justification for its action. Finally, EU states might perhaps agree that in the face of an armed attack or an imminent armed attack, states can use force on the territory of another state without its consent, if that state is unable or unwilling to act effectively to restrain the attack.

This consensus provides a basis on which the EU can step up engagement with the US on drones and targeted killing. At the heart of the EU position is the belief that the use of lethal force outside zones of active hostilities is an exceptional measure that can only be justified on the basis of a serious and imminent threat to human life. At a time when drone technology is proliferating rapidly, EU leaders should be more forthright in making this argument publicly – especially since Obama has adopted it, at least rhetorically, as an element of his policy. While Europeans may be reluctant to accuse Obama of having violated international law, they can assert their own vision and encourage Obama to follow through on his rhetoric by elevating the idea of a strict imminent threat-based approach to the use of deadly force outside the battlefield. European leaders and officials should welcome Obama's latest moves to restrain drone strikes and his intimation that the armed conflict against al-Qaeda may be nearing its end. In this way they would reinforce the standards implicit in his speech and make clear that America's closest allies will be watching to see how far he matches his words with action.

At the same time, the EU and its member states should use their private communications with the Obama administration to continue to press for greater clarification and transparency in US drone strike policies. They should ask US officials to explain those aspects of the drone programme that remain uncertain: the meaning that the US attaches to the term "associated forces", the definition of a "continuing and imminent" threat, the basis for deciding what level of threat justifies targeted killing, and the criteria and processes by which the US reviews drone strikes after the fact and assesses whether there have been civilian casualties (it is notable that Obama's speech considered various ideas for reviewing proposals for targeted strikes beforehand, but

said nothing about post-strike review). EU officials should encourage the US to interpret these terms in a strict and restrictive way, so that the constraints they embody are made as meaningful as possible. In particular, the EU and its member states should press the Obama administration to scale back or abandon the idea that groups outside Afghanistan and Pakistan should be classed as associated forces, which has done more than anything else to turn the fight against al-Qaeda into a global armed conflict.

The EU should also encourage the Obama administration to provide much more information about individual drone strikes in the future, including the threat posed by the target and, as far as possible, an accounting of those killed and injured – something that may be more likely if drone strikes are transferred progressively from the CIA to the Department of Defence, as officials have suggested will happen. Finally, the EU should test US willingness to rethink its broader armed conflict model or declare its proclaimed armed conflict against al-Qaeda at an end, perhaps linked to the forthcoming withdrawal of US forces from Afghanistan.³⁸ The EU might point out that if US targeting policies are in fact much more restrictive than allowed for under its legal paradigm, it has little to lose from rethinking that paradigm, while it stands to benefit in the future by setting a more restrained precedent for other states.

Looking further ahead, the EU and its member states could build on these exchanges and undertake a broader effort with the US to explore the possibility of agreeing common standards for the use of drones and other methods of conducting targeted strikes. It would be enormously valuable if the EU and the US could together agree on a set of guiding principles for the kinds of operation that technological change is making possible, rooted in a common interpretation of the applicable parts of international law. (To avoid problems arising from the different obligations that states may face under domestic law or regional instruments, such a code of conduct should be based on laws that have broad or universal adherence or are recognised as customary.) This would be the most powerful step that Europe could take towards establishing a global standard for drone strikes that does not undermine the international rule of law, before the evolving practice of other states overtakes any such effort.

Unanswered questions on the use of lethal force

An effort to develop a set of standards for the use of force outside battlefield conditions would require the EU to define its own views on the subject more completely than it has done so far. The EU should therefore begin internal discussions aimed at clarifying and refining its position,

³⁶ See Dapo Akande, "Classification of Armed Conflicts: Relevant Legal Concepts", in Elizabeth Wilmshurst, ed., *International Law and the Classification of Conflicts* (Oxford University Press, 2012), pp. 51–54.

³⁷ These criteria are taken from "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", document adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, September 1990, available at <http://www.unrol.org/files/BASICP-3.PDF>.

³⁸ Declaring an end to its proclaimed armed conflict against al-Qaeda would also remove the justification for the United States' detention of terrorist suspects at Guantanamo Bay, but that question is beyond the scope of this paper.

while simultaneously extending discussions with the US aimed at exploring the possibilities of reaching a common position. Such discussions could begin in the twice-yearly transatlantic dialogue between EU and US legal advisers. They could also be pursued in smaller groups, such as the informal West Point Group of like-minded states involved in hostilities in Afghanistan. The discussions on self-defence mentioned by the former legal adviser to the British Foreign and Commonwealth Office, Sir Daniel Bethlehem, in a recent law review article (in which he described a strand of debate “largely away from the public gaze, within governments and between them, about what the appropriate principles are, and ought to be, in respect of such conduct”) are one example of the kind of process that might be pursued.³⁹ It would also be desirable for civil society organisations to be allowed to contribute to the process, through discussion forums such as the Oud Poelgeest meetings convened by the Netherlands.

There are a number of particular areas where European views seem incompletely resolved, or where international legal standards are unsettled, on which intra-EU discussions might initially focus:

- What, if any, are the geographical limits to armed conflicts between states and external non-state groups? While European officials and scholars generally reject the notion of a global armed conflict, they do not appear to have a settled answer to the question of whether territorially focused armed conflicts (such as the conflict in Afghanistan) must be confined within a single state, or how far they can spread. Assuming that at least some enemy forces may be targeted by virtue of their status, may they be targeted even after they have crossed the boundaries of another state (leaving aside the question of whether that use of force infringes the sovereignty of the third state)? Is any geographical proximity to the conflict required, or is it simply the participation of the individual in the conflict that is decisive?
- What categories of persons may be targeted during an armed conflict between a state and a non-state group, and under what circumstances? Unlike the armed forces of states, armed groups aren’t often composed of a clear and easily identifiable group of fighters. This raises the question of who (if anyone) within the group should be regarded as a fighter who can be targeted at any time, and who as a civilian who can only be targeted if he or she is directly participating in an attack (according to a firm rule of the laws of armed conflict). In its widely discussed interpretive guidance on direct participation in hostilities, the International Committee of the Red Cross (ICRC) proposed that members of organised armed groups (defined as those

who performed a continuous combat function) should be understood to lose their protection against direct attack for as long as they assumed this function.⁴⁰ The US has, at least in the case of detention, developed a similar but slightly different test of “functional membership” in an armed group. Do EU member states see these standards as compatible, and do they agree with them? Beyond members of organised armed groups, what other actions would qualify as direct participation in such conflicts, and do states agree with the ICRC that civilians lose protection only for the duration of each specific act?

- Under circumstances in which individuals involved in an armed conflict do not benefit from protection against attack as civilians, are there any other restrictions on when they may be targeted? Largely in response to the changing nature of armed conflict and the rise in lethal action directed against individuals, there have been a number of suggestions in recent years that additional restrictions may apply in some cases, especially outside battlefield conditions. In its decision on targeted killing, the Israeli High Court of Justice ruled that members of armed groups, even when they appeared to be taking a direct part in hostilities, could not be attacked “if a less harmful means can be employed”. In its interpretive guidance on direct participation, the ICRC argued that the restraining role of the principles of military necessity and humanity would increase “with the ability of a party to the conflict to control the circumstances and area in which its military operations are conducted, and may become decisive where armed forces operate against selected individuals in situations comparable to peacetime policing”.⁴¹ There have also been suggestions in recent years that international human rights law may regulate the actions of states in some circumstances during armed conflict, particularly in areas where the state exercises a high degree of control. All of these arguments have been the focus of fierce debate, and discussions on this subject are likely to play a significant role in determining the evolution of the laws of armed conflict in coming years.
- Outside an armed conflict, what framework governs the deliberate taking of life, and how does it apply in regions where the writ of law enforcement is limited? Most Europeans would assume that human rights law provides the relevant framework, though there are questions about how far human rights treaties cover the use of lethal force outside a state’s territory, and the US has traditionally argued that human rights treaties such as the International Covenant on Civil and Political Rights do not apply extraterritorially. If

³⁹ Daniel Bethlehem, “Self-Defence Against an Imminent or Actual Armed Attack by Non-State Actors”, the *American Journal of International Law*, October 2012, p. 770, available at http://www.asil.org/pdfs/ajil/Daniel_Bethlehem_Self_Defense_AJIL_ARTICLE.pdf (hereafter, Bethlehem, “Principles”).

⁴⁰ Nils Melzer, “Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law”, International Committee of the Red Cross, 1 July 2009, available at <http://www.icrc.org/eng/resources/documents/publication/p0990.htm> (hereafter, Melzer, “Interpretive Guidance”).

human rights law does apply, how do its provisions regarding the right to life govern actions against terrorist groups in lawless areas? In recent cases, the European Court of Human Rights has applied the European Convention to situations of military activity or hostage-taking in ways that recognise a wider scope for action that results in people's deaths than would be the case under normal peacetime conditions. How far can these precedents be extended, and what are their implications for situations where terrorists are judged to pose an imminent threat to human life?

- Under what conditions does the right of self-defence allow for the use of lethal force on the territory of another state without its consent? As mentioned above, there have been inter-governmental discussions on this issue. The suggestions set out by Sir Daniel Bethlehem would provide a focus for further discussion.⁴¹
- The notion of imminence plays a central role both in the assessment of whether an individual poses a threat to the lives of others that would justify the deliberate taking of his life, and in assessing when the threat of an armed attack justifies the use of force on the territory of a sovereign state without its consent. Should the concept be interpreted in the same way or in different ways in these respective contexts?

At the least, such discussions might help to define a European position on the use of force outside battlefield conditions. But it is possible to imagine that some kind of broader transatlantic consensus might also emerge. Some EU member states may be wary of searching for an agreement with the US that might lead to a weakening of what they regard as a clear legal framework based on a firm differentiation between armed conflict and law enforcement. But if the analysis of this paper is correct, it is at least worth exploring whether the notion of self-defence might provide the foundation for a meaningful degree of convergence between European and US views. Under current circumstances, European and US officials might be able to agree that the deliberate killing of terrorist suspects outside zones of conventional hostilities is only permissible when they pose a serious and imminent threat to innocent life that cannot be deflected in any less harmful way. However, much more discussion will be necessary to flesh out the terms of this statement, and to explore the further questions of whether such a threat-based analysis might also apply in some circumstances during armed conflict, and where the boundaries of armed conflict should be set.

Conclusion

Targeted killing through the use of remotely piloted aircraft represents a fundamental challenge to traditional conceptions of peace, war, and the international rule of law. The deliberate killing of alleged members of an enemy force is associated with armed conflict, yet the circumstances of drone strikes – the ability to strike against a designated individual, at a time of one's choosing, far away from any battlefield – are far removed from a conventional notion of wartime. In this way, every drone strike expands the sphere where military force is the arbiter and shrinks the realm where the law is enforced through impartial adjudication. Committed as it is to the international rule of law, the EU must do what it can to reverse the tide of US drone strikes before it sets a new benchmark for the international acceptability of killing alleged enemies of the state.

As a practical matter, the EU should press the US to continue scaling back its use of drone strikes, and to go further in meeting the requirements of transparency and accountability in the attacks it carries out. Beyond this, though, there is a broader struggle underway to define the rules governing the use of lethal force outside theatres of conventional military operations. Here the EU needs to make its voice heard, both to define its own views of the appropriate standards and to try to work towards greater international consensus on the issue. The shift in US policy towards a greater reliance on self-defence as an operational principle seems to offer an opening for further discussion. But US practice remains very far from what Europeans would like to see and its legal justification continues to rely on premises that most Europeans reject.

However, the fact that Obama has embraced a standard that Europeans should find easier to accept than previous US claims creates an opening for Europeans to explore the implications of self-defence against individual threats as a justification for the use of lethal force. At the same time, Europeans should continue to encourage the US to go further in rethinking or abandoning its claims of a global armed conflict that provides authority to target enemy fighters as a group. These discussions may prove to be long and painstaking. But they are surely worth exploring as an effort to sustain the international rule of law at a time when rapid technological change in the area of weaponry threatens to erode it.

⁴¹ Melzer, "Interpretive Guidance", p.80.
⁴² Bethlehem, "Principles".

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Anthony Dworkin is a senior policy fellow at the European Council on Foreign Relations, working on human rights, democracy, and international justice. He is the author of the ECFR policy brief “Beyond the ‘War on Terror’: Towards a New Transatlantic Framework for Counterterrorism” (2009), as well as several papers on EU human rights policy and EU support for democracy and human rights in North Africa. His most recent ECFR report was “The Struggle for Pluralism after the North African Revolutions” (2013). He was previously the executive director of the Crimes of War Project and edited the book *Crimes of War: What the Public Should Know* (2nd ed., Norton, 2007).

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From: Seitz, Virginia A (OLC)
Sent: Wednesday, October 30, 2013 8:50 PM
To: (b) (6)
Subject: Re: Any progress o (b) (5)

Many thanks. Va

From: (b) (6) [mailto:(b) (6)]
Sent: Wednesday, October 30, 2013 08:17 PM
To: Seitz, Virginia A (OLC)
Subject: RE: Any progress o (b) (5)

I spoke to Brian. He confirmed your understanding precisely. Thank you. (b) (6)

From: Seitz, Virginia A (OLC) [mailto:(b) (6)]
Sent: Wednesday, October 30, 2013 6:43 PM
To: (b) (6)
Cc: Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC)
Subject: RE: Any progress o (b) (5)

I'm here if you would like to discuss briefly (b) (6)

From: (b) (6) [mailto:(b) (6)]
Sent: Wednesday, October 30, 2013 6:41 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC)
Subject: Any progress o (b) (5)

(b) (5). Thanks. (b) (6)

From: (b) (6) e (OLC)
Sent: Monday, November 18, 2013 5:17 PM
To: (b) (6) (NSD) (b) (6) (OLC)
Cc: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC)
Subject: RE: 110813 NYU CT Speech v10 - consolidated NSD edits

Tracking:

	Recipient
	(b) (6) (NSD)
	Roberts, Matthew (OLC)
	Seitz, Virginia A (OLC)
	Krass, Caroline D. (OLC)
	Koffsky, Daniel L (OLC)

(b) (6) —
Attached are OLC's comments on the draft. Thank you for giving us a chance to look at it; I'm happy to discuss if it's helpful.

(b) (6)
110813 NYU CT
Speech v10 - con...

From: (b) (6) (NSD)
Sent: Monday, November 18, 2013 4:47 PM
To: (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: 110813 NYU CT Speech v10 - consolidated NSD edits

Yes to both things. I'm here until a 5:30pm meeting, and then will be back at my desk after.

From: (b) (6) (OLC)
Sent: Monday, November 18, 2013 4:46 PM
To: (b) (6) (NSD) (b) (6) (OLC)
Subject: RE: 110813 NYU CT Speech v10 - consolidated NSD edits

Would you like us to layer our comments on to yours? Also, if you're around, can I give you a call in a few minutes?

From: (b) (6) (NSD)
Sent: Monday, November 18, 2013 4:17 PM
To: (b) (6) (OLC) (b) (6) (OLC)
Subject: 110813 NYU CT Speech v10 - consolidated NSD edits

Sorry to keep pinging you with drafts. Here are NSD's consolidated edits, in case you're interested in seeing how we've edited certain phrases.

<< File: 110813 NYU CT Speech v10 - consolidated NSD edits.docx >>

From: Egan, Brian J. (b) (6)
Sent: Monday, November 25, 2013 6:32 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC)
Cc: Fonzone, Christopher
Subject: Wyden Letter RE: al-Aulaqi

(b) (5)



From: (b) (6) (OLC)
Sent: Thursday, December 05, 2013 9:10 AM
To: Silas, Adrien (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: S1681, Intel Auth FY14 (OLA Wkflow 107993)
Importance: High

Adrien: Here in this redline are our suggested changes. With one exception, all the changes are technical (e.g., conforming the citation format for citing the bill). The one substantive change is (b) (5)

[Redacted]



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redline.doc...

Please let us know if we can be of any further assistance.

(b) (6)
Office of Legal Counsel
(b) (6)

From: Silas, Adrien (OLA)
Sent: Wednesday, December 04, 2013 3:03 PM
To: (b) (6) Garemore, Juliette J. (FBI) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC) (b) (6) (OLC); Mizer, Benjamin (OLC); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); (b) (6)
Brown Lee, Erika (ODAG); Chung, Joo (OPCL); Lane Scott, Kristi Z (OPCL); Lullo, Joseph R. (OPCL); Miller, William A. (OPCL); Wood, Alexander W (OPCL)
Cc: Ruppert, Mary (OLA); Agrast, Mark D. (OLA); Walsh, James (ODAG)
Subject: S1681, Intel Auth FY14 (OLA Wkflow 107993)
Importance: High

Please provide me your comment or “no comment” on the attached draft Justice Department comments (“Intel100.doc.docx”) on the Senate version of the intelligence authorization bill by no later than **10 a.m. tomorrow, Thursday, December 5, 2013**. Thanks! (For your information only, I also have attached the raw comments of Justice Department components.)

[JIM WALSH: Heads up only.]

NSD
OLC

CIV
FBI
OPCL



Intel100.doc.docx



s1681.text.pdf



RE: (OLA WF
107993) FW: LR...



FW: (OLA WF
107993) FW: LR...



RE: (OLA WF
107993) FW: LR...



FW: (OLA WF
107993) FW: LR...



RE: (OLA WF
107993) FW: LR...

(b) (5)

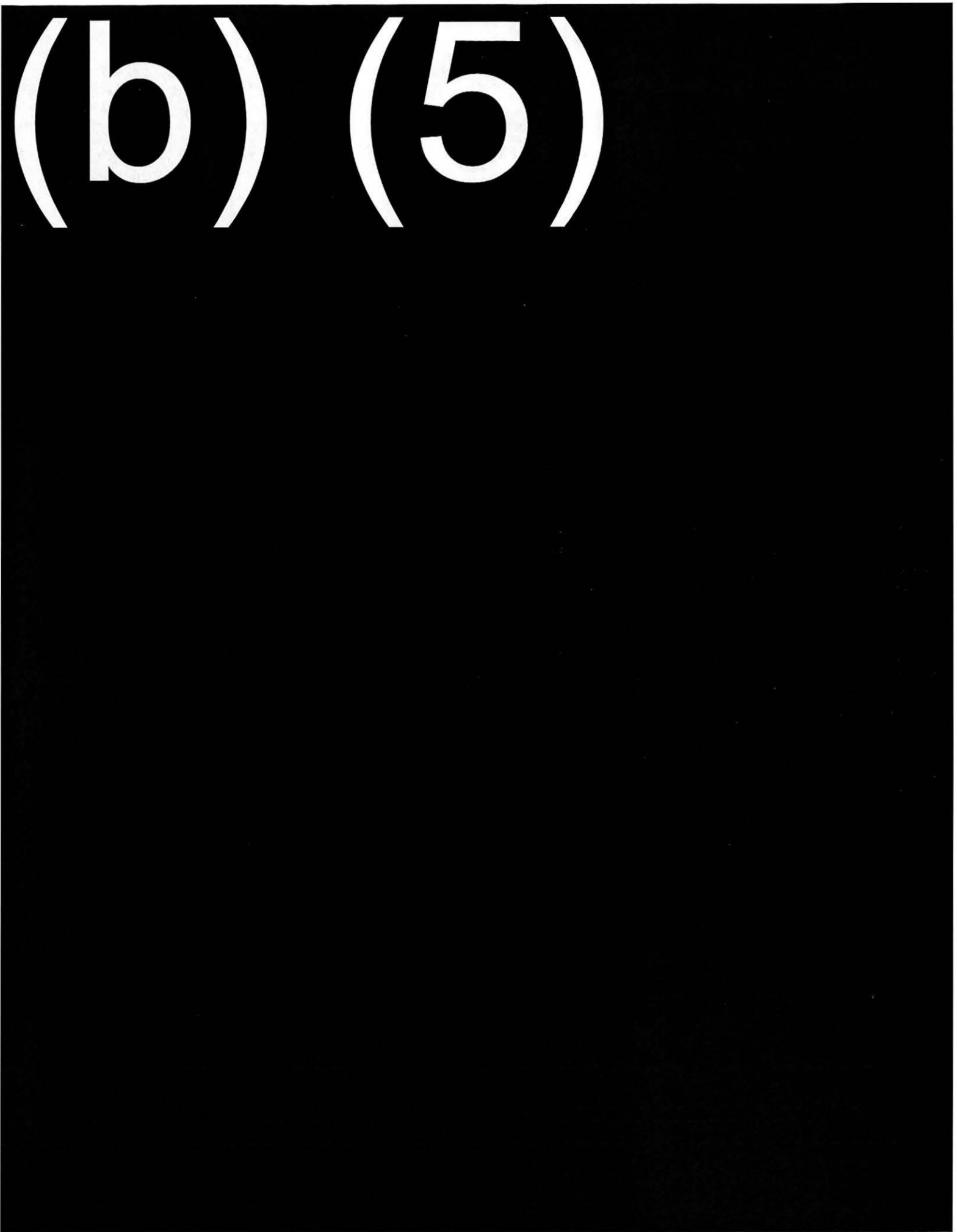
(b) (5)

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(b) (5)

(b) (5)

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(b) (6)

(b) (5)

(b) (5)

Department of Justice
Office of Legislative Affairs
Internal Control Sheet

Date of Document: 11/14/2013 **OLA WF ID:** 107993
Date Received: 11/14/2013 **WF Type:** OMB Request
Date Due: 11/21/2013 5:00 PM **CONGRESS:** 113
LRM: EHF-113-178 **File #:** S.1681

From: OMB

To: OLA

Subject: OMB Request for Views on S.1681 Intelligence Authorization Act for FY 2014

Referred To:	Date Assigned:	Action:
OLA Silas	11/14/2013	For appropriate handling
JMD/Budget/CIO/SEPS, 11/15/2013 OLP, NSD, OLC, CIV, CRM, EOUSA, FBI, OIP, OIG		Comments due to OLA/Silas by COB 11/20/13. CC: ODAG, PCLO, OLA/Agrast/Ruppert/Burton/Simpson

OMB Contact: Holly Fitter (b) (6)

OLA POC: Adrien Silas (b) (6)

Previous/Similar Request: Similar request B.165 referred to JMD/FASS/HR, NSD, OLP, OLC, CIV, CRM, EOUSA, FBI, DEA, ATF, OIG, PCLO

ES WF ID:

Closing Remarks:

Component Review

Department of Justice
Office of Legislative Affairs
Internal Control Sheet

Date of Document: 11/14/2013
Date Received: 11/14/2013
Date Due: 11/21/2013 5:00 PM
LRM: EHF-113-178

OLA WF ID: 107993
WF Type: OMB Request
CONGRESS: 113
File #: S.1681

Component Assign Date 11/15/2013

Component Due Date 11/20/2013

Component	Responded	Time	Action	Notes
JMD			No Response	
OLP			No Response	
NSD			No Response	
OLC			No Response	
CIV			No Response	
CRM			No Response	
EOUSA			No Response	
FBI			No Response	
OIP			No Response	
OIG			No Response	

From: (b) (6) (NSD)
Sent: Tuesday, December 03, 2013 9:53 AM
To: Silas, Adrien (OLA)
Cc: NSD LRM Mailbox (NSD) (b) (6) (NSD)
Subject: RE: (OLA WF 107993) FW: LRM [EHF-113-178] OMB Request for Views on S1681 Intelligence Authorization FY 2014 #696618190#
Attachments: NSD comments on intel authorization bill 11-19-13.docx

Adrien,

Attached are NSD's comments on the Senate Intelligence Authorization bill. NSD provides narrative comments to 4 sections, and suggests specific language in markups at the bottom of the attachment.

Thanks,

Katherine

From: Silas, Adrien (OLA)
Sent: Monday, December 02, 2013 3:33 PM
To: (b) (6) (NSD)
Subject: FW: (OLA WF 107993) FW: LRM [EHF-113-178] OMB Request for Views on S1681 Intelligence Authorization FY 2014 #696618190#

Unfortunately, we urgently need whatever NSD can produce on S. 1681, the Senate version of the intelligence authorization bill. ODNI already is circulating comments, apparently including some comments that DOJ staff has provided informally outside of the OLA process.

From: (b) (6) (NSD)
Sent: Tuesday, November 26, 2013 12:22 PM
To: Silas, Adrien (OLA)
Subject: RE: (OLA WF 107993) FW: LRM [EHF-113-178] OMB Request for Views on S1681 Intelligence Authorization FY 2014 #696618190#

I'll ping people on my end again.

From: Silas, Adrien (OLA)
Sent: Tuesday, November 26, 2013 12:14 PM
To: (b) (6) (NSD)
Subject: FW: (OLA WF 107993) FW: LRM [EHF-113-178] OMB Request for Views on S1681 Intelligence Authorization FY 2014 #696618190#

Any NSD progress on this one? OMB has let me know that ODNI has prepared a chart with agency comments on it and shared it with the White House (I do not have the chart).

From: (b) (6) (NSD)
Sent: Wednesday, November 20, 2013 3:31 PM
To: Silas, Adrien (OLA)

Subject: FW: (OLA WF 107993) FW: LRM [EHF-113-178] OMB Request for Views on S1681 Intelligence Authorization FY 2014 #696618190#

Adrien,

I've got our comments ready but need to clear them through our front office. I'll try to get them out tomorrow.

Thanks,

(b) (6)



duplicate

(b) (5)

From: O'Neil, David (ODAG)
Sent: Sunday, December 08, 2013 10:31 PM
To: Bies, John (OLC)
Subject: Re: Prep

Thanks John. See you tomorrow.

From: Bies, John (OLC)
Sent: Sunday, December 08, 2013 08:51 PM
To: O'Neil, David (ODAG)
Subject: Fw: Prep

Dave, I don't think there's anything specific you need to do to prepare for the moot, but here is a list of potential DOJ/OLC issues that might come up for her.

From: Bies, John (OLC)
Sent: Tuesday, December 03, 2013 05:25 PM
To: Seitz, Virginia A (OLC); Krass, Caroline D. (OLC); Colborn, Paul P (OLC)
Subject: Prep

Here is a preliminary list of potential areas of interest relating to OLC topics. I welcome any comments or additions.

OLC-Related QUESTIONS FOR CAROLINE

- (b) (5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(b) (5)

(b) (5) [Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

From: (b) (6) (OLC)
Sent: Friday, December 20, 2013 3:13 PM
To: Silas, Adrien (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: (OLA WF 108179) FW: LRM [WT-113-150] ODNI Letter on S1681 Intelligence Authorization FY 2014 #700850072#
Attachments: Views Letter to SSCI on Intel Auth 2013-12-18.docx; s1681textt.pdf; LRM-EHF-113-178, S1681, Intel Auth FY14 (OLA Wkflow 107993) #696618190# ; WT-113-150 CONTROL.doc; Views Letter to SSCI on Intel Auth 2013-12-18 - olc edits.docx
IQaccount: OLA

Adrien: In the last of the attachments are our suggested edits to the ODNI views letter.

(b) (6)
Office of Legal Counsel
(b) (6)
[Redacted]

From: Freeman, Andria D (OLA)
Sent: Friday, December 20, 2013 10:47 AM
To: Allen, Michael (JMD); Atwell, Tonya M (JMD); Cantilena, Jennifer (OCIO); Faulkner, Lila (JMD); Foltz, Robin (JMD); Gary, Arthur (JMD); Lauria-Sullens, Jolene (JMD); Lofthus, Lee J (JMD); Long, Mariana (JMD); McCormack, Luke (JMD); Michaelson, Melanie (CIV); Plante, Jeanette (JMD); Rodgers, Janice (JMD); Schwartz, Christine (JMD); Sims, Steven (JMD); Snell, Scott (JMD); Sutton, Jeffrey (JMD); Ward, Lisa (JMD); Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC) (b) (6) (OLC) (b) (6); Kruger, Leondra R (OLC) (b) (6) (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV) (b) (6)
[Redacted]
[Redacted] Brown Lee, Erika (ODAG); Chung, Joo (OPCL); Lane Scott, Kristi Z (OPCL); Lullo, Joseph R. (OPCL); Miller, William A. (OPCL); Wood, Alexander W (OPCL)
Cc: Burrows, Charlotte (ODAG); Columbus, Eric (ODAG)
Subject: FW: (OLA WF 108179) FW: LRM [WT-113-150] ODNI Letter on S1681 Intelligence Authorization FY 2014 #700850072#

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 3PM 12/20/13.

From: Justice Lrm (SMO)
Sent: Thursday, December 19, 2013 6:23 PM
To: Clifton, Deborah J (OLA); Freeman, Andria D (OLA); McKay, Shirley A (OLA); Silas, Adrien (OLA); Taylor, Velma (OLA); Siegel, Nicole (OLA); Riley, Ann J. (OLA)
Subject: FW: LRM [WT-113-150] ODNI Letter on S1681 Intelligence Authorization FY 2014 #700850072#

From: Thomas, Will

Sent: Thursday, December 19, 2013 6:23:01 PM (UTC-05:00) Eastern Time (US & Canada)

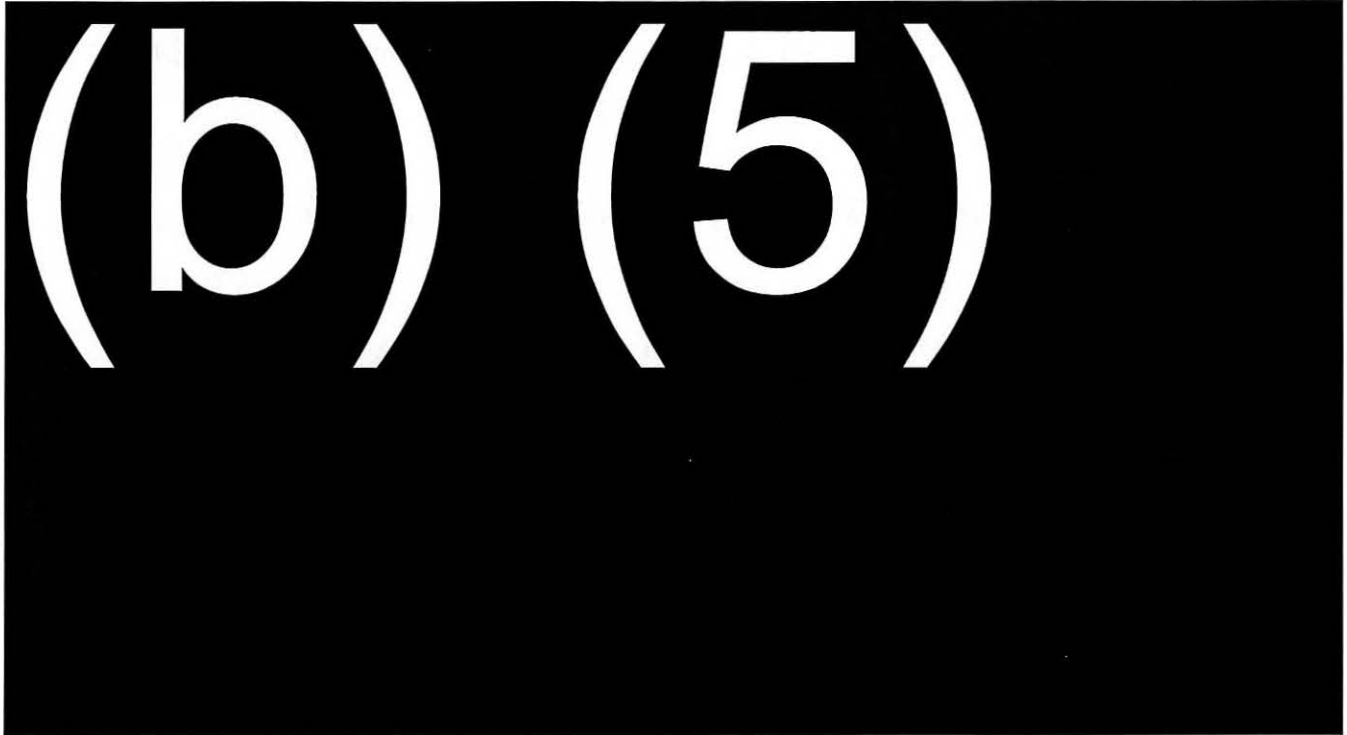
To: DEFENSE; ENERGY; DHS; Justice Lrm (SMO); DL-NSS-LRM; OGE; DL-OSTP-LRM; PCLOB; STATE; TREASURY

Cc: Kosiak, Steve; Hire, Andrew D.; Bregman, Shannon C.; Richter, Shannon; August, Lisa L.; Boden, James; Hunt, Alex; Seehra, Jasmeet; Nelson, Kimberly P.; Brown, Dustin S.; Leon, Jeremy; DL-WHO-WHGC-LRM; DL-OVP-LRM; Neill, Allie; Menter, Jessica; DL-NSS-INTEL; DL-NSS-LEGAL; DL-NSS-LEGISLATIVE; Burnim, John D.; Newman, Kimberly A.; Sarri, Kristen; Arguelles, Adam; Wibben, Carrie; Cancian, Mark F.; Sale, Dominic K.; Bernard, Scott; Bales, Carol A.;

(b) (6); Rodriguez-Knox, Cynthia; Fitter, E. Holly; Vaeth, Matt; Sandy, Mark; Treadwell, Trey

Subject: LRM [WT-113-150] ODNI Letter on S1681 Intelligence Authorization FY 2014 #700850072#

DEADLINE: 4:30 PM Monday, December 30, 2013



OMB CONTACT: Thomas, Will

E-Mail (b) (6)

PHONE (b) (5)

FAX (b) (5)

(b) (5)

(b) (5)

Thank you.

From: Silas, Adrien (OLA)
Sent: Wednesday, December 11, 2013 12:12 PM
To: Fitter, Holly; Burnim, John D.
Subject: LRM-EHF-113-178, S1681, Intel Auth FY14 (OLA Wkflow 107993) #696618190#

IQaccount: OLA
IQwfAttach: E-Mail Message 2013-12-11 12-09PM.html||Intel100.doc.docx
IQworkflowID: 107993

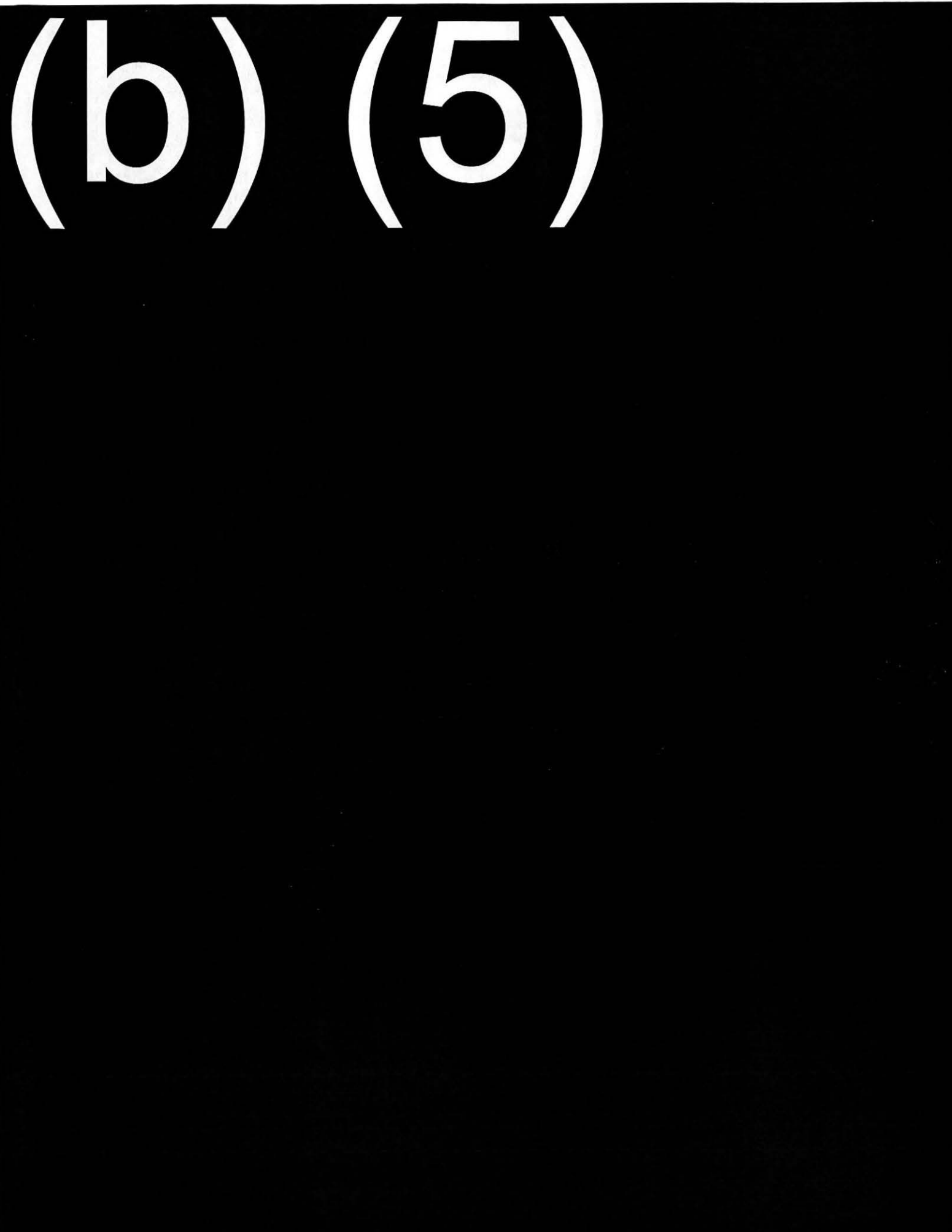
The comments of the Department of Justice on S. 1681, the “Intelligence Authorization Act for Fiscal Year 2014” are set forth in the attached file (“Intel100.doc”). We apologize for our delay in responding.


Intel100.doc.docx

(b) (5)

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Department of Justice
Office of Legislative Affairs
Internal Control Sheet

Date of Document: 12/19/2013 **OLA WF ID:** 108179
Date Received: 12/20/2013 **WF Type:** OMB Request
Date Due: 12/30/2013 4:30 PM **CONGRESS:** 113
LRM: WT-113-150 **File #:** S.1681

From: OMB

To: OLA

Subject: ODNI Letter on S1681 Intelligence Authorization FY 2014 (reported)

Referred To:	Date Assigned:	Action:
OLA Silas	12/20/2013	For appropriate handling
JMD/HR, OLP, NSD, OLC, CIV, FBI, PCLO	12/20/2013	Comments due to OLA/Silas by 3pm 12/20/13. CC: ODAG

OMB Contact: Willie Thomas (b) (6)

OLA POC: Adrien Silas (b) (6)

Previous/Similar Request: Previous request to JMD/Budget/CIO/SEPS, OLP, NSD, OLC, CIV, CRM, EOUSA, FBI, OIP, OIG

ES WF ID:

Closing Remarks:

Component Review

Component Assign Date 12/20/2013 Component Due Date 12/20/2013

Department of Justice
Office of Legislative Affairs
Internal Control Sheet

Date of Document: 12/19/2013
Date Received: 12/20/2013
Date Due: 12/30/2013 4:30 PM
LRM: WT-113-150

OLA WF ID: 108179
WF Type: OMB Request
CONGRESS: 113
File #: S.1681

Component	Responded	Time	Action	Notes
JMD			No Response	
OLP			No Response	
NSD			No Response	
OLC			No Response	
CIV			No Response	
FBI			No Response	
OPCL			No Response	

From: Walsh, James (ODAG)
Sent: Thursday, January 02, 2014 5:27 PM
To: Krass, Caroline D. (OLC)
Cc: (b) (6) (OLC); Mizer, Benjamin (OLC); Kruger, Leondra R (OLC)
Subject: Re: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Got it, Thanks, Caroline.

From: Krass, Caroline D. (OLC)
Sent: Thursday, January 02, 2014 05:26 PM
To: Walsh, James (ODAG)
Cc: (b) (6) (OLC); Mizer, Benjamin (OLC); Kruger, Leondra R (OLC)
Subject: RE: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Jim – no problem, I now have a 5:30 SVTC anyway. (b) (5)

Thanks for checking –

Caroline

From: Walsh, James (ODAG)
Sent: Thursday, January 02, 2014 4:37 PM
To: Krass, Caroline D. (OLC)
Subject: Fw: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Caroline,

Sorry to be sending this late in the day. I know you're trying to get out early because (b) (6)

(b) (6)

OMB has asked (b) (5)

Thanks,

Jim

From: Silas, Adrien (OLA)
Sent: Thursday, January 02, 2014 04:11 PM
To: Walsh, James (ODAG); Columbus, Eric (ODAG); Burrows, Charlotte (ODAG)
Cc: Ruppert, Mary (OLA)
Subject: FW: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Any word o (b) (5) ?

From: Ruppert, Mary (OLA)
Sent: Tuesday, December 31, 2013 2:59 PM
To: Columbus, Eric (ODAG); Walsh, James (ODAG); Burrows, Charlotte (ODAG)
Cc: Silas, Adrien (OLA)
Subject: RE: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

OMB said we do not have to provide an answer on this today. It can wait until Thursday because DOD needs until Thursday to clear the letter.

From: Ruppert, Mary (OLA)
Sent: Tuesday, December 31, 2013 2:57 PM
To: Columbus, Eric (ODAG); Walsh, James (ODAG); Burrows, Charlotte (ODAG)
Cc: Silas, Adrien (OLA)
Subject: RE: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

In case it will assist you, here ar (b) (5)

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|

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[Redacted]

(b) (5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Ruppert, Mary (OLA)
Sent: Tuesday, December 31, 2013 2:53 PM
To: Columbus, Eric (ODAG); Walsh, James (ODAG); Burrows, Charlotte (ODAG)
Subject: FW: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Does DOJ support (b) (5) [Redacted] ?

From: Burnim, John D. [mailto: (b) (6)]
Sent: Tuesday, December 31, 2013 2:50 PM
To: Ruppert, Mary (OLA)
Cc: Silas, Adrien (OLA); Thomas, Will
Subject: Re: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

Many thanks. Would it be correct to assume tha (b) (5)
[REDACTED]

From: Ruppert, Mary (OLA) [mailto: (b) (6)]
Sent: Tuesday, December 31, 2013 02:45 PM Eastern Standard Time
To: Burnim, John D.
Cc: Silas, Adrien (OLA) (b) (6)
Subject: LRM [WT-113-150] ODNI Letter on S1681 Intelligence. The Authorization FY 2014 #700850072#

John:

Here are DOJ's comments on the ODNI views letter for S. 1681.

Sorry for the delay!

Mary

Mary B. Ruppert

United States Department of Justice

Office of Legislative Affairs

Phone: (202 (b) (6))

Blackberry: (202 (b) (6))

From: Krass, Caroline D. (OLC)
Sent: Wednesday, January 08, 2014 7:45 AM
To: Walsh, James (ODAG)
Cc: O'Neil, David (ODAG); Thompson, Karl (OAG)
Subject: Krass.HearingQFRs.ForWHReview.docx
Attachments: ATT00536.docx

Jim - please find attached the current version of my QFRs, which are in the final stages of WH review and are hopefully going over to the Committee later today. OLC has cleared. Thanks - Caroline

From: Koffsky, Daniel L (OLC)
Sent: Friday, January 10, 2014 5:44 PM
To: (b) (6)
Subject: RE: Secure fax heading your way

Understood. Thank you (b) (6)

From (b) (6) [mailto:(b) (6)]
Sent: Friday, January 10, 2014 5:31 PM
To: Koffsky, Daniel L (OLC)
Subject: Secure fax heading your way

Sending to DOJCC. (b) (5)
(b) (6)

From: Colborn, Paul P (OLC)
Sent: Thursday, January 23, 2014 2:02 PM
To: Gaston, Molly (OLA)
Cc: Agrast, Mark D. (OLA)
Subject: RE: targeted killings paper

Tracking: **Recipient**
Gaston, Molly (OLA)
Agrast, Mark D. (OLA)

This message has been archived.

(b) (5)

From: Gaston, Molly (OLA)
Sent: Thursday, January 23, 2014 1:59 PM
To: Colborn, Paul P (OLC)
Cc: Agrast, Mark D. (OLA)
Subject: RE: targeted killings paper

Paul, I know you were extremely busy wit (b) (5) last week. Could you please let me know what you think of this? (b) (5). Thanks.

From: Gaston, Molly (OLA)
Sent: Friday, January 17, 2014 11:02 AM
To: Colborn, Paul P (OLC)
Cc: Agrast, Mark D. (OLA)
Subject: targeted killings paper

Paul, please see OAG's comment about (b) (5) in the attached paper. (b) (5) What do you think? If you could take a look quickly and let us know, that would be greatly appreciated.

<< File: NSD - Targeted Killings 1-10 (odag).dc.docx >>

From: Cheung, Denise (OAG)
Sent: Friday, January 24, 2014 5:00 PM
To: Gaston, Molly (OLA); Agrast, Mark D. (OLA); Colborn, Paul P (OLC)
Cc: Kadzik, Peter J (OLA); Krass, Caroline D. (OLC)
Subject: RE: targeted killings paper

Yes, thanks.

From: Gaston, Molly (OLA)
Sent: Friday, January 24, 2014 4:48 PM
To: Agrast, Mark D. (OLA); Colborn, Paul P (OLC); Cheung, Denise (OAG)
Cc: Kadzik, Peter J (OLA); Krass, Caroline D. (OLC)
Subject: RE: targeted killings paper

Denise, does this work for you? Thanks very much.

From: Agrast, Mark D. (OLA)
Sent: Friday, January 24, 2014 4:22 PM
To: Colborn, Paul P (OLC); Cheung, Denise (OAG); Gaston, Molly (OLA)
Cc: Kadzik, Peter J (OLA); Krass, Caroline D. (OLC)
Subject: RE: targeted killings paper

I'm comfortable with this. Thanks.

From: Colborn, Paul P (OLC)
Sent: Friday, January 24, 2014 4:20 PM
To: Agrast, Mark D. (OLA); Cheung, Denise (OAG); Gaston, Molly (OLA)
Cc: Kadzik, Peter J (OLA); Krass, Caroline D. (OLC)
Subject: RE: targeted killings paper

Here's our revision. Adding Caroline. << File: NSD - Targeted Killings 1-10 (odag) dc (2)--olc.docx >>

From: Agrast, Mark D. (OLA)
Sent: Friday, January 24, 2014 3:57 PM
To: Cheung, Denise (OAG); Gaston, Molly (OLA)
Cc: Kadzik, Peter J (OLA); Colborn, Paul P (OLC)
Subject: RE: targeted killings paper

Adding Paul.

From: Agrast, Mark D. (OLA)
Sent: Friday, January 24, 2014 2:55 PM

To: Cheung, Denise (OAG); Gaston, Molly (OLA)
Cc: Kadzik, Peter J (OLA)
Subject: RE: targeted killings paper

(b) (5)

I have explained my concerns to Paul and he is working on a change to address my concern.

From: Cheung, Denise (OAG)
Sent: Friday, January 24, 2014 2:33 PM
To: Agrast, Mark D. (OLA); Gaston, Molly (OLA)
Cc: Kadzik, Peter J (OLA)
Subject: RE: targeted killings paper

Maybe we could just omit that bracketed sentence?

From: Agrast, Mark D. (OLA)
Sent: Friday, January 24, 2014 2:30 PM
To: Gaston, Molly (OLA); Cheung, Denise (OAG)
Cc: Kadzik, Peter J (OLA)
Subject: RE: targeted killings paper

(b) (5)

From: Gaston, Molly (OLA)
Sent: Friday, January 24, 2014 2:21 PM
To: Cheung, Denise (OAG)
Cc: Agrast, Mark D. (OLA); Kadzik, Peter J (OLA)
Subject: FW: targeted killings paper

Denise, how does this work for you? Thanks.

From: Colborn, Paul P (OLC)
Sent: Friday, January 24, 2014 2:02 PM
To: Gaston, Molly (OLA)
Cc: Agrast, Mark D. (OLA)
Subject: RE: targeted killings paper

Molly, here's what we've come up with as a revision. << File: NSD - Targeted Killings 1-10 (odag) dc (2)--olc2.docx >>

duplicate

duplicate

From: Krass, Caroline D. (OLC)
Sent: Sunday, February 02, 2014 9:15 AM
To: (b) (6)
Cc: Koffsky, Daniel L (OLC)
Subject: Re: USG-ICRC off-site proposal

Brian - this seems like a good idea to me, but it might make sense for someone with a less busy schedule than Lisa to co-chair with the ICRC.

Thanks -
Caroline

From: Egan, Brian J. [mailto: (b) (6)]
Sent: Saturday, February 01, 2014 03:42 PM
To: (b) (6) (b) (6) Stephen Preston <stephen. (b) (6)> 'Gross, Richard Clayton (Rich) BG USARMY JS (US)' (b) (6) Krass, Caroline D. (OLC); Koffsky, Daniel L (OLC); (b) (6) (b) (6) 'robert.li (b) (6), (b) (3) (A)' (b) (6), (b) (3) (A)
Cc: Fonzone, Christopher (b) (6)
Subject: FW: USG-ICRC off-site proposal

(b) (5)

(b) (5)
[Large redacted area]

(b) (5)



(b) (5)



(b) (5)



From: Wiegmann, Brad (NSD)
Sent: Friday, February 14, 2014 4:07 PM
To: Krass, Caroline D. (OLC)
Subject: RE: Hearing Prep

Thanks.

From: Krass, Caroline D. (OLC)
Sent: Friday, February 14, 2014 3:36 PM
To: Wiegmann, Brad (NSD)
Cc: Bies, John (OLC); Carlin, John (NSD)
Subject: Hearing Prep

Brad – further to our conversation earlier today, below are points for John were he to get questions on

(b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] Thanks -- Caroline

(b) (5) [Redacted]

- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
- [Redacted]
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- [Redacted]
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[Redacted]
- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

(b) (5)

[Redacted text block]

[Redacted text block]

- [Redacted list item]
- [Redacted list item]

From: (b) (6) (OLC)
Sent: Tuesday, February 18, 2014 12:56 PM
To: Silas, Adrien (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Bies, John (OLC); Krass, Caroline D. (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC); (b) (6) (OLC)
Subject: FW: LRM-WT-113-150, S1681, Intel Auth FY14 - REVISED ODNI Ltr (OLA Wkflow 108179) #700850072#
Attachments: Views Letter to SSCI on Intel Auth REVISED 2014-02-07.docx
IQaccount: OLA
IQwfAttach: E-Mail Message 2014-02-18 09-49AM.html|Views Letter to SSCI on Intel Auth REVISED 2014-02-07.docx|Views Letter to SSCI on Intel Auth REVISED CLEAN 2014-02-07.docx
IQworkflowID: 108179

Adrien: OLC has two comments on the revised ODNI views letter concerning S. 1681, the Intelligence Authorization Act, 2014.

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) [Redacted]

(b) (6)
Office of Legal Counsel
(b) (6)
[Redacted]

From: Silas, Adrien (OLA)
Sent: Tuesday, February 18, 2014 10:54 AM
To: (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC);
(b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6)
(OLC) (b) (6)
[Redacted]
Cc: Agrast, Mark D. (OLA); Ruppert, Mary (OLA); Hayden, Paul A. (OLA); Walsh, James (ODAG) (b) (6) B.
(ODAG)
Subject: FW: LRM-WT-113-150, S1681, Intel Auth FY14 - REVISED ODNI Ltr (OLA Wkflow 108179) #700850072#

Please provide me your comment or "no comment" on the attached latest version of ODNI's views letter on S. 1681, the intelligence authorization bill, by no later than by **3:30 p.m. today**. F.Y.I. (b) (5)

[Redacted]

NSD
OLC
FBI
cc: ODAG

From: Colborn, Paul P (OLC)
Sent: Wednesday, February 19, 2014 5:44 PM
To: Burton, Faith (OLA)
Subject: Fw: Views Letter to SSCI on Intel Auth REVISED 2014-02-18 (3)
Attachments: Views Letter to SSCI on Intel Auth REVISED 2014-02-18 (3).docx

For me to read in your ofc

From: Mizer, Benjamin (OLC)
Sent: Wednesday, February 19, 2014 05:40 PM
To: Colborn, Paul P (OLC); Kruger, Leondra R (OLC) (b) (6) (OLC); Bies, John (OLC); Krass, Caroline D. (OLC)
Cc: Koffsky, Daniel L (OLC)
Subject: Views Letter to SSCI on Intel Auth REVISED 2014-02-18 (3)

(b) (5)

I attach a proposed draft. My revisions are in blue highlight, since the redline does not distinguish authors. (b) (5)

We need to get this to OLA for internal DOJ clearance as soon as we can. They will then convey to ODNI and NSS.

<<Views Letter to SSCI on Intel Auth REVISED 2014-02-18 (3).docx>>

From: Singh, Anita (NSD)
Sent: Friday, February 21, 2014 2:25 PM
To: Agrast, Mark D. (OLA); Krass, Caroline D. (OLC); Carlin, John (NSD); Wiegmann, Brad (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Cheung, Denise (OAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA) (b) (6) (NSD)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

We have it reserved. See everyone then. Thanks, Mark.

From: Agrast, Mark D. (OLA)
Sent: Friday, February 21, 2014 2:24 PM
To: Krass, Caroline D. (OLC); Carlin, John (NSD); Wiegmann, Brad (NSD); Singh, Anita (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Cheung, Denise (OAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA) (b) (6) (NSD)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

Thanks, Caroline. After speaking with Anita, it seems that a Monday morning meeting will allow us more time to gather the facts. I will send out a calendar invite for 10am if NSD will kindly reserve their conference room for that time.

+ Josh Geltzer.

From: Krass, Caroline D. (OLC)
Sent: Friday, February 21, 2014 1:51 PM
To: Agrast, Mark D. (OLA); Carlin, John (NSD); Wiegmann, Brad (NSD); Singh, Anita (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Cheung, Denise (OAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

Adding Dan and John. (b) (5)

(b) (5)

. Thanks -- Caroline

From: Agrast, Mark D. (OLA)
Sent: Friday, February 21, 2014 1:41 PM
To: Carlin, John (NSD); Wiegmann, Brad (NSD); Singh, Anita (NSD); Krass, Caroline D. (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Cheung, Denise (OAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA)
Subject: HEADS UP: Possible Feinstein questions for Carlin hearing
Importance: High

Please see new questions below from Feinstein staff. Are you available to discuss at 5:00 this afternoon?

From: Buchwald, Mike (Intelligence) [mailto:(b) (6)]
Sent: Friday, February 21, 2014 1:12 PM
To: Agrast, Mark D. (OLA)
Cc: Gottesman, E (Intelligence)
Subject: John Carlin role in U.S. Targeting of U.S. persons?
Importance: High

Hi Mark,

I know Evan gave you a heads up about some questions / issues for the Carlin hearing before we had to reschedule it.

I wanted to flag the question below that we have drafted for Chairman Feinstein and that I just discussed with David.

Can you let us know if John Carlin has had any role in the past or future targeting of U.S. persons such as Awlaki (which the President declassified last year)?

If not, or if only indirectly, he might get a question similar to the one below. If he has had a role, we'd like to know specifically what his role has been. Can you please let me know by today or Monday?

Thanks,

Mike

(b) (6) (direct)

The Current Role of DOJ in Oversight of Intel Activities

Targeted Lethal Counterterrorism Strikes: Last May, after the President's speech on national security, the White House formally announced that, if a lethal counterterrorism operation is being considered against an American outside the U.S., DOJ "will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States."

· **What is the role of DOJ's National Security Division in this review? Does the Office of Legal Counsel at least consult with the National Security Division on this issue which is of utmost importance?**

· **Who in DOJ is responsible for ensuring that the facts supporting the Department's legal analysis are accurate?**

Declassification Decisions: In your answers to our pre-hearing questions, you wrote that you meet regularly with the Office of the DNI on declassification and transparency issues.

· **What role should the NSD play in ensuring that the Intelligence Community is complying with Executive Order 13526, which is the legal basis for determining what can and can't remain classified?**

Mike Buchwald

Counsel and Designee to Chairman Dianne Feinstein

Senate Select Committee on Intelligence

211 Hart Office Building

Washington D.C. 20510

(202) 224-1700

From: Krass, Caroline D. (OLC)
Sent: Friday, February 21, 2014 5:00 PM
To: Agrast, Mark D. (OLA); Carlin, John (NSD); Wiegmann, Brad (NSD); Singh, Anita (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Cheung, Denise (OAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

All –

Please find below from OLC proposed answers to the first two questions:

Targeted Lethal Counterterrorism Strikes: Last May, after the President’s speech on national security, the White House formally announced that, if a lethal counterterrorism operation is being considered against an American outside the U.S., DOJ “will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States.”

- **What is the role of DOJ’s National Security Division in this review? Does the Office of Legal Counsel at least consult with the National Security Division on this issue which is of utmost importance?**

- (b) (5) [Redacted]

- [Redacted]

- **Who in DOJ is responsible for ensuring that the facts supporting the Department’s legal analysis are accurate?**

- (b) (5) [Redacted]

duplicate

(b) (6)

(b) (6)

duplicate

From: Egan, Brian J. (b) (6)
Sent: Sunday, February 23, 2014 11:34 AM
To: Krass, Caroline D. (OLC)
Cc: Fonzone, Christopher
Subject: FW: DNI views letters
Attachments: 20140223 DNI Views Letter to SSCI on Intel Auth NSC FINAL edit.docx; 20140220 DNI Views Letter to HPSCI on Intel Auth NSC Edit.docx

(b) (5)

-----Original Message-----

From: robert.li (b) (6), (b) (3) (A)
Sent: Sunday, February 23, 2014 11:14 AM
To: Lundeborg, Greta (b) (6), (b) (3) (A)
Cc: Roslansky, Josie; Egan, Brian J. (b) (6) Stout, Jennifer; Arguelles, Adam (b) (6), (b) (3) (A)
Subject: RE: DNI views letters

I would hope that we would be able to get this out on Monday. Thanks, Greta.

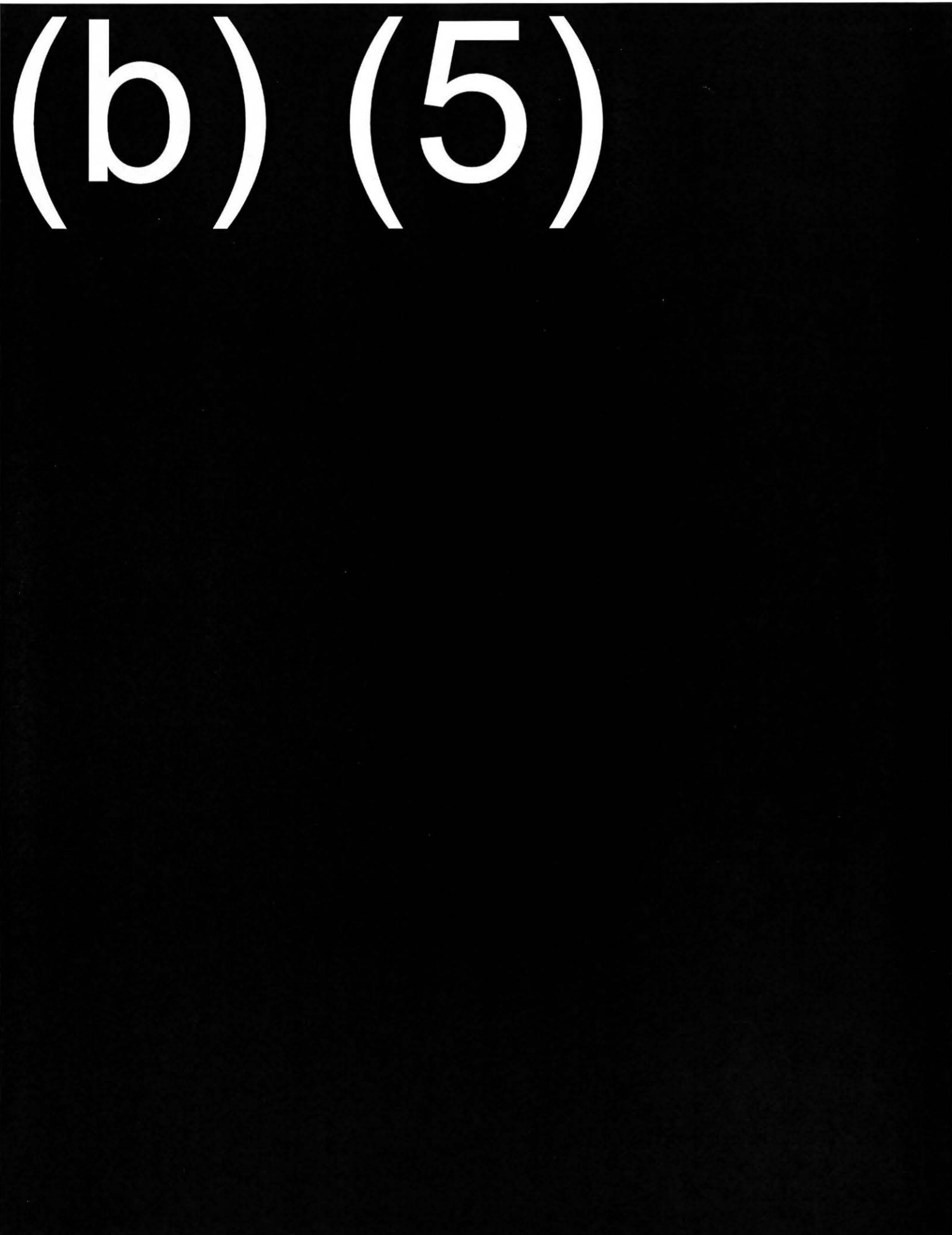
-----Original Message-----

From: Lundeborg, Greta [mailto:(b) (6)]
Sent: Sunday, February 23, 2014 10:58 AM
To: Robert Litt (b) (6), (b) (3) (A)
Cc: Roslansky, Josie; Egan, Brian J.; 'Mark D. Agrast' (b) (6) (b) (6) Stout, Jennifer; Arguelles, Adam
Subject: DNI views letters

(b) (5)

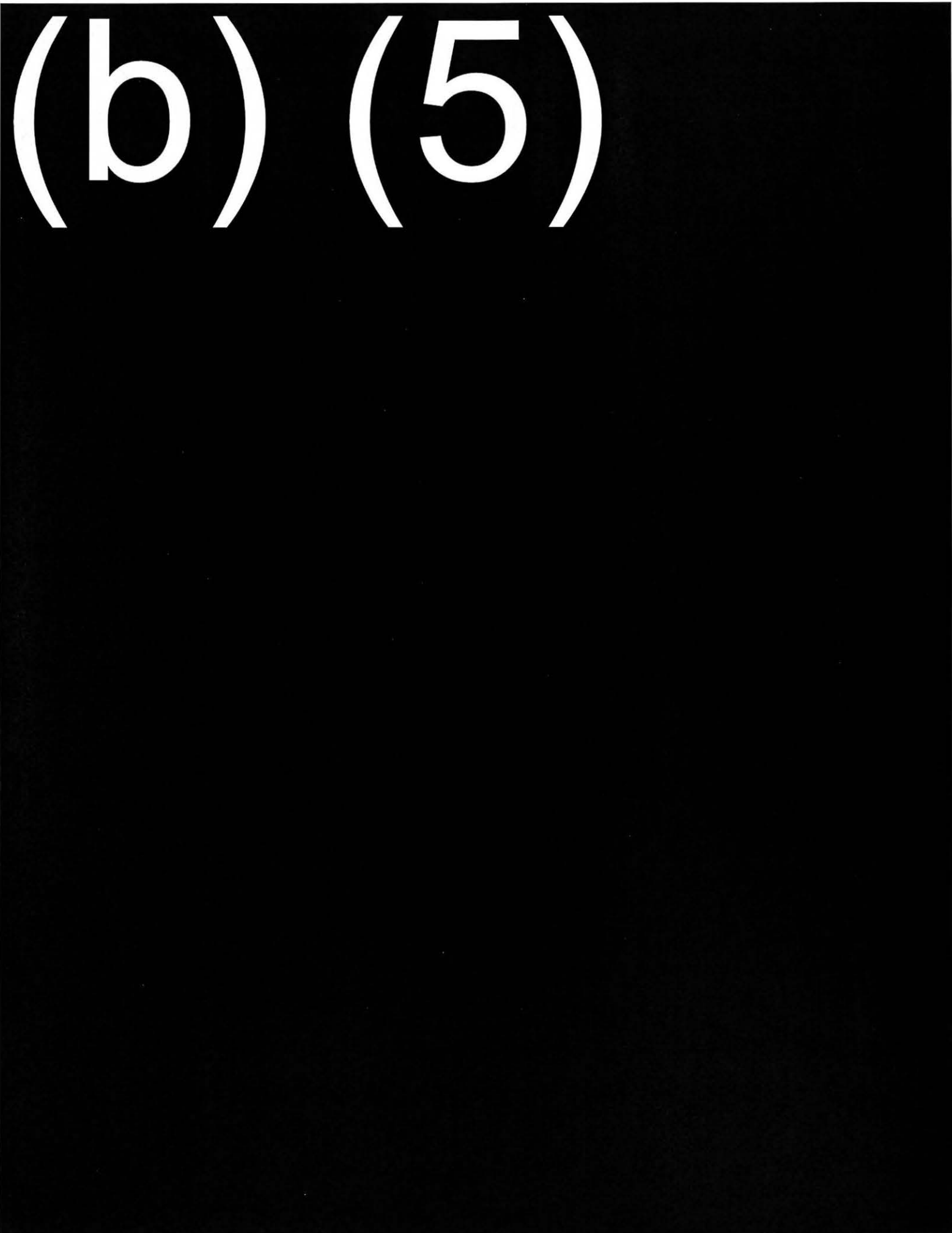
Best, Greta

(b) (5)



(b) (5)

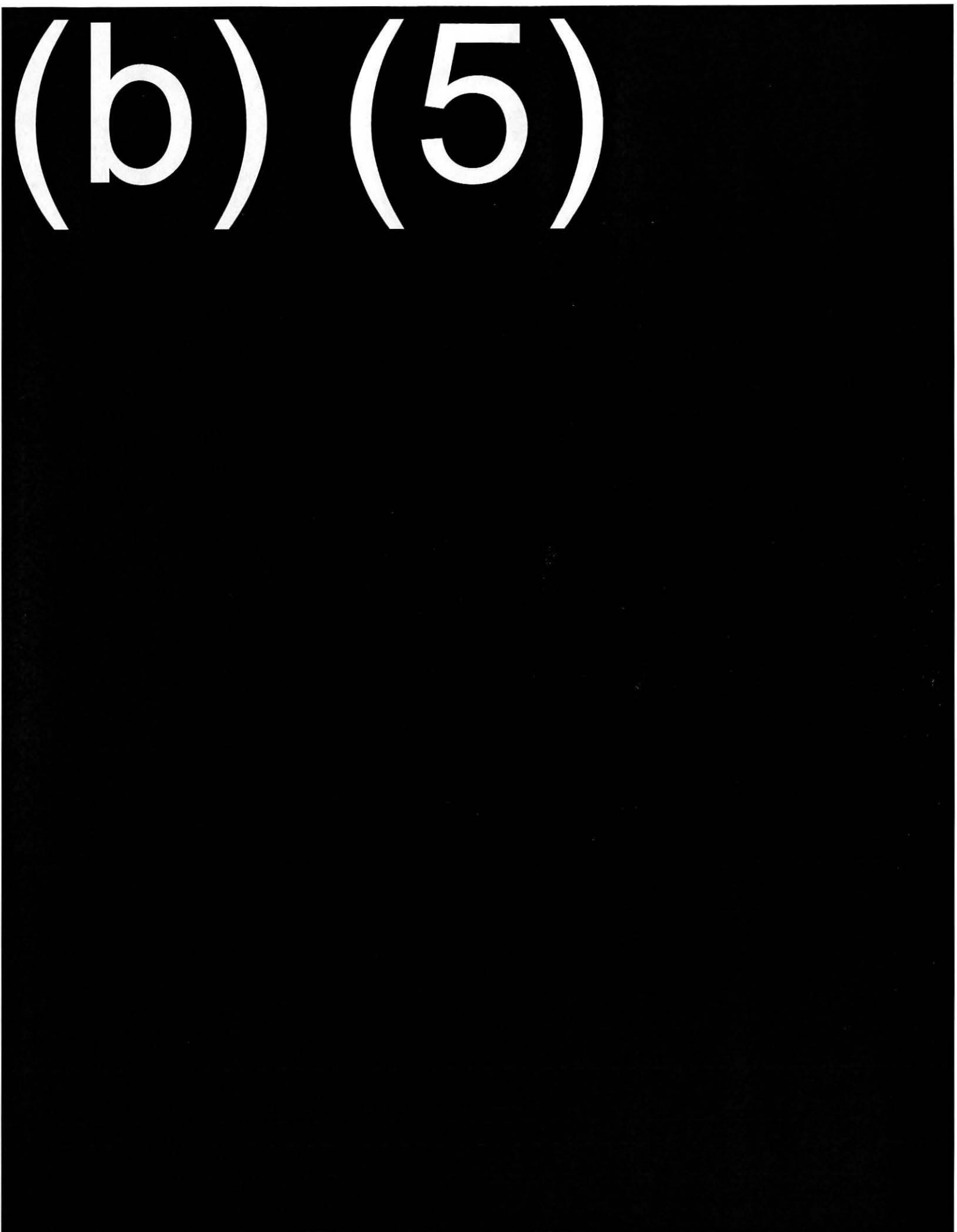
(b) (5)



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(b) (5)

From: Koffsky, Daniel L (OLC)
Sent: Monday, February 24, 2014 7:40 AM
To: Walsh, James (ODAG)
Cc: Krass, Caroline D. (OLC) (b) (6) (OLC)
Subject: Re: National Security ICCPR Talking Points and Q&As for Clearance

Jim: I expect that you can speed up our response by contactin (b) (6) in the first instance. Thanks.

--Dan

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(b) (6)

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duplicate

(b) (6)

From: Krass, Caroline D. (OLC)
Sent: Monday, February 24, 2014 9:12 AM
To: Walsh, James (ODAG); Koffsky, Daniel L (OLC)
Cc: (b) (6) (OLC)
Subject: RE: National Security ICCPR Talking Points and Q&As for Clearance

Tracking:	Recipient	Read
	Walsh, James (ODAG)	
	Koffsky, Daniel L (OLC)	Read: 2/24/2014 9:19 AM
	(b) (6) (OLC)	Read: 2/24/2014 9:13 AM

Jim, I think tha (b) (6) 's edits are fine. (b) (5)
[REDACTED]. Thanks -- Caroline

duplicate

(b) (6)

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duplicate

(b) (6)

From: (b) (6) (OLC)
Sent: Monday, February 24, 2014 9:39 AM
To: (b) (6) (NSD)
Subject: RE: ICCPR -- targeted killing

This message has been archived.

Thanks!

From: (b) (6) (NSD)
Sent: Monday, February 24, 2014 9:37 AM
To: (b) (6) (OLC)
Subject: Re: ICCPR -- targeted killing

Done.

From: (b) (6) (OLC)
Sent: Monday, February 24, 2014 09:36 AM Eastern Standard Time
To: (b) (6) (NSD)
Subject: RE: ICCPR -- targeted killing

No, I was hoping you were going to go ahead and send them (b) (5)

[REDACTED]

From: (b) (6) (NSD)
Sent: Monday, February 24, 2014 9:34 AM
To: (b) (6) (OLC)
Subject: Re: ICCPR -- targeted killing

Yes, Katherine Didow handles that for us. Should I ask her to hold off for now?

From: (b) (6) (OLC)
Sent: Monday, February 24, 2014 09:32 AM Eastern Standard Time
To: (b) (6) (NSD)
Subject: RE: ICCPR -- targeted killing

(I didn't see OLP on your email; is NSD sending comments on to Ryan?)

From (b) (6) (NSD)
Sent: Monday, February 24, 2014 9:27 AM
To: (b) (6) (OLC)
Subject: RE: ICCPR -- targeted killing

p.s. my comments are in the document, not Chris's below, and are slightly different.

From: (b) (6) (NSD)
Sent: Monday, February 24, 2014 9:23 AM
To: (b) (6) (OLC)
Subject: FW: ICCPR -- targeted killing

FYI, these were my comment (b) (5) .

duplicate

duplicate

duplicate

From: Higginbotham, Ryan K (OLP)
Sent: Monday, February 24, 2014 10:20 AM
To: (b) (6) (OLC) (b) (6) (OLC); Bollerman, Kerry A. (CIV)
Subject: FW: ICCPR -- targeted killing

FYI, here are NSD's responses to ODAG's comments:

(b) (5)
[Redacted]

RESPONSE:

(b) (5)

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(b) (5)

RESPONSE:

(b) (5)

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RESPONSE:

(b) (5)

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(b) (6)

(b) (6)

(b) (6)

duplicate

From: Singh, Anita (NSD)
Sent: Monday, February 24, 2014 12:29 PM
To: Cheung, Denise (OAG); Krass, Caroline D. (OLC); Agrast, Mark D. (OLA); Wiegmann, Brad (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA); (b) (6) (NSD) (b) (6) (NSD) (b) (6) (OLC); Thompson, Karl (OAG)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

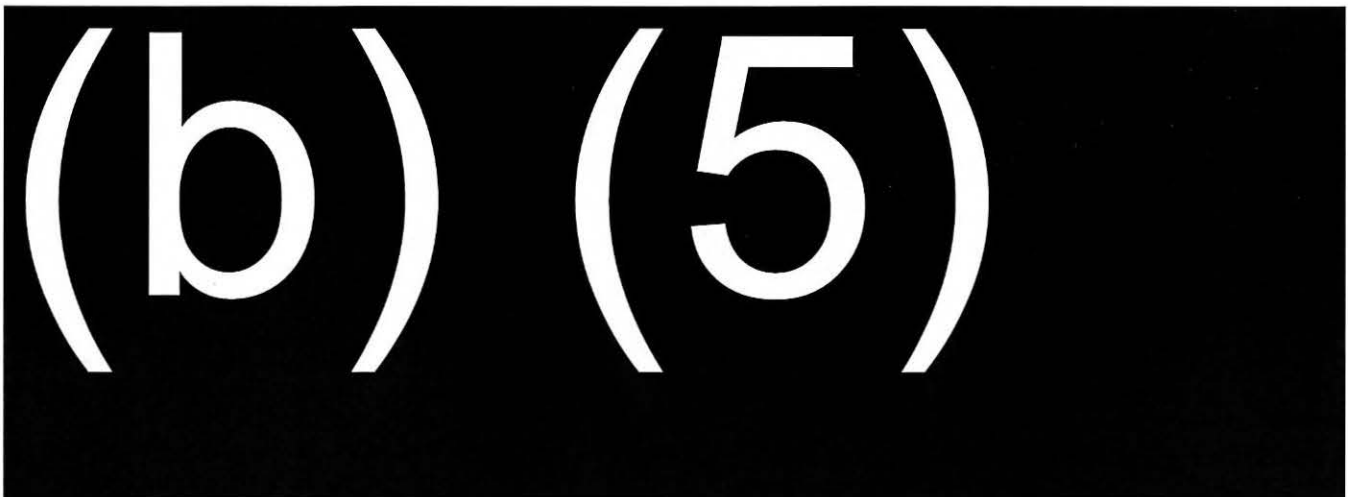
Thanks, all. We'll incorporate. Much appreciated.

From: Cheung, Denise (OAG)
Sent: Monday, February 24, 2014 12:24 PM
To: Krass, Caroline D. (OLC); Singh, Anita (NSD); Agrast, Mark D. (OLA); Wiegmann, Brad (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (OLC); Thompson, Karl (OAG)
Subject: Re: HEADS UP: Possible Feinstein questions for Carlin hearing

OAG agrees with these changes.

From: Krass, Caroline D. (OLC)
Sent: Monday, February 24, 2014 12:12 PM Eastern Standard Time
To: Singh, Anita (NSD); Cheung, Denise (OAG); Agrast, Mark D. (OLA); Wiegmann, Brad (NSD); Koffsky, Daniel L (OLC); Bies, John (OLC)
Cc: Walsh, James (ODAG) (b) (6) B. (ODAG); Kadzik, Peter J (OLA); Burton, Faith (OLA); Hayden, Paul A. (OLA); Ruppert, Mary (OLA); Kellner, Kenneth E. (OLA) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (OLC)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

On that set of bullets, we have the following revisions (b) (5):



(b) (5)

duplicate

(b) (6)

(b) (6)

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(b) (6)

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(b) (6)

duplicate

From: Krass, Caroline D. (OLC)
Sent: Monday, February 24, 2014 3:27 PM
To: Thompson, Karl (OAG); Cheung, Denise (OAG)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

Tracking:	Recipient	Read
	Thompson, Karl (OAG)	Read: 2/24/2014 5:20 PM
	Cheung, Denise (OAG)	

Thank you.

From: Thompson, Karl (OAG)
Sent: Monday, February 24, 2014 12:18 PM
To: Krass, Caroline D. (OLC); Cheung, Denise (OAG)
Cc: Bies, John (OLC); Koffsky, Daniel L (OLC)
Subject: RE: HEADS UP: Possible Feinstein questions for Carlin hearing

Thanks – makes sense. This solution looks fine to me.

From: Krass, Caroline D. (OLC)
Sent: Monday, February 24, 2014 12:17 PM
To: Thompson, Karl (OAG); Cheung, Denise (OAG)
Cc: Bies, John (OLC); Koffsky, Daniel L (OLC)
Subject: FW: HEADS UP: Possible Feinstein questions for Carlin hearing

Hi – I wanted to get this in front of them before I had to go out – I am happy to discuss – if you need to talk before 2 please feel free to talk to Dan and John. Thanks -- Caroline

duplicate

(b) (5)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

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(b) (6)

(b) (6)

(b) (5)

(b) (5)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (5)

From: Krass, Caroline D. (OLC)
Sent: Tuesday, February 25, 2014 4:13 PM
To: Delery, Stuart F. (CIV)
Subject: RE: Speech
Attachments: SFD Decker Lecture_DRAFT 2-25-14.docx

Stuart, this is a terrific speech. I just had a few suggestions in the attached.

Best,

Caroline

From: Delery, Stuart F. (CIV)
Sent: Tuesday, February 25, 2014 12:53 PM
To: Krass, Caroline D. (OLC)
Subject: Speech

Caroline:

Thanks for being willing to look at this if you have time, but obviously I don't want to add to your workload so please only do it if convenient (b) (5).

Thanks,

Stuart

From: Higginbotham, Ryan K (OLP)
Sent: Tuesday, February 25, 2014 5:34 PM
To: (b) (6) (OLC)
Cc: Koffsky, Daniel L (OLC); Mizer, Benjamin (OLC)
Subject: RE: ICCPR -- targeted killing

This message has been archived.

Thank you for your review and responses.

From: (b) (6) (OLC)
Sent: Tuesday, February 25, 2014 5:11 PM
To: Higginbotham, Ryan K (OLP)
Cc: Koffsky, Daniel L (OLC); Mizer, Benjamin (OLC)
Subject: RE: ICCPR -- targeted killing

Ryan—

With apologies for the delay, here are our responses to ODAG's comments/questions:

(b) (5)

Thank you,

(b) (6)

duplicate

duplicate

(b) (6)

From: (b) (6) (OLC)
Sent: Thursday, February 27, 2014 1:31 PM
To: (b) (6) B. (ODAG) (b) (6) (NSD); Walsh, James (ODAG); Hardee, Christopher (NSD)
Cc: Koffsky, Daniel L (OLC); Mizer, Benjamin (OLC)
Subject: RE: ICCPR Q&A on targeted killing

I've added OLC comments (and no comments) to the mix. (b) (5)

From (b) (6) B. (ODAG)
Sent: Thursday, February 27, 2014 11:03 AM
To (b) (6) (NSD); Walsh, James (ODAG) (b) (6) (OLC); Hardee, Christopher (NSD)
Subject: RE: ICCPR Q&A on targeted killing

Ophs, adding Chris Hardee

From (b) (6) B. (ODAG)
Sent: Thursday, February 27, 2014 11:02 AM
To (b) (6) (NSD); Walsh, James (ODAG) (b) (6) (OLC)
Subject: RE: ICCPR Q&A on targeted killing

I added one comment (#33) to answer a question Beth posed. I otherwise have no opinion or problems about the other points.

Ben

^{(b) (6)}duplicate^{(b) (6)}

(b) (6)

(b) (6)

duplicate

(b) (6)

From: (b) (6) (OLC)
Sent: Thursday, February 27, 2014 8:18 PM
To: (b) (6) (NSD)
Subject: FW: Final Review of ICCPR Presentation Hard Qs and As
Attachments: ICCPR_Hard_QAs_1-18_IA_MASTER (3) olc.docx

From: (b) (6) (OLC)
Sent: Monday, January 27, 2014 8:01 PM
To: Higginbotham, Ryan K (OLP)
Cc: Koffsky, Daniel L (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: Final Review of ICCPR Presentation Hard Qs and As

Ryan—

Attached are OLC's comments in redline on the latest version of the Q&As (except for C-1 and G-1). The comments and redlines either appear as drafted by OLC (b) (6), or Ben Mizer.

Thank you,

(b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Monday, January 20, 2014 11:17 PM
To: Bollerman, Kerry A. (CIV); Stevens, Karen L (CRT); Monroe, Becky (CRT); Hendley, Scott; Opl, Legislation (b) (6) (NSD) (b) (6) (OLC); Hyle, Kenneth (BOP); Kaplan, Jennifer E (OVW); Poston, Catherine M (OVW); Sabol, William (OJP); Ramker, Gerard (OJP); See, William F. (FBI); Sogocio, Rico (EOIR); Brink, David; Wong, Norman (USAEO); Neal, Kristina (USAEO) (b) (6) (FBI); Hageman, John T. (ATF (b) (6) (FBI); Blaha, Amber (ENRD); Tenoso, Gaye L. (OTJ) (b) (6) (DEA); Mahoney, Kristen (OJP); Jweied, Maha (A2J); (b) (6) (FBI); Siger, Steven B. (OLP)
Cc: Burrows, Charlotte (ODAG)
Subject: Fw: Final Review of ICCPR Presentation Hard Qs and As

From: Ryan Higginbotham [mailto:(b) (5)]
Sent: Monday, January 20, 2014 11:11 PM
To: Higginbotham, Ryan K (OLP)
Subject: Final Review of ICCPR Presentation Hard Qs and As

Attached are the revised ICCPR Hard Qs and As for your final revision/review and clearance. (b) (5)

_____ " Please let me know if you believe another component is better suited to address a particular question.

I have highlighted new text in the Qs and As in yellow. (b) (5)

Please note that revised versions of sections C-1 and G-1 of the Qs and As will be circulated separately.

I would appreciate cleared input, comments, and edits from components by Monday, January 27 to allow time for review and leadership clearance by February 3.

Thank you for all your work.

Ryan Higginbotham
Office of Legal Policy

--
Ryan K. Higginbotham

From: Gaston, Molly (OLA)
Sent: Thursday, March 06, 2014 6:21 PM
To: Bies, John (OLC); Colborn, Paul P (OLC)
Subject: RE: Targeted Killings paper

This message has been archived.

Great! Thanks very much.

From: Bies, John (OLC)
Sent: Thursday, March 06, 2014 6:16 PM
To: Gaston, Molly (OLA); Colborn, Paul P (OLC)
Subject: RE: Targeted Killings paper

These are still current as far as I am concerned.

From: Gaston, Molly (OLA)
Sent: Wednesday, March 05, 2014 1:18 PM
To: Colborn, Paul P (OLC); Bies, John (OLC)
Subject: Targeted Killings paper

Paul and John,

I do not think this needs to be updated (b) (5) but wanted you to take a quick look and confirm. Thanks!

Molly Gaston
Chief of Staff and Attorney Advisor
Office of Legislative Affairs
U.S. Department of Justice
Office: (202 (b) (6) | Cell: (202 (b) (6)

<< File: 21 - Targeted Killings 1-24.docx >>

From: (b) (6) (OLC)
Sent: Friday, March 07, 2014 11:26 AM
To: Higginbotham, Ryan K (OLP)
Subject: RE: last night's ICCPR DOJ edits

Tracking: Recipient
Higginbotham, Ryan K (OLP)

This message has been archived.

Thanks; given that, let me know if you need anything from me at this point.

From: Higginbotham, Ryan K (OLP)
Sent: Friday, March 07, 2014 11:25 AM
To: (b) (6) (OLC)
Subject: RE: last night's ICCPR DOJ edits

(b) (6) ,

It turns out that some of the edits and comments in question were the subject of discussion between State and Ben Fitzpatrick on 2/27 (attached). I missed the email and resubmitted some of the same edits and comments out of a belief that they had been unaddressed.

Please see the attached document ICCPRQsandAs-C5-D2-D-4-E7 for the latest version of the Qs and As.

Ryan Higginbotham

From (b) (6) (OLC)
Sent: Friday, March 07, 2014 11:18 AM
To: Higginbotham, Ryan K (OLP)
Subject: RE: last night's ICCPR DOJ edits

Ryan—

I don't think I have the last round of comments; could you send me a copy?

Many thanks!

- (b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Friday, March 07, 2014 10:25 AM
To: Bollerman, Kerry A. (CIV) (b) (6) (NSD) (b) (6) (OLC)
Cc: (b) (6) B. (ODAG); Burrows, Charlotte (ODAG)
Subject: FW: last night's ICCPR DOJ edits

All:

State wishes to have a telephone conversation about (b) (5)
Please indicate your
availability at 11:30 this morning.

Thank you,

Ryan Higginbotham

From: Scimeca, Natalya K [mailto:(b) (6)]
Sent: Friday, March 07, 2014 10:10 AM
To: Higginbotham, Ryan K (OLP)
Subject: last night's ICCPR DOJ edits

Hi Ryan,

We're really down to the wire on finalizing the ICCPR hard Q/As, so I'd like to discuss (b) (5)
Can we speak at 11:30 to wrap this up? Please feel free to get any relevant colleagues on the phone.

Thanks so much,

Natalya

Natalya Scimeca

Attorney-Adviser, Human Rights and Refugees

Office of the Legal Adviser

U.S. Department of State

(b) (6) [REDACTED]

(b) (6) [REDACTED]

This email is UNCLASSIFIED.

From: (b) (6) (OLC)
Sent: Friday, March 07, 2014 12:50 PM
To: Higginbotham, Ryan K (OLP); Henry, Terry (CIV); Mason, Mary (CIV); Bollerman, Kerry A. (CIV) (b) (6) (NSD); Swingle, Sharon (CIV)
Cc: (b) (6) B. (ODAG); Burrows, Charlotte (ODAG)
Subject: RE: last night's ICCPR DOJ edits

Tracking: **Recipient**
Higginbotham, Ryan K (OLP)
Henry, Terry (CIV)
Mason, Mary (CIV)
Bollerman, Kerry A. (CIV)
(b) (6) (NSD)
Swingle, Sharon (CIV)
(b) (6) B. (ODAG)
Burrows, Charlotte (ODAG)

This message has been archived.

Ryan—

I think the only open issue in which we have equities is (b) (5)

[REDACTED]

[REDACTED]

(b) (6)

From: Higginbotham, Ryan K (OLP)
Sent: Friday, March 07, 2014 12:31 PM
To: Henry, Terry (CIV); Mason, Mary (CIV); Bollerman, Kerry A. (CIV) (b) (6) (NSD); (b) (6) (OLC); Swingle, Sharon (CIV)
Cc: (b) (6) B. (ODAG); Burrows, Charlotte (ODAG)
Subject: RE: last night's ICCPR DOJ edits

I went ahead and spoke to Natalya Scimeca. Please see the attached document for a readout on the points of discussion and submit any comments.

Thank you,

Ryan Higginbotham

From: Henry, Terry (CIV)
Sent: Friday, March 07, 2014 12:02 PM
To: Mason, Mary (CIV); Bollerman, Kerry A. (CIV); Higginbotham, Ryan K (OLP) (b) (6)
(NSD) (b) (6) (OLC); Swingle, Sharon (CIV)
Cc (b) (6) B. (ODAG); Burrows, Charlotte (ODAG)
Subject: Re: last night's ICCPR DOJ edits

Obviously, I was not available, either. In fact, I just saw Kerry's email.

Terry

From: Mason, Mary (CIV)
Sent: Friday, March 07, 2014 10:38 AM Eastern Standard Time
To: Bollerman, Kerry A. (CIV); Higginbotham, Ryan K (OLP) (b) (6) (NSD) (b) (6)
(OLC); Henry, Terry (CIV); Swingle, Sharon (CIV)
Cc (b) (6) B. (ODAG); Burrows, Charlotte (ODAG)
Subject: RE: last night's ICCPR DOJ edits

I also am not available.

duplicate

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(b) (6)

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(b) (6)

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(b) (6)

From: Koffsky, Daniel L (OLC)
Sent: Monday, March 10, 2014 12:04 PM
To: Walsh, James (ODAG)
Subject: FW: Draft DoD Law of War Manual - revised Chapter VI
Attachments: Draft Chapter VI - Weapons - 3-07-2014.pdf

Jim: Here's chapter VI. I'll send chapter V shortly.
--Dan

From: Koffsky, Daniel L (OLC)
Sent: Monday, March 10, 2014 12:05 PM
To: Walsh, James (ODAG)
Subject: FW: Draft DoD Law of War Manual - revised Chapter V
Attachments: Draft Chapter V - The Conduct of Hostilities - 2-5-2014.pdf

Jim: Here's chapter V.
--Dan

From: Roslansky, Josie (b) (6) gov>
Sent: Thursday, March 27, 2014 6:41 PM
To: Egan, Brian J. (b) (6) Stephen Preston (b) (6) Steve Fabry (b) (6) Bridgeman, Theresa (b) (6) 'Schwab, Carol M'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US)'; STARZAK, ALISSA M SES OSD OGC (US) (b) (6) (b) (6) (b) (6) (b) (6) LTC USARMY JS OCJCS (US); Koffsky, Daniel L (OLC); Thompson, Karl (OAG); 'robert.li (b) (6), (b) (3) (A) (b) (6) (b) (6) Jacobsohn, Robin (ODAG)
Cc: Fonzone, Christopher; Luftig, Charles; Petrila, Jim; Lundeberg, Greta; Eggers, Jeff; Pomper, Stephen (b) (6) Easterly, Jen (b) (6)
Subject: RE: AUMF hearing

Brian (b) (5)
Thanks, Josie

From: Egan, Brian J.
Sent: Thursday, March 27, 2014 6:37 PM
To: (b) (6) Stephen Preston (b) (6) Steve Fabry (b) (6) Bridgeman, Theresa (b) (6) 'Schwab, Carol M'; 'Gross, Richard Clayton (Rich) BG USARMY JS (US)'; STARZAK, ALISSA M SES OSD OGC (US) (b) (6) (b) (6) Park, Robert, Mr. DoD OGC (b) (6) CIV OSD OGC (US) (b) (6) (b) (6) (b) (6) LTC USARMY JS OCJCS (US); Dan Koffsky (b) (6) Thompson, Karl (OAG) (b) (6); 'robert.li (b) (6), (b) (3) (A) (b) (6) (b) (6) Jacobsohn, Robin (ODAG)
Cc: Fonzone, Christopher; Luftig, Charles; Petrila, Jim; Lundeberg, Greta; Roslansky, Josie; Eggers, Jeff; Pomper, Stephen (b) (6) Easterly, Jen (b) (6)
Subject: AUMF hearing

Thank you for attending today's meeting. (b) (5)

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks, and please let me know if you have any questions.

Brian

From: Riley, Ann J. (OLA)
Sent: Friday, March 28, 2014 2:20 PM
To: Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)

In the attached, CRM made an edit t (b) (5) Both CRM and NSD have signed off. Let me know how OLC responds.

Thank you!

From: Riley, Ann J. (OLA)
Sent: Friday, March 28, 2014 7:28 AM
To: Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)

WHCO/NSS sent additional edits t (b) (5) . Apologies for the late update.

From: Riley, Ann J. (OLA)
Sent: Thursday, March 27, 2014 6:26 PM
To: Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)
Importance: High

OLC -

These QFRs have been stalled and OLA is pushing to wrap these up before the AG's House Oversight Committee (b) (5) . If possible, please advise by 11am if you clear these edits.

Thank you for your help throughout this process.

Ann

From: (b) (6) (OLC)
Sent: Wednesday, January 22, 2014 1:21 PM
To: Riley, Ann J. (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Krass, Caroline D. (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC); Koffsky, Daniel L (OLC); Roberts, Matthew (OLC) (b) (6) (OLC); Singdahlsen, Jeffrey (OLC)
Subject: FW: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)

Ann: Attached are our edits to the QFR responses. Unless indicated otherwise, we are fine with the changes that have been suggested by the White House, State, DoD, and others.

(b) (6)

Office of Legal Counsel

(b) (6)

[Redacted]

From: Riley, Ann J. (OLA)
Sent: Tuesday, January 14, 2014 2:58 PM
To: (b) (6) (NSD); Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC); Mizer, Benjamin (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)

NSD and OLC –

Please see edits from State and NSS t (b) (5). I am still waiting to hear from DPC – but wanted to get these back to you as soon as possible so you could start reviewing. FYI – CRM has cleared the edits t (b) (5) Please let me know if you clear these revisions or have any additional edits by 3pm tomorrow, January 15th.

Thank you,

Ann

-



AG May 15 2013
HJC QFRs - Set ...

From: Jacobsohn, Robin (ODAG)
Sent: Monday, March 31, 2014 8:26 PM
To: Koffsky, Daniel L (OLC)
Cc: Thompson, Karl (OLC)
Subject: RE: AUMF hearing

OK – thanks very much!

From: Koffsky, Daniel L (OLC)
Sent: Monday, March 31, 2014 8:21 PM
To: Jacobsohn, Robin (ODAG)
Cc: Thompson, Karl (OLC)
Subject: Re: AUMF hearing

No, I didn't, Robin.

From: Jacobsohn, Robin (ODAG)
Sent: Monday, March 31, 2014 08:19 PM
To: Koffsky, Daniel L (OLC)
Cc: Thompson, Karl (OLC)
Subject: FW: AUMF hearing

Dan – apart from this list of hard Qs, did you get a set of approved talking points on this subject?

Thanks!



duplicate

From: (b) (6) (OLC)
Sent: Tuesday, April 01, 2014 11:06 AM
To: Riley, Ann J. (OLA)
Cc: Mizer, Benjamin (OLC); Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (OLC); (b) (6) (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: For review: Draft Responses to AG's QFRs from May 15, 2013 HJC oversight hearing (OLA wf 107049)
Importance: High

Ann:

O (b) (5) OLC has no comment on this set of edits, and defers to other components in responding to questions concerning how best to phrase the response.

O (b) (5) : (b) (5)

Thank you,

(b) (6)

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(b) (6)

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From: Fitzpatrick, Benjamin B. (ODAG)
Sent: Tuesday, May 06, 2014 6:26 PM
To: Thompson, Karl (OLC); Koffsky, Daniel L (OLC)
Cc: Walsh, James (ODAG)
Subject: RE: DC

Got it. Thanks Karl.

From: Thompson, Karl (OLC)
Sent: Tuesday, May 06, 2014 5:47 PM
To: Fitzpatrick, Benjamin B. (ODAG); Koffsky, Daniel L (OLC)
Cc: Walsh, James (ODAG)
Subject: Re: DC

Hi Ben (b) (5).

Thanks,

Karl

From: Fitzpatrick, Benjamin B. (ODAG)
Sent: Tuesday, May 06, 2014 04:55 PM
To: Thompson, Karl (OLC); Koffsky, Daniel L (OLC)
Cc: Walsh, James (ODAG)
Subject: DC

Karl and Dan

(b) (5)
[Redacted text block]

Thanks so much.

Best,

Ben

Benjamin Fitzpatrick

Senior Counsel to the Deputy Attorney General

Department of Justice

Tel: (202) (b) (6)

U (b) (6)

S (b) (6)

TS (b) (6)

From: (b) (6) (OLC)
Sent: Friday, May 16, 2014 4:14 PM
To: Taylor, Velma (OLA)
Cc: Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (OLC) (b) (6) (b) (6)
(b) (6) (OLC) (b) (6) (OLC)
Subject: RE: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Attachments: RE: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

Velma:

I've attached the email OLC sent to Adrien.

Thank you,

(b) (6)

From: Taylor, Velma (OLA)
Sent: Friday, May 16, 2014 4:02 PM
To: Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP); Bies, John (OLC) (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC) (b) (6) (OLC) (b) (6) (OLC); Bolleman, Kerry A. (CIV); Mayer, Michael (CIV); Brink, David; Opl, Legislation; USAEO-Legislative (USA) (b) (6)
Subject: FW: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Importance: High

I'm trying to handle this now that Adrien has gone for the day. Can you forward to me any response you have sent Adrien on this item? Thanks

From: (b) (6) (NSD)
Sent: Friday, May 16, 2014 3:43 PM
To: Gaston, Molly (OLA); Taylor, Velma (OLA)
Subject: FW: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Importance: High

Corrected version is attached – thank you!

From: (b) (6) (NSD)
Sent: Friday, May 16, 2014 3:37 PM
To: Silas, Adrien (OLA)
Subject: FW: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Importance: High

Adrien,

I very much apologize, but I've received a revision to our comments, to one paragraph on page 3. They are minor may not require ODAG re-clearance though I will of course defer to you on that.

Thanks,

(b) (6)

From: Freeman, Andria D (OLA)

Sent: Thursday, May 15, 2014 3:42 PM

To: Chang, Cindy (OAAG); Grigsby, Stacey (OAAG); Gunn, Currie (OAAG); Hirsch, Sam (OAAG); Davis, Valorie A (OLP); Hemmick, Theresa (OLP); Jackson, Wykema C (OLP); Matthews, Matrina (OLP) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC) (b) (6) (OLC); (b) (6) Kruger, Leondra R (OLC) (b) (6) (OLC) (b) (6) (OLC); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Brink, David; Hendley, Scott; Lofton, Betty; Opl, Legislation; Wroblewski, Jonathan; USAEO-Legislative (USA);

(b) (6)

Cc: Silas, Adrien (OLA); Agrast, Mark D. (OLA); Gaston, Molly (OLA); Riley, Ann J. (OLA); Burrows, Charlotte (ODAG); Columbus, Eric (ODAG); Tomney, Brian (ODAG); Weaver, Carla J. (ODAG)

Subject: FW: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 10:15am 5/16/14.

From: Justice Lrm (SMO)

Sent: Thursday, May 15, 2014 11:59 AM

To: Freeman, Andria D (OLA); Thomas, Sheaya L. (OLA)

Subject: FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

From: Fitter, E. Holly

Sent: Thursday, May 15, 2014 11:57:12 AM (UTC-05:00) Eastern Time (US & Canada)

To: Justice Lrm (SMO); ODNI; STATE

Cc: Burnim, John D.; Vaeth, Matt; Asen, Jonathan; Hedger, Stephen; Arguelles, Adam; Sarri, Kristen; Menter, Jessica; DL-WHO-WHGC-LRM; DL-OVP-National Security; Simpkins, John; Washington, Geovette; DL-NSS-LEGAL; DL-NSS-LEGISLATIVE; DL-NSS-CT; DL-NSS-AFPAK; DL-NSS-MULTILAT; DL-NSS-MENA; DL-OMB-NSD; DL-OMB-IAD (b) (6)

(b) (6) CIV OSD OGC (US) (b) (6) (b) (6)

(b) (6) Vaddi, Pranay R (b) (6)

Croll, Toby <(b) (6)>

Subject: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

DEADLINE: 12:00 Noon Friday, May 16, 2014

Please review the attached 3-page DOD (Preston) statement for a 5/21 SFRC hearing on the Framework Under U.S. Law for Current Military Operations and advise of any comments by the deadline above. thanks.

Please be aware that the State Principal Deputy Legal Adviser, Mary McLeod also will testify.

State: When will I get the McLeod statement?

LRM ID: EHF-113-364

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM
Thursday, May 15, 2014

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference

SUBJECT: LRM [EHF-113-364] DEFENSE Oversight Testimony on Framework Under U.S. Law for Current
Military Operations

OMB CONTACT: **Fitter, E**

E-Mail (b) (6)

PHONE: (b) (6)

FAX: (b) (6)

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

From: (b) (6) (OLC)
Sent: Friday, May 16, 2014 11:50 AM
To: Silas, Adrien (OLA)
Cc: Kruger, Leondra R (OLC); Bies, John (OLC); Koffsky, Daniel L (OLC) (b) (6) (OLC); (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: RE: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Attachments: Preston prepared statement for SFRC hearing DRAFT 5-14-14 clean--olc.docx

Adrien—
OLC has one edit in the attached redline on the DoD testimony on the framework under U.S. law for current military operations.
Thank you,
(b) (6)

From (b) (6) (OLC)
Sent: Thursday, May 15, 2014 7:18 PM
To (b) (6) (OLC)
Cc: Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: (OLA WF 109134) FW: LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

(b) (6) Please review. I'm sorry; I should have sent this to you earlier, given the early deadline tomorrow morning. (b) (5)

[Redacted]

[Redacted]

(b) (6)
Office of Legal Counsel
(b) (6)

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(b) (6)

(b) (6)

(b) (6)

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(b) (6)

(b) (6)

duplicate

From: (b) (6) (OLC)
Sent: Tuesday, May 20, 2014 2:02 PM
To: Silas, Adrien (OLA)
Cc: Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (OLC) (b) (6) (b) (6) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: Response to PASSBACK on LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#
Attachments: Preston prepared statement for SFRC hearing DRAFT 5-20-14 1155.docx; Preston prepared statement for SFRC hearing -- redline from 5-14 draft.docx; DOJ response on (OLA WF 109134) [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

Adrien--
OLC has no comment on the revise statement.

(b) (6)

-----Original Message-----

From (b) (6) (OLC)
Sent: Tuesday, May 20, 2014 1:49 PM
To (b) (6) (OLC)
Cc: Kruger, Leondra R (OLC); Bies, John (OLC) (b) (6) (OLC) (b) (6) (b) (6) (OLC)
Subject: FW: Response to PASSBACK on LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

(b) (6)

The Preston statement has been revised in response to DOJ comments. Would you be able to review the revised statement before their (unreasonable) 2:15 deadline?

Thank you,

(b) (6)

-----Original Message-----

From: Silas, Adrien (OLA)
Sent: Tuesday, May 20, 2014 1:43 PM
To (b) (6) (NSD) (b) (6) (NSD) (b) (6) (NSD); NSD LRM Mailbox (NSD); Bies, John (OLC); (b) (6) (OLC) (b) (6) Kruger, Leondra R (OLC) (b) (6) (OLC) (b) (6) (OLC)
Subject: FW: Response to PASSBACK on LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

Please let me know by 2:15 p.m. today whether you have any comments on the attached document, which has been revised in response to your earlier comments. F.Y.I., I have attached the Justice Department comments on the prior, original draft.

NSD
OLC

-----Original Message-----

From: Fitter, E. Holly [mailto: (b) (6)]
Sent: Tuesday, May 20, 2014 1:18 PM
To: STATE; ODNI; Justice Lrm (SMO); Silas, Adrien (OLA); 'ODNI'; Fonzone, Christopher (b) (6) Luftig, Charles; Pomper, Stephen; DL-NSS-LEGAL; Ajay Berry; Croll, Tob (b) (6) Vaddi, Pranay R (b) (6) (b) (6)
Cc (b) (6) CIV OSD OGC (US) (b) (6) (b) (6)
Subject: Response to PASSBACK on LRM [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

See DOD revised clean revised copy and redline comparing current statement with the draft with edits accepted. Please advise of any final edits by REDLINING THE CLEAN COPY (first attachment) by 2:30 PM today. Firm deadline.

If you do not advise by 2:30 this statement will be cleared as revised.

FYI -- DOD advise (b) (5)

From: Taylor, Velma (OLA)
Sent: Friday, May 16, 2014 5:27 PM
To: 'Fitter, E. Holly'
Subject: DOJ response on (OLA WF 109134) [EHF-113-364] DOD (Preston) Oversight Testimony on Framework Under U.S. Law for Current Military Operations #721263625#

The comments of the Department of Justice on the draft Defense Department (Preston) congressional hearing testimony concerning a United States legal framework for current military operations are set forth in the attached file. (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Preston prepared statement for...

