EXHIBIT 103

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CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505

General Counsel

2 March 2004

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

Dear Mr. Goldsmith:

(TS/ As you know, the Central Intelligence Agency's (CIA) Counterterrorism Detention and Interrogation program has expended considerable effort to ensure that it operates in accordance with applicable law and guidance provided by the Department of Justice's Office of Legal Counsel (OLC) and the Attorney General. In light of the ongoing nature of this program, I am requesting that OLC reaffirm its analyses set forth in the following documents:

- The unclassified letter from John C. Yoo, Deputy Assistant Attorney General, to the Counsel to the President, dated 1 August 2002, concerning interrogation methods that may be used during the war on terrorism.

- The unclassified memorandum by Jay S. Bybee, Assistant Attorney General, for the Counsel to the President, dated 1 August 2002, concerning the standards of conduct for interrogation under 18 U.S.C. 2340-2340A.

- The classified memorandum from Jay S. Bybee, Assistant Attorney General, to the Acting General Counsel of the CIA, dated 1 August 2002, concerning the interrogation of an al Qaeda operative.

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- The classified memorandum entitled "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel" (hereafter "summary points"), which was prepared with OLC's assistance and received the concurrence of your office in June 2003. (Enclosed with this letter is a copy of the summary points along with a covering memorandum.)

(TS// We rely on the applicable law and OLC guidance to assess the lawfulness of detention and interrogation techniques. For example, using the applicable law and relying on OLC's guidance, we concluded that the abdominal slap previously discussed with OLC (and mentioned in the June 2003 summary points) is a permissible interrogation technique. Similarly, in addition to the sitting and kneeling stress positions discussed earlier with OLC, the Agency has added to its list of approved interrogation techniques two standing stress positions involving the detainee leaning against a wall..

(TS// We also would like to share with you our views on three additional interrogation techniques, and two uses of water not involving the waterboard.

such as the attention grasp, walling and the facial slap, all of which have been reviewed by your office. Like other approved interrogation techniques, is used as part of the Survival, Evasion, Resistance, Escape (SERE) training provided to US Military personnel.

(TS// The use of water with detainees has proven to be a very effective part of some detainee interrogations. Uses of water (other than with the waterboard) range from pouring, flicking, or tossing (i.e., water PFT) a relatively small amount of water on detainees, to dousing detainees with water from a bucket or garden hose (i.e., water dousing). (We describe both techniques in greater detail below.) Both water PFT and water dousing are used as part of the SERE training provided to US Military personnel. We believe these techniques clearly fall

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within the legal parameters establish by applicable law and are consistent with OLC's 2002 and 2003 guidance set forth in the documents identified above.

(TS// Water PFT is intended to create a distracting effect, to startle, humiliate, and cause insult. Water PFT is intended to wear down the detainee physically and psychologically. Up to one pint of potable water may be used so long as it is applied in such a manner as to prevent its inhalation or ingestion. Water PFT may be used as a stand-alone interrogation technique or in conjunction with other techniques in an approved interrogation plan such as sleep deprivation. No more than one pint of water every 15 to 20 minutes may be applied. Given the relatively small amount of water that is applied and the method of application, there are virtually no health or safety concerns with water PFT as part of an approved interrogation plan.

(TS// Water dousing is intended to weaken the detainee's overall resistance posture and persuade him to cooperate with interrogators by removing his sense of predictability and control. The detainee, dressed or undressed, is restrained by shackles and/or interrogators in a standing, sitting or supine position on the floor, bench or similar level surface. Potable water is poured on the detainee from a container or garden hose connected to a water source. Water is applied so as to not enter the nose or mouth. A session can last from 10 minutes (a single application) to an hour (multiple applications). The detainee's resilience, level of cooperation, amount and temperature of water, temperature of the ambient air, and physical and mental state are all factors regulating the length of the water dousing session. A medical officer is present to monitor the detainee's physical condition during the water dousing session(s), including any indications of hypothermia. Upon completion of the water dousing session(s), the detainee is moved to another room, monitored as needed by a medical officer to guard against hypothermia, and steps are taken to ensure the detainee is capable of generating necessary body heat and maintain normal body functions.

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(TS//) I greatly appreciate the assistance of your office and the Department of Justice with the CIA's Detention and Interrogation program. If possible, we request reaffirmation of the legal guidance provided by OLC in the documents cited above within 60 days. Moreover, any guidance you choose to provide on the interrogation techniques described in this letter or any other techniques used in this program also would be appreciated. Of course, at your request, we will brief you or cleared members of your staff on any of the interrogation techniques used by the CIA as part of this program.

Sincerely,

Scott W. Muller

Enclosure

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Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel

- The Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment ("the Convention") applies to the United States only in accordance with the reservations, understandings, and declarations that the United States submitted with its instrument of ratification of the Convention.
  - The Convention's definition of torture, as interpreted by the U.S. understandings, is identical in all material ways to the definition of torture contained in 18 U.S.C. §2340-2340A. The standard for what constitutes torture under §2340-2340A and under the Convention is therefore identical.
  - The Convention also provides that state parties are to undertake to prevent other cruel, inhuman, or degrading treatment or punishment. Because of U.S. reservations to the Convention, the U.S. obligation to undertake to prevent such treatment or punishment extends only to conduct that would constitute cruel and inhuman treatment under the Eighth Amendment or would "shock the conscience" under the Fifth and Fourteenth Amendments. Additionally, the Convention permits the use of such treatment or punishment in exigent circumstances, such as a national emergency or war.
- Customary international law imposes no obligations regarding the treatment of al-Qa'ida detainees beyond that which the Convention, as interpreted and understood by the United States in its reservations, understandings, and declarations, imposes. The Convention therefore definitively establishes what constitutes torture and cruel, inhuman, or degrading treatment or punishment for the purposes of U.S. international law obligations.
- CIA interrogations of foreign nationals are not within the "special maritime and territorial jurisdiction" of the United States where the interrogation occurs on foreign

territory in buildings that are not owned or leased by or under the legal jurisdiction of the U.S. government. The criminal laws applicable to the special maritime and territorial jurisdiction therefore do not apply to such interrogations. The only two federal criminal statutes that might apply to these interrogations are the War Crimes Statute, 18 U.S.C. §2441, and the prohibition against torture, 18 U.S.C. §2340-2340A.

- The federal War Crimes Statute, 18 U.S.C. §2441, does not apply to al-Qa'ida because the Geneva Conventions and the Hague Convention IV, the conventions that the conduct must violate in order to violate section 2441, do not apply to al-Qa'ida. Al-Qa'ida is a non-governmental international terrorist organization whose members cannot be considered POWs within the meaning of the Geneva Conventions or receive the protections of the Hague Convention IV. Because these conventions do not protect al-Qa'ida members, conduct toward those members cannot violate section 2441.

- The interrogation of al-Qa'ida detainees does not constitute torture within the meaning of section 2340 where the interrogators do not have the specific intent to cause "severe physical or mental pain or suffering." The absence of specific intent (i.e., good faith) can be established through, among other things, evidence of efforts to review relevant professional literature, consulting with experts, reviewing evidence gained from past experience where available (including experience gained in the course of U.S. interrogations of detainees), providing medical and psychological assessments of a detainee (including the ability of the detainee to withstand interrogation without experiencing severe physical or mental pain or suffering), providing medical and psychological personnel on site during the conduct of interrogations, or conducting legal and policy reviews of the interrogation process (such as the review of reports from the interrogation facilities and visits to those locations). A good faith belief need not be a reasonable belief; it need only be an honest belief.

- The interrogation of members of al-Qa'ida, who are foreign nationals, does not violate the Fifth, Eighth, and Fourteenth Amendments because those amendments do not apply. The Due Process Clauses of the Fifth and Fourteenth Amendments, which would be the only clauses in those

amendments that could arguably apply to the conduct of interrogations, do not apply extraterritorially to aliens. The Eighth Amendment has no application because it applies solely to those persons upon whom criminal sanctions have been imposed. The detention of enemy combatants is in no sense the imposition of a criminal sanction and thus the Eighth Amendment does not apply.

- Taking all of the relevant circumstances into account (such as the Government's need for information to avert terrorist activities against the United States and its citizens, the good faith efforts to avoid producing severe physical or mental pain or suffering, and the absence of malicious or sadistic purpose by those conducting the interrogations), the use of the techniques described below and of comparable, approved techniques would not constitute conduct of the type that would be prohibited by the Fifth, Eighth, or Fourteenth Amendments even were they to be applicable.

- The use of the following techniques and of comparable, approved techniques in the interrogation of al-Qa'ida detainees by the CIA does not violate any Federal statute or other law, where the CIA interrogators do not specifically intend to cause the detainees to undergo severe physical or mental pain or suffering (i.e., they act with the good faith belief that their conduct will not cause such pain or suffering): isolation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainees), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.