~~TOP SECRET~~ [redacted] ~~NOFORN//X1~~ 1.4(c)

OGC-FO-2003-50078
5 August 2003

MEMORANDUM FOR THE RECORD

SUBJECT: (U~~//AIUO)~~ Review of Interrogation Program on 29 July 2003

1. ~~(S)~~ On 29 July 2003, the DCI and CIA General Counsel attended a meeting in the office of National Security Adviser Condoleezza Rice to discuss current, past and future CIA policies and practices concerning the interrogation of certain detainees held by CIA in the wake of the 11 September 2001 attacks on the United States and in the Nation's war on terror. The meeting was an outgrowth of the DCI's 3 July 2003 memorandum to Dr. Rice requesting a reaffirmation of the CIA's policies and practices. The meeting was attended by the DCI, CIA General Counsel Scott W. Muller, the Attorney General, Acting Assistant Attorney General, Office of Legal Counsel, Patrick Philbin, Dr. Rice, White House Counsel Alberto Gonzales, Counsel to the National Security Council (NSC) John Bellinger and the Vice President.

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2. ~~(TS~~ [redacted] The DCI started the meeting by stating that CIA wanted a reaffirmation of its policies and practices (1) in light of recent White House statements and the resulting media which had created the impression that certain previously authorized interrogation techniques are not used by US personnel and are no longer approved as a matter of US policy and (2) in light of the fact that the annual review of [redacted] was in process. 1.4(c)

3. ~~(S)~~ After the DCI's introduction, Mr. Muller distributed to each participant a set of briefing slides entitled CIA Interrogation Program, 29 July 2003. A copy is attached hereto as Attachment A. Mr. Muller walked through the slides with the group page by page, explaining orally the substance of what was shown on each page. Each page was reviewed with the exception of pages 16-17. 3.5(c)

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SUBJECT: Review of Interrogation Program on 29 July 2003

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4. ~~(TS/~~ [redacted] Near the outset of the discussion of "Legal Authorities" (page 2), the Attorney General forcefully reiterated the view of the Department of Justice that the techniques being employed by CIA were and remain lawful and do not violate either the anti-torture statute or US obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment. He said that he had reviewed the 25 June 2003 letter to Senator Leahy from DoD General Counsel William J. Haynes II and had reviewed with Patrick Philbin the facts relating to actual CIA interrogations in the past year. Having done so, he said that CIA practices were entirely lawful and that he agreed with the statement that had been made with respect to those policies and practices in the Haynes letter. (In the week preceding the meeting, CIA had given Philbin, Bellinger and Gonzales a full briefing on the facts contained in the slides and, in advance of the meeting, Philbin had reviewed all the pertinent facts with the Attorney General). In the course of the discussion, the Attorney General and Pat Philbin gave a lengthy explanation of the law and the applicable legal principles. Their explanation squares completely with the understanding under which CIA has been operating. See previous Memoranda for the Record by Scott W. Muller, Acting General Counsel John A. Rizzo, and/or [redacted] CTC/LGL [redacted] and related materials.

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5. ~~(TS/~~ [redacted] There was a discussion of the 27 June 2003 *Washington Post* article reporting that the Administration had pledged not to use "stress and duress" techniques in interrogating detainees. The Vice President asked how the press could have gotten such an impression and Muller mentioned both the President's statement in February 2002 concerning "humane" treatment of detainees and the various occasions including 26 June 2003 on which the White House press office had stated that US treatment of detainees was "humane." Judge Gonzales informed the Vice President that the President's February 2002 policy is applicable only to the Armed Forces. Referring to the statements from the Deputy White House press secretary in response to questions from the *Washington Post* on the occasion of the President's 26 June 2003 proclamation on United Nations International Day in Support of Victims of Torture, Bellinger explained that the press officer had "gone off script" and had mistakenly gone back to "old" talking points. The DCI stated

SUBJECT: Review of Interrogation Program on 29 July 2003

that it was important for the White House to cease stating that US Government practices were "humane" as that term is easily susceptible to misinterpretation. Bellinger undertook to insure that the White House press office ceases to make statements on the subject other than that the US is complying with its obligations under US law. (In or about March, Bellinger had made a similar commitment and reported to the undersigned and to Judge Gonzales that he had informed Press Secretary Ari Fleischer that the White House press office should not state either that the US was complying with the Geneva Conventions--which are inapplicable--or was treating all detainees "humanely.")

6. ~~(TS)~~ There was a brief discussion of the recent letter to Dr. Rice from Senator Arlen Specter. The Attorney General strongly advised that the statements in the 25 June 2003 letter to Senator Leahy be reaffirmed. Addressing the purported misinterpretation of US policy reported in the *Washington Post* and CIA's concern that merely reaffirming the Leahy letter (in light of the other statements made on 26 June and the reporting) could be read as acknowledgement of the erroneous view of Administration policy reflected in that reporting, the Attorney General proposed that the response to Senator Specter emphasize that the statements in the Haynes response to the Leahy letter were responses to specific legal questions and had been carefully and narrowly crafted. There was agreement that this approach, properly implemented, was appropriate.

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7. ~~(TS)~~ [redacted] In connection with the "Safeguards" discussion in the briefing slides (pages 6-7), Mr. Bellinger explained that CIA's intent and good faith were important elements of the legal analysis and that the safeguards were intended to reflect that good faith in spirit and reality. Mr. Philbin explained at this point that, under the Eighth Amendment, it was critical to look at the purpose of the acts. He said that certain Human Rights groups were citing Eighth Amendment cases (including Department of Justice briefs) and claiming that "stress and duress" techniques violated the Eighth Amendment per se. He explained that those cases, including one involving the shackling of a prisoner, were inapplicable

SUBJECT: Review of Interrogation Program on 29 July 2003

because, among other things, they involved "wanton and malicious" punishment whereas the interrogations at issue were undertaken for very different and legitimate purposes.

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8. ~~(TS)~~ [redacted] Dr. Rice asked about the entry (page 7) "Infractions remedied (two incidents, no harm)." She asked if there had not been a death in connection with the interrogation program. Mr. Muller stated that there had been two deaths--both reported to the Inspector General, the Criminal Division and Congress--but that neither had involved the Interrogation Program (i.e., authorized interrogation personnel engaged in or authorized to engage in interrogations as part of the Interrogation Program or detainees who were the authorized subject of enhanced techniques).

9. ~~(S)~~ Mr. Muller explained that the senior leadership of the Intelligence Committees had been briefed. The Vice President asked if this included the new leadership and Mr. Muller stated that it did. Mr. Muller also stated that CIA intended to do another briefing after the recess.

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10. ~~(TS)~~ [redacted] In connection with page 8 ("Interrogation Methods"), Mr. Muller stated that the technique most likely to raise concerns was the waterboard. Dr. Rice asked for a description of the procedure which Mr. Muller gave, noting that the Attorney General opinion authorized administrations of up to 40 seconds.

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11. ~~(TS~~ [redacted] Mr. Muller summarized the material on pages 9-12 of the briefing slides, stating that they showed that the detainees subject to the use of Enhanced Techniques of one kind or another had produced significant intelligence information that had, in the view of CIA professionals, saved lives.

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12. ~~(TS)~~ [redacted] Mr. Muller reviewed page 13 of the slides, noting in particular that three individuals had been the subject of the waterboard. The Vice President asked about the relationship between the column entitled "Sessions" and the column entitled "WB." Mr. Muller explained. Dr. Rice commented specifically on the number of times that KSM had been waterboarded (119). Mr. Muller stated his understanding that a number of the uses had been for less than the permitted

40 seconds. Patrick Philbin stated that the Attorney General opinion authorized repetitions of the procedure and the Attorney General stated that he was fully aware of the facts and that CIA was "well within" the scope of the opinion and authority given to CIA by that opinion. The Vice President commented on the value of what KSM had provided and noted that KSM had obviously been a "tough customer".

1.4(c) 13. (TS [redacted] The DCI stated that it was important for CIA to know that it was executing Administration policy and not merely acting lawfully. The Vice President stated, and Dr. Rice and the Attorney General agreed, that this was the case. Mr. Muller stated that this left the issue of how to deal with

1.4(c) the annual [redacted] review process. There was a brief discussion of that process in which John Bellinger stated, in response to a question from the Vice President, that there was no requirement for a full meeting of the NSC Principals. (Judge Gonzales stated that he was certain that DoD General Counsel Haynes [and, by implication, the Secretary of Defense] was clearly aware of the substance of CIA's program based on, among other things, the DoD review of similar techniques and numerous discussions. Mr. Muller and Mr. Bellinger agreed. At an earlier meeting on this subject, Judge Gonzales had stated that, when the techniques were first authorized, Dr. Rice had discussed them with the Secretary of Defense.) After discussion, the Vice President, Dr. Rice and the Attorney

1.4(c) General agreed (with the DCI's concurrence) that it was not necessary or advisable to have a full Principals Committee meeting to review and reaffirm the Program. Instead, as part of the [redacted] process some combination of Dr. Rice, the Vice President and/or Judge Gonzales would inform the President that the CIA was conducting interrogations [redacted] 1.4(c)

[redacted] using techniques that could be controversial but that the Attorney General had reviewed and approved them as lawful under US law.

[redacted] 3.5(c)

Scott W. Muller

SUBJECT: Review of Interrogation Program on 29 July 2003

ADDENDUM (5 August 2003)

~~(S)~~ In a telephone conversation on 4 August, Mr. Bellinger informed Mr. Muller that Dr. Rice was now of the view that the Secretary of State and the Secretary of Defense should be briefed prior to [redacted] A specific plan will be proposed in the next few days. 1.4(c)

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Scott W. Muller

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SUBJECT: Review of Interrogation Program on 29 July 2003

3.5(c)

DCI/OGC/SWMuller: [redacted] (4 August 2003)
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