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Congress of the United States

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COMMITTEE ON THE JUDICIARY

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June 17, 2004

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The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We urge the Committee on the Judiciary to formally request from the Administration all executive branch memoranda, orders, and rules analyzing and implementing the Geneva Conventions, the 1994 Convention Against Torture, customary international law on torture, and federal torture statutes as they apply to detainees in Afghanistan, Iraq, and Guantanamo Bay.

Excerpts from these documents, many of which have been made public, indicate that the Justice Department and Defense Department have chosen to interpret the term "torture" so narrowly as to render it meaningless. We fear that our national security and the safety of Americans abroad could be seriously compromised if these interpretations are in fact synonymous, or even appear to be synonymous, with official U.S. policy.

This inquiry should include, but not be limited to, the following memoranda:

- Fall 2001: Justice Department memorandum to the Central Intelligence Agency supporting the legality of all forms of interrogation except those causing severe mental or physical pain.
- December 28, 2001: Office of Legal Counsel memorandum arguing that prisoners held at Guantanamo Bay could not appeal their confinement or their conditions in U.S. courts.
- January 9, 2002: Office of Legal Counsel memorandum arguing that Geneva Convention protections do not apply to detainees captured during the war in Afghanistan.
- January 22, 2002: Justice Department memorandum to the White House entitled "Application of Treaties and Laws to Al Qaeda and Taliban Detainees." This memorandum allegedly explains how officials could avoid prosecution for war crimes by withholding Geneva Convention status from detainees.
- January 25, 2002: White House Counsel Alberto Gonzales memorandum to the President recommending a decision that Geneva Convention protections not be extended to Taliban and Al Qaeda fighters.

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- August 1, 2002: Assistant Attorney General Jay S. Bybee memorandum to White House Counsel Alberto R. Gonzales arguing that the legal theories of necessity and self-defense could justify the use of torture.
- March 6, 2003: Department of Defense memorandum entitled "A Working Group Report on Detainee Interrogations in the Global War on Terrorism." This memorandum argues that the United States could apply a very narrow definition of torture to justify extreme interrogation techniques. It further argues that even if Americans did commit acts of torture, the President, military officials, and service members could avoid accountability by using theories of self-defense, necessity, and the President's constitutional authority as Commander-in-Chief.

Many of the above documents have been made public, either in part or in full. We request that you compel the Justice and Defense Departments to both officially make these reports available to Congress in their entirety and hand over any related materials – including supporting materials for the memoranda, subsequent memoranda generated based on these original findings, and briefings provided to high-level executive officials that draw from these documents.

Officially rejecting international prohibitions on torture would embolden hostile foreign states or organizations to abuse American soldiers or civilians. Further, abandoning international law in this area could undermine our ability to mobilize international opinion against rogue regimes that often invoke national security concerns to justify the repression of their own people, their violent opposition to American interests, and their support of international terror.

Other troubling revelations from those sections that have appeared in the press include the apparent assertions of the "Nuremberg defense." Various memoranda argue that torturers could escape responsibility for their wanton acts by arguing that they were "just taking orders." See, e.g., U.S. DEPARTMENT OF DEFENSE, WORKING GROUP REPORT ON DETAINEE INTERROGATIONS IN THE GLOBAL WAR ON TERRORISM: ASSESSMENT OF LEGAL, HISTORICAL, POLICY, AND OPERATIONAL CONSIDERATIONS 32-33 (Mar. 6, 2003). Allowing torturers to avoid prosecution by pointing the finger at their superiors would set a terrible precedent – effectively extending immunity for any war crimes committed under orders from superiors.

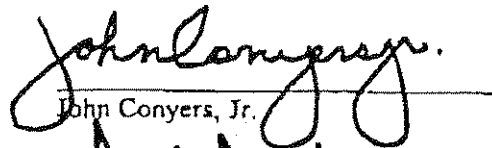
A complete depiction of the Administration's torture policy cannot be gained without the release of all memoranda, orders, and rules regarding this subject. Indeed, if recent press reports do not accurately portray the Executive's policy on the use of torture, then a full airing of all relevant information would allow the public to develop a more balanced perspective. Either way, Congress and the American people deserve to be fully informed.

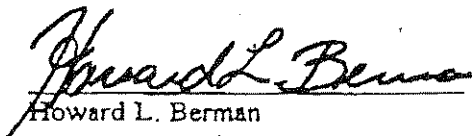
We would look forward to working with you on this request.

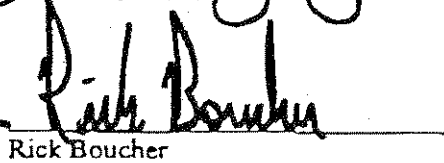
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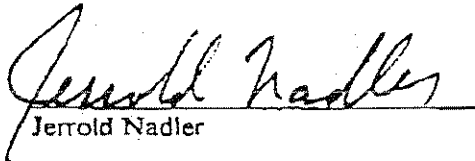
Sincerely,

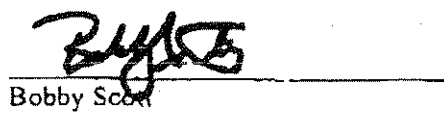

Martin T. Meehan

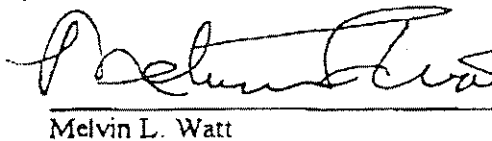

John Conyers, Jr.

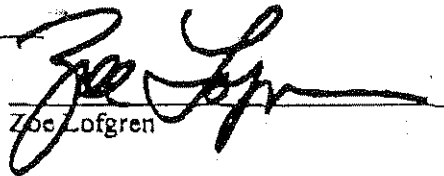

Howard L. Berman

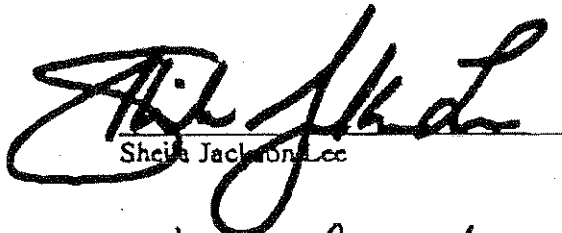

Rick Boucher

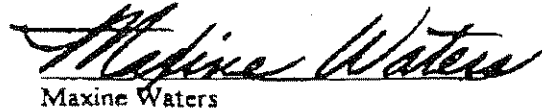

Jerrold Nadler


Bobby Scott

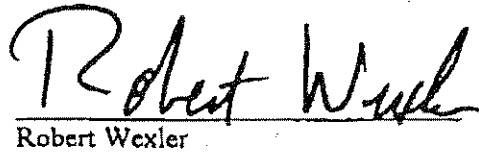

Melvin L. Watt

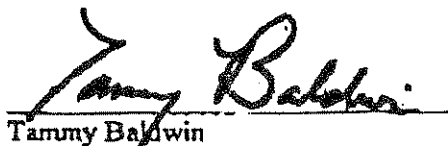

Zoe Lofgren

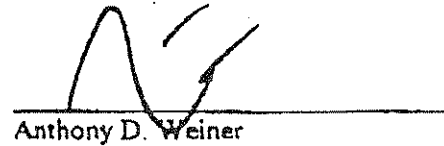

Sheila Jackson Lee

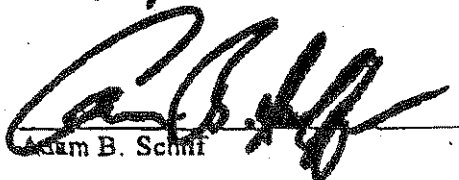

Maxine Waters

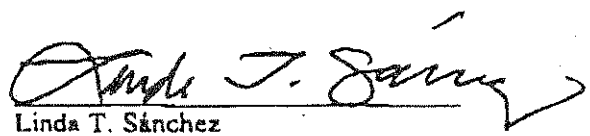

William D. Delahunt


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Tammy Baldwin


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