STATEMENT REGARDING
DECLASSIFIED NARRATIVE DESCRIBING
THE DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL'S OPINIONS ON
THE CIA'S DETENTION AND INTERROGATION PROGRAM

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APRIL 22, 2009

Today Chairman Dianne Feinstein and I, with the agreement of Vice Chairman Kit Bond, have posted on the website of the Senate Select Committee on Intelligence, a document newly declassified by the Obama Administration. I ask unanimous consent that this document be included in the Congressional Record along with this statement.

In so doing we conclude an effort that I began as Chairman of the Committee in the last Congress to provide to the public an initial narrative of the history of the interrogation and detention opinions of the Department of Justice's (DOJ) Office of Legal Counsel (OLC).

I applaud President Obama's decisive action last week not only to release four of the OLC opinions discussed in our narrative but also to state firmly our nation's support for the front-line intelligence professionals who relied on that legal advice in good faith. I couldn't agree more.

Three of these OLC documents are among those that I sought for the Committee starting as far back as 2005, when it became increasingly clear to me that Congress had not been given complete information regarding the Bush Administration's interrogation policies and practices.

I said publicly in July of 2005 and still firmly believe today that secret legal opinions that are kept even from oversight by the Congress can lead to great error. In the years since then I – together with Chairman Feinstein and others – have sought within the Committee, on the Senate Floor, and in written demands to the Bush Administration to launch a comprehensive investigation of these issues and to advance legislation to end coercive interrogation practices.

Now, thanks to President Obama's wise decision and to the ongoing work of the Senate Intelligence Committee, we have at last begun the task of fully setting the record straight, holding our government accountable, and learning from past errors in order to protect our country into the future.

Let me be clear - in the wake of 9/11 we all wanted to leave no stone unturned in our pursuit of terrorists to prevent future attacks. At that time and since, the Senate Intelligence Committee sought to work in partnership with the Administration to keep America safe. But we now know that essential

information was withheld from the Congress on many matters and decisions were made in secret by senior Bush Administration officials to obscure the complete picture.

It is my hope and intention that the document we release today helps to fill in some of the facts, even as many other pieces of the puzzle are brought forth.

The genesis of this document is as follows:

Last year, I sought declassification of the August 1, 2002 OLC opinion, along with a short contextual narrative to accompany it. While declassification of that opinion was resisted, we engaged instead in a joint effort with Attorney General Michael B. Mukasey to declassify a broader narrative surrounding all of the OLC's opinions on these matters.

The objective was to produce a text that describes the key elements of the opinions and sets forth facts that provide a context for those opinions, within the boundaries of what the DOJ and the Intelligence Community would recommend in 2008 for declassification.

By late 2008, the DOJ, the Director of National Intelligence (DNI) and the Central Intelligence Agency (CIA) all had approved the public release of this narrative, but the Bush Administration National Security Council (NSC) held it and would not agree to its declassification.

I renewed the declassification effort as soon as Attorney General Eric Holder took office in early February 2009, and I am pleased to have received the support again of the DOJ, DNI and CIA, and now also of the NSC, for its release as a contextual description of the OLC memos.

Readers of the narrative should bear in mind that its text is current through President Obama's Executive Orders of January 22, 2009, but has not been revised following the release of the four OLC opinions on April 16, 2009. While there is now more public information available about those four opinions, the narrative adds important facts about the approval of the interrogation program beginning in 2002 and about opinions subsequent to the four that have been released.

For the moment, I'd like to note three points that emerge from the narrative:

- First, the records of the CIA demonstrate that the lawyers at the Office of Legal Counsel (OLC) did not operate in a vacuum. Key legal officials at the CIA, NSC, DOJ's Criminal Division, the Office of White House Counsel, all participated in meetings leading to the approval of methods used by the CIA. The then Vice President and the National Security Adviser are at the center of the discussions. But, strikingly, unless there is

a further story in records not yet shown to us, the Secretary of State and the Secretary of Defense, were not involved in the decision making process despite the high stakes for U.S. foreign policy and for the treatment of the U.S. military.

- Second, the narrative and the May 30, 2005 opinion demonstrate that the Detainee Treatment Act of December 2005 was substantially undermined by the May 30, 2005 OLC opinion. The Bush Administration had already construed the main provisions of the Act to authorize its full gamut of coercive techniques.

- Third, the narrative demonstrates that the job of declassifying the interrogation and detention opinions of the OLC is not complete. There were important opinions in 2006 and 2007 that will, among other things, show how OLC interpreted the Detainee Treatment Act and the war crimes amendments of the Military Commissions Act of 2006, and Common Article 3 of the Geneva Conventions. The prompt declassification of those opinions, accompanied by their withdrawal as valid OLC opinions, is essential to completing the progress achieved by the President's declassification and the Attorney General's withdrawal of four opinions last week.

Finally, I am gratified that the release of the August 2002 and May 2005 opinions, followed by the release of this narrative of the history of OLC opinions from 2002 to 2007, are themselves but first steps.

In this new environment, and with the shared determination of our new Chairman, the Senate Intelligence Committee is undertaking a major review not only of the origin of the detention and interrogation program, but also of its actual implementation. We will be asking probing questions about what took place during interrogations and what intelligence was gained from detainees. We will also be examining what was told to the Congress, including both the content and the limitations on the briefings that were provided.

It is long overdue but certainly not too late. As we enter a new period committed to openness and change, and bid farewell to the former Administration's obscurity and dishonesty, there is the potential for great progress in our intelligence and national security activities.

The trust between the Executive branch and the Congress was breached, and the trust and confidence of the American people has been eroded. But I remain confident that if we restore the vital role of the Congress in overseeing our intelligence activities, we can bridge the divide, restore integrity, and get back to the business of lawfully and effectively securing this great nation.