



January 28, 2009

**By Mail and E-Mail**

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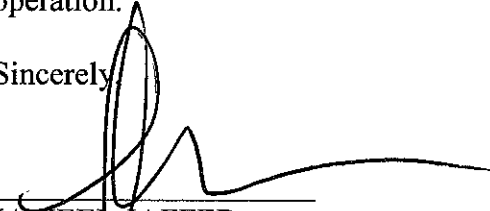
**Re:** *ACLU v. DOD*, No. 1:04-cv-4151 (S.D.N.Y.)  
*ACLU v. DOJ*, No. 1:05-cv-9620 (S.D.N.Y.)  
*ACLU v. DOJ*, No. 1:06-cv-0214 (D.D.C.)

Dear Mr. Lane and Ms. Wolverton,

Attached please find a letter from the ACLU to David Barron, Acting Assistant Attorney General for the Office of Legal Counsel. As the letter relates in part to issues that are before the courts in the above-captioned cases, and as you represent the OLC in those cases, we are sending the letter to you rather than to the Acting Assistant Attorney General directly. We would appreciate your conveying the letter to Mr. Barron at your earliest possible convenience.

Thank you for your cooperation.

Sincerely,



JAMEEL JAFFER  
 AMRIT SINGH  
 MELISSA GOODMAN



January 28, 2009

David Barron  
 Acting Assistant Attorney General  
 Office of Legal Counsel  
 U.S. Department of Justice  
 950 Pennsylvania Avenue, NW  
 Washington, DC 20530-0001

Dear Mr. Barron,

For more than five years, the ACLU and other advocacy organizations have been seeking the release of the OLC memos that supplied the basis for the Bush administration's policies relating to interrogation, detention, rendition, and warrantless surveillance. In October 2003, May 2004, January 2005, and December 2008, we filed FOIA requests seeking legal memos relating to interrogation, detention, and rendition. In December 2005, we filed a FOIA request seeking legal memos relating to the National Security Agency's warrantless wiretapping program. We have filed three lawsuits to enforce compliance with our FOIA requests, *see ACLU v. DOD*, No. 1:04-cv-4151 (S.D.N.Y.); *ACLU v. DOJ*, No. 1:05-cv-9620 (S.D.N.Y.); *ACLU v. DOJ*, No. 1:06-cv-0214 (D.D.C.), and these ongoing suits have resulted in the release of thousands of government documents. Despite our efforts, however, most of the key OLC memos are still being withheld in their entirety.

In light of President Obama's January 21 Memorandum concerning the Freedom of Information Act,<sup>1</sup> we write to ask that you reconsider the decision to withhold these OLC memos. Releasing the memos would allow the public to better understand the legal basis for the Bush administration's national security policies; to better understand the role that the OLC played in developing, justifying, and advocating those policies; and to participate more meaningfully in the ongoing debate about national security, civil liberties, and human rights. Releasing the memos would also signal to Americans, and to the world, that you intend to turn the page on an era in which the OLC served not as a source of objective legal advice but as a facilitator for the executive's lawless conduct.<sup>2</sup>

<sup>1</sup> See Memorandum from President Barack Obama to Heads of Executive Departments and Agencies, Jan. 21, 2009, *available at* [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

<sup>2</sup> Notably, President Obama has effectively rescinded all memos issued by OLC between Sept. 11, 2001, and Jan. 20, 2009, insofar as those memos interpret laws governing interrogation. See Executive Order on "Ensuring Lawful Interrogations," Jan.

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 TREASURER

We are attaching a chart of certain OLC memos authored since September 2001 relating to interrogation, detention, rendition, and/or surveillance. Where the information is known to us, we have indicated each memo's date, author, recipient, and subject. We have also indicated which memos are the subject of ACLU litigation, and in which courts. All of the listed memos are the subject of pending ACLU FOIA requests.<sup>3</sup>

We ask that you release the still-withheld memos at the earliest possible date. To the extent that releasing the memos would require a declassification review, we ask that you conduct such a review. In some instances, it may be necessary for you to redact portions of the memos to protect information whose disclosure would cause damage to national security. In determining whether the disclosure of information would cause such damage, however, please bear in mind that undue secrecy presents its own risks to national security, as President Obama's January 21 FOIA memorandum recognizes. In order for our democracy to function, the public must have the fullest possible information about government conduct and policy. When information is kept secret unnecessarily, the public is deprived of its ability to evaluate government policy, advocate for change, and hold government officials accountable for their decisions. As we have said in our legal briefs, we are deeply concerned that the Bush administration withheld many of the still-secret memos not for legitimate security reasons but for purely political ones. We encourage you to apply the strongest possible presumption in favor of disclosure.

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Thank you for your consideration. We would welcome the opportunity to meet with you to discuss this request.

Sincerely,



JAMEL JAFFER  
AMRIT SINGH  
MELISSA GOODMAN

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22, 2009, available at

[http://www.whitehouse.gov/the\\_press\\_office/EnsuringLawfulInterrogations](http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations).

<sup>3</sup> We hope that the attached chart will help you quickly identify some of the memos that are of most interest to us and to the general public. Please note, however, that the chart is not comprehensive. For example, we have excluded any memo that OLC has identified to us as a "draft," as "internal," or as "undated." We have also excluded memos that have been identified to us only by date and length. We hope that your reassessment of OLC's position with respect to the release of memos will address not only the memos listed on our chart but all memos relating to interrogation, detention, rendition, and/or surveillance.

cc: Jenny-Brooke Condon  
Gibbons P.C.

Meredith Fuchs  
National Security Archive

Shayana Kadidal  
Center for Constitutional Rights

Marc Rotenberg  
Electronic Privacy Information Center

Arthur Eisenberg  
New York Civil Liberties Union

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