

Date: 20020803

TO: [REDACTED]

FROM: [REDACTED]

SUBJECT: EYES ONLY - FORMAL APPROVAL FOR THE NEXT PHASE

[REDACTED]

TOT: 031357Z AUG 02 DIRECTOR [REDACTED]

~~SECRET~~

[REDACTED] 031357Z DIRECTOR [REDACTED]

TO: [REDACTED]

[REDACTED]

FROM: [REDACTED]

SUBJECT: EYES ONLY - FORMAL APPROVAL FOR THE NEXT PHASE

REF: [REDACTED]

TEXT:

1. ACTION REQUIRED: [REDACTED] FORMAL AUTHORIZATION TO EMPLOY THE WATER BOARD, AS DESCRIBED BELOW, IN ADDITION TO THE TECHNIQUES PREVIOUSLY AUTHORIZED [REDACTED] PLEASE SEE BELOW GUIDANCE IN PARA NINE REGARDING DECISION AUTHORITY.

2. SUMMARY: AS REFLECTED MORE COMPLETELY [REDACTED] CIA PLANS TO IMPLEMENT MORE AGGRESSIVE TECHNIQUES IN OUR INTERROGATION OF ((ABU ZUBAYDAH)), IN ORDER TO OBTAIN ACTIONABLE INTELLIGENCE ABOUT AL-QA'IDA OPERATIVES IN THE UNITED STATES AND PLANNED AL-QA'IDA LETHAL ATTACKS AGAINST U.S. CITIZENS AND U.S. INTERESTS. THE AGENCY'S ATTORNEYS HAVE CONDUCTED EXTENSIVE DISCUSSIONS WITH THE DEPARTMENT OF JUSTICE, AND WITH THE LEGAL ADVISER TO THE NATIONAL SECURITY COUNCIL, AND HAVE CONFIRMED THAT THE USE OF THESE

TECHNIQUES IS LAWFUL. ADDITIONALLY, THE DCI DISCUSSED THESE PROPOSALS WITH THE NATIONAL SECURITY ADVISER ON 17 JULY 2002, AND HAS ADVISED US THAT WE MAY PROCEED. WE RECEIVED FORMAL WRITTEN APPROVAL FROM THE DEPARTMENT OF JUSTICE'S OFFICE OF LEGAL COUNSEL ON 1 AUGUST 2002 AT 2230L THAT EACH OF THE TECHNIQUES DESCRIBED IN REF AND INCLUDING THE USE OF WATER BOARD ARE LEGAL.

3. THE LEGAL CONCLUSIONS ARE PREDICATED UPON THE DETERMINATIONS BY THE INTERROGATION TEAM THAT ABU ZUBAYDAH CONTINUES TO WITHHOLD CRITICAL THREAT INFORMATION, INCLUDING THE IDENTITIES OF AL-QA'IDA OPERATIVES IN THE UNITED STATES; THAT IN ORDER TO PERSUADE HIM TO PROVIDE THOSE IDENTITIES, THE USE OF MORE AGGRESSIVE TECHNIQUES IS REQUIRED; AND THAT THE USE OF THOSE TECHNIQUES WILL NOT ENGENDER LASTING AND SEVERE MENTAL OR PHYSICAL HARM.

4. BACKGROUND. AS MORE FULLY DESCRIBED [REDACTED] THE NEXT PHASE OF THE INTERROGATION MAY EMPLOY VARIOUS METHODS INCLUDING THE ATTENTION GRASP; WALLING; THE FACIAL HOLD; THE FACIAL SLAP (INSULT SLAP); CRAMPED CONFINEMENT; WALL STANDING; STRESS POSITIONS; SLEEP DEPRIVATION; THE WATER BOARD; THE USE OF DIAPERS; AND/OR THE USE OF HARMLESS INSECTS. THE TEAM MAY DETERMINE THAT IT WISHES TO DRAW FROM ANY OR ALL OF THE TECHNIQUES DESCRIBED ABOVE, AS WELL AS FROM THOSE TECHNIQUES EMPLOYED PREVIOUSLY. A CIA PHYSICIAN'S ASSISTANT WITH SERE EXPERIENCE WILL BE PRESENT THROUGHOUT THE PROCESS AND A PHYSICIAN IS CURRENTLY ON SITE.

5. DISCUSSION. ON 13 JULY 2002, ACTING GENERAL COUNSEL JOHN RIZZO AND [REDACTED] CTC/LGL [REDACTED] MET WITH NSC LEGAL ADVISER JOHN BELLINGER; DEPUTY NSC LEGAL ADVISER [REDACTED] DEPUTY ASSISTANT ATTORNEY GENERAL JOHN YOO AND ATTORNEY [REDACTED] OF THE OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; ASSISTANT ATTORNEY GENERAL MICHAEL CHERTOFF; HEAD OF THE CRIMINAL DIVISION AT THE DEPARTMENT OF JUSTICE; AND CHIEF OF STAFF TO THE DIRECTOR OF THE FBI DAN LEVIN. RIZZO AND [REDACTED] PROVIDED A FULL BRIEF TO THE GROUP ABOUT THE VARIOUS TECHNIQUES SUMMARIZED IN PARAGRAPH 3 ABOVE, WITH PARTICULAR EMPHASIS PLACED UPON THE DETAILS OF THE WATER BOARD AND MOCK BURIAL PROCESSES. OUR ATTORNEYS' FURTHER ADVISED THE GROUP THAT:

-- THE CIA AND FBI STAFF EMPLOYEES ENGAGED IN THE INTERROGATION OF ABU ZUBAYDAH ARE COMPLEMENTED BY EXPERT PERSONNEL WHO POSSESS EXTENSIVE EXPERIENCE, GAINED WITHIN THE DEPARTMENT OF DEFENSE, ON THE PSYCHOLOGICAL AND PHYSICAL METHODS OF INTERROGATION AND THE RESISTANCE TECHNIQUES EMPLOYED AS COUNTERMEASURES TO SUCH INTERROGATION.

-- ALTHOUGH THE INTERROGATION PROCESS HAS PRODUCED A LIMITED AMOUNT OF SUCCESS TO DATE, ABU ZUBAYDAH REMAINS ADROIT AT APPLYING A HOST OF RESISTANCE TECHNIQUES. HE IS THE AUTHOR OF A SEMINAL AL-QA'IDA MANUAL ON RESISTANCE TO INTERROGATION METHODS, AND THAT

THE AGENCY ASSESSES HE CONTINUES TO WITHHOLD CRITICAL, ACTIONABLE INFORMATION ABOUT THE IDENTITIES OF AL-QA'IDA PERSONNEL DISPATCHED TO THE UNITED STATES AND ABOUT PLANNED AL-QA'IDA TERRORIST ATTACKS. SIMPLY STATED, COUNTLESS MORE AMERICANS MAY DIE UNLESS WE CAN PERSUADE AZ TO TELL US WHAT HE KNOWS.

-- THE INTERROGATION PROCESS PREVIOUSLY HAD BEEN BRIEFED TO THE OFFICE OF LEGAL COUNSEL (WHO SUBSEQUENTLY BRIEFED THE ASSISTANT ATTORNEY GENERAL FOR THE CRIMINAL DIVISION), AS WELL AS TO THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, THE LEGAL ADVISER TO THE NATIONAL SECURITY COUNCIL, AND THE WHITE HOUSE COUNSEL. THE PROCESS HAD BEEN THOROUGHLY REVIEWED AS WELL BY CIA'S ACTING GENERAL COUNSEL AND BY THE CHIEF LEGAL ADVISER TO THE COUNTERTERRORIST CENTER, AND THE INTERROGATION TEAM REMAINS AUTHORIZED TO EMPLOY ALL METHODS LAWFULLY PERMITTED.

-- NONETHELESS, THE INTERROGATION TEAM NOW HAD CONCLUDED THAT THE USE OF MORE AGGRESSIVE METHODS IS REQUIRED TO PERSUADE ABU ZUBAYDAH TO PROVIDE THE CRITICAL INFORMATION NEEDED TO SAFEGUARD THE LIVES OF INNUMERABLE INNOCENT MEN, WOMEN, AND CHILDREN WITHIN THE UNITED STATES AND ABROAD. IN LIGHT OF THE EXCEPTIONALLY GRAVE, LETHAL, AND IMMINENT RISKS TO THE CITIZENS OF THE UNITED STATES, AND THE AGENCY'S ASSESSMENT THAT ABU ZUBAYDAH CONTINUES TO WITHHOLD CRITICAL INFORMATION THAT WOULD PERMIT THE UNITED STATES TO AVERT THOSE RISKS, CIA HAD REVIEWED THE TEAM'S PROPOSALS AND WISHED TO SECURE CONCURRENCE FROM THE NSC AND THE DEPARTMENT OF JUSTICE. WE ALSO WISHED TO PRESENT THE PROPOSALS TO THE FBI CHIEF OF STAFF SO THAT THE FBI COULD DETERMINE WHETHER TO PARTICIPATE IN THE NEXT PHASE AS WELL.

-- WE EMPHASIZED THAT CLEARLY IT IS NOT OUR INTENT TO PERMIT ABU ZUBAYDAH TO DIE IN THE COURSE OF SUCH ACTIVITIES, AND THAT WE WOULD HAVE APPROPRIATELY TRAINED MEDICAL PERSONNEL ON-SITE TO ENSURE THE AVAILABILITY OF EMERGENCY RESPONSE SHOULD HE SUFFER A POTENTIALLY LETHAL CONSEQUENCE. NONETHELESS, WE NOTED THAT THE RISK IS EVER-PRESENT THAT ABU ZUBAYDAH MAY SUFFER A HEART ATTACK, STROKE, OR OTHER ADVERSE EVENT REGARDLESS OF THE CONDITIONS OF HIS DETENTION AND QUESTIONING; INDEED, THAT POTENTIAL IS ALWAYS PRESENT WHENEVER AN INDIVIDUAL IS UNDER DETENTION.

6. THE CIA LAWYERS THEN ASKED THE GROUP TO CONSIDER THE PROVISIONS OF 18 U.S.C. SECTIONS 2340-2340B (ASIDE FROM THE LEGAL DOCTRINES OF NECESSITY OR OF SELF-DEFENSE), AS WELL AS ANY OTHER APPLICABLE U.S. LAW.

-- AS NOTED [REDACTED] THOSE SECTIONS GENERALLY PROVIDE THAT IT IS A FEDERAL CRIME SUBJECT TO SEVERE PENALTIES FOR ANY PERSON ACTING "UNDER COLOR OF LAW" (WHICH WOULD INCLUDE, OF COURSE, ALL MEMBERS OF THE INTERROGATION TEAM AND OTHER PERSONNEL AS WELL) TO ENGAGE IN CONDUCT THAT IS "SPECIFICALLY INTENDED TO INFLICT SEVERE PHYSICAL OR MENTAL PAIN OR SUFFERING . . . UPON ANOTHER PERSON WITHIN HIS CUSTODY OR PHYSICAL CONTROL."

-- THE STATUTE DEFINES "SEVERE MENTAL PAIN OR SUFFERING" AS "THE PROLONGED MENTAL HARM CAUSED BY OR RESULTING FROM: (A) THE INTENTIONAL INFLICTION OR THREATENED INFLICTION OF SEVERE PHYSICAL PAIN OR SUFFERING; (B) THE ADMINISTRATION OR APPLICATION, OR THREATENED ADMINISTRATION OR APPLICATION, OF MIND-ALTERING SUBSTANCES OR OTHER PROCEDURES CALCULATED TO DISRUPT PROFOUNDLY THE SENSES OR PERSONALITY; (C) THE THREAT OF IMMINENT DEATH; OR (D) THE THREAT THAT ANOTHER PERSON WILL IMMINENTLY BE SUBJECTED TO DEATH, SEVERE PHYSICAL PAIN OR SUFFERING, OR THE ADMINISTRATION OR APPLICATION OF MIND-ALTERING SUBSTANCES OR OTHER PROCEDURES CALCULATED TO DISRUPT PROFOUNDLY THE SENSES OR PERSONALITY."

-- AMONG OUR PRIMARY CONCERNS, OF COURSE, IS THE FEAR THAT THE SUBJECT MAY SUFFER A HEART ATTACK, FOR EXAMPLE, AND DIE IN THE COURSE OF HIS DETENTION AT [REDACTED] THE FEDERAL CRIMINAL STATUTES PROVIDE THAT ANY PERSON WHO VIOLATES THE PROHIBITIONS QUOTED ABOVE "SHALL BE FINED UNDER (THE U.S. CRIMINAL CODE) OR IMPRISONED NOT MORE THAN 20 YEARS, OR BOTH, AND IF DEATH RESULTS TO ANY PERSON FROM CONDUCT PROHIBITED BY THIS SUBSECTION (I.E., THAT QUOTED ABOVE), SHALL BE PUNISHED BY DEATH OR IMPRISONED FOR ANY TERM OF YEARS OR FOR LIFE."

7. THE NSC-CONVENED GROUP CAREFULLY CONSIDERED THESE PROVISIONS AND THE PROPOSED INTERROGATION PROCEDURES AS DESCRIBED [REDACTED] THE REPRESENTATIVES FROM THE OFFICE OF LEGAL COUNSEL ("OLC") AT JUSTICE ADVISED THAT THE STATUTE WOULD NOT PROHIBIT THE METHODS PROPOSED BY THE INTERROGATION TEAM, IN LIGHT OF THE SPECIFIC FACTS AND CIRCUMSTANCES OF THE INTERROGATION PROCESS. THE LEGAL CONCLUSION TURNS UPON THE FOLLOWING FACTORS:

-- THE ABSENCE OF ANY SPECIFIC INTENT TO INFLICT SEVERE PHYSICAL OR MENTAL PAIN OR SUFFERING. IN A LETTER DATED 13 JULY 2002, OLC ADVISED CIA THAT "SPECIFIC INTENT CAN BE NEGATED BY A SHOWING OF GOOD FAITH. . . . IF, FOR EXAMPLE, EFFORTS WERE MADE TO DETERMINE WHAT LONG-TERM IMPACT, IF ANY, SPECIFIC CONDUCT WOULD HAVE AND IT WAS LEARNED THAT THE CONDUCT WOULD NOT RESULT IN PROLONGED MENTAL HARM, ANY ACTIONS TAKEN RELYING ON THAT ADVICE WOULD HAVE TO BE UNDERTAKEN IN GOOD FAITH. DUE DILIGENCE TO MEET THIS STANDARD MIGHT INCLUDE SUCH ACTIONS AS SURVEYING PROFESSIONAL LITERATURE, CONSULTING WITH EXPERTS, OR EVIDENCE GAINED FROM PAST EXPERIENCE."

-- WE UNDERSTAND FROM OTS [REDACTED] OMS, AND THE SERE PSYCHOLOGISTS ON THE INTERROGATION TEAM THAT THE PROCEDURES DESCRIBED ABOVE SHOULD NOT PRODUCE SEVERE MENTAL OR PHYSICAL PAIN OR SUFFERING; FOR EXAMPLE, NO SEVERE PHYSICAL INJURY (SUCH AS THE LOSS OF A LIMB OR ORGAN) OR DEATH SHOULD RESULT FROM THE PROCEDURES; NOR WOULD THEY BE EXPECTED TO PRODUCE PROLONGED MENTAL HARM CONTINUING FOR A PERIOD OF MONTHS OR YEARS (SUCH AS THE CREATION OF PERSISTENT POSTTRAUMATIC STRESS DISORDER), GIVEN

THE EXPERIENCE WITH THESE PROCEDURES AND THE SUBJECT'S RESILIENCE TO DATE.

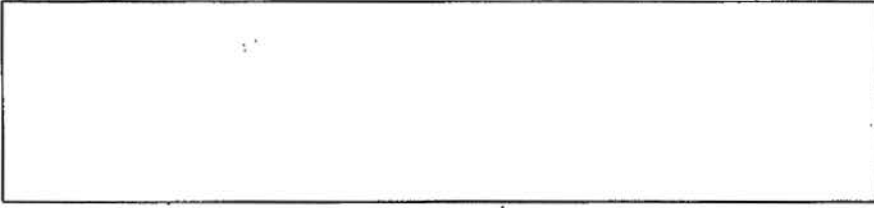
-- ACCORDINGLY, THE TEAM LAWFULLY MAY EMPLOY THOSE PROCEDURES CONTAINED IN REF AND MAY ALSO EMPLOY USE OF THE WATER BOARD. PLEASE NOTE THAT THE "MOCK BURIAL" TECHNIQUE HAS NOT/NOT BEEN APPROVED FOR LEGAL AND POLICY REASONS.

-- WATER BOARD: WITH THIS PROCEDURE, INDIVIDUALS ARE BOUND SECURELY TO AN INCLINED BENCH. INITIALLY A CLOTH IS PLACED OVER THE SUBJECT'S FOREHEAD AND EYES. AS WATER IS APPLIED IN A CONTROLLED MANNER, THE CLOTH IS SLOWLY LOWERED UNTIL IT ALSO COVERS THE MOUTH AND NOSE. ONCE THE CLOTH IS SATURATED AND COMPLETELY COVERING THE MOUTH AND NOSE, SUBJECT WOULD BE EXPOSED TO 20 TO 40 SECONDS OF RESTRICTED AIRFLOW. WATER IS APPLIED TO KEEP THE CLOTH SATURATED. AFTER THE 20 TO 40 SECONDS OF RESTRICTED AIRFLOW, THE CLOTH IS REMOVED AND THE SUBJECT IS ALLOWED TO BREATHE UNIMPEDED. AFTER 3 OR 4 FULL BREATHS, THE PROCEDURE MAY BE REPEATED. WATER IS USUALLY APPLIED FROM A CANTEEN CUP OR SMALL WATERING CAN WITH A SPOUT.

8. WHILE DOJ/OLC FOUND THAT USE OF THE WATER BOARD POSES AN IMMINENT THREAT OF DEATH AS USED IN THE STATUTE, IT ALSO FOUND THAT NO PROLONGED MENTAL HARM ATTACHES TO ITS USE AND ITS USE DOES NOT HAVE THE SPECIFIC INTENT TO INFLICT SEVERE PAIN OR SUFFERING; THEREFORE, USE OF THE WATER BOARD DOES NOT VIOLATE THE STATUTE.

9. AS WE ANTICIPATE THAT ABU ZUBAYDAH WILL PROTEST VIGOROUSLY AS A RESULT OF THIS NEW PHASE, WE WOULD LIKE TO EXPAND ON PREVIOUS GUIDANCE ABOUT DECISION AUTHORITY (ALEC ). STANDARD GUIDANCE IS THAT HQS SHOULD BE CONSULTED (VIA  IF NECESSARY) SHOULD ANY MEMBER OF THE TEAM OR ON-SITE PERSONNEL SUGGEST/REQUEST THAT THE INTERROGATION BE HALTED FOR ANY REASON. HOWEVER, SHOULD A SITUATION ARISE THAT WOULD NECESSITATE AN IMMEDIATE DECISION BY BASE, THE FINAL DECISION MUST REST WITH BOTH COB AND THE SENIOR CTC OFFICER, AFTER CONSULTATIONS WITH ALL MEMBERS OF THE TEAM. BOTH COB AND THE SENIOR CTC OFFICER MUST BE IN AGREEMENT BEFORE ANY ACTION IS TAKEN. AGAIN, WE ANTICIPATE THAT THIS WILL BE IN ONLY THE MOST EXTREME CASES.

10. GOOD LUCK.



END OF MESSAGE