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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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<http://www.house.gov/judiciary>

April 8, 2008

By Fax and U.S. Mail

Professor John Choon Yoo
University of California, Berkeley
School of Law
890 Simon Hall
Berkeley, CA 94720

Dear Professor Yoo:

I write to invite you to appear before the Committee on the Judiciary at our May 6 hearing scheduled to explore issues regarding the nature and scope of Presidential power in time of war and the current Administration's approach to these questions under U.S. and international law. Among the subjects likely to be explored at the hearing are United States policies regarding interrogation of persons in the custody of the nation's intelligence services and armed forces, matters addressed in some detail in opinions that you authored during your service as Deputy Assistant Attorney General in the Office of Legal Counsel. Given your personal knowledge of key historical facts, as well as your academic expertise, your testimony would be invaluable to the Committee on these subjects.

I understand that, in discussions with my staff, you have expressed reluctance to testify voluntarily on such matters. I am hopeful that you have reconsidered that stance, however, given your extensive public comments on these very issues. For example, on April 3, 2008, Esquire magazine published an interview in which you made frank and on-the-record comments regarding the origination, drafting, and scope of OLC interrogation memoranda.¹ Similarly, you provided on-the-record comments on the recently released March 2003 interrogation memorandum to the Washington Post just last week, describing that document as "near boilerplate" and asserting that, in pulling back from the analysis in that memorandum, the

¹ Richardson, "Torture Memo" Author John Yoo Responds to This Weeks Revelations, Esquire Magazine, April 3, 2008, available at <http://www.esquire.com/the-side/qa/john-yoo-responds>.

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Department had "ignored [its] long tradition in defending the President's authority in wartime."² Overall, you have made such extensive public comments on these and related matters, that it is extremely difficult to understand why you would continue to decline to present your views to the Committee.

To the extent you have raised concerns with my staff that some questions on these matters might call for responses that you believe would be covered by executive privilege or that would implicate executive confidentiality interests, I am confident such concerns can be effectively managed in a setting where you are voluntarily appearing before the Committee. Indeed, just two months ago, Principal Deputy Assistant Attorney General in the Office of Legal Counsel Steven Bradbury testified before the Committee on many legal issues raised by Administration policy on the interrogation of detainees. If the current head of OLC was able to testify on these matters, and especially given that OLC's current interrogation memoranda remain classified unlike at least some of the opinions that you authored, I can see no principled basis on which you might decline to appear.

During your recent executive branch service to the Nation, you played a key role in momentous, and controversial, events of great interest to all Americans. And I am sure that, from your prior service as General Counsel to the Senate Judiciary Committee, you would agree that it is the unique responsibility of Congress, the representative branch, to explore such issues and to bring relevant information to light. As you once wrote, "Congress' power to conduct such inquiries inheres in its power to study and pass legislation, and it has used this power from the very beginning of the Republic to investigate maladministration in the Executive Branch, to determine whether social conditions require new legislation, and to review the success of existing laws."³

In that vein, let me repeat my hope that you will voluntarily appear before the Committee on May 6. If that date poses a particular scheduling problem, please contact my staff as described below and we will be happy to discuss reasonable alternatives. Should you continue to refuse to testify on a cooperative basis, however, the Committee must of course proceed with its investigation and will be left with no option but to compel your appearance.

Thank you for your careful consideration of this invitation. So that we may plan accordingly, please contact Committee staff at (202) 225-3951 as soon as possible and no later than the close of business on Thursday, April 17, 2008, to discuss the details of your appearance.

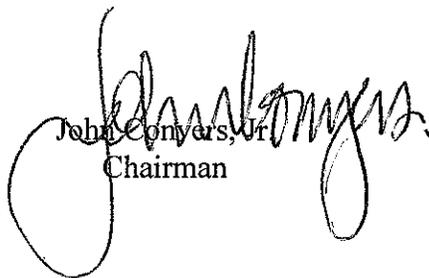
² Eggen and White, *Memo: Laws Didn't Apply to Interrogators*, Washington Post, April 2, 2008.

³ Yoo, *Lawyers in Congress*, 61 *Law & Contemp. Probs.* 1, 16 (Spring 1998) (footnotes omitted).

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Any further responses and questions should similarly be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951, fax:: 202-225-7680).

Sincerely,


John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Hon. Brian A. Benczkowski