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UNITED STATES SENATE

September 15, 2006

The Honorable Condoleezza Rice
Secretary of State
United States Department of State
2201 C Street, NW, Suite 7226
Washington, D.C. 20451

Dear Secretary Rice:

In your letter to Senator Warner, you asserted that the Administration's proposal for military commissions is sufficient to satisfy our obligations under Common Article 3 of the Geneva Conventions. You state that in the "case where the treaty's terms are inherently vague, it is appropriate for a state to look to its own legal framework, precedents, concepts, and norms in interpreting these terms and carrying out its international obligations."

As a signatory to the Geneva Conventions, the United States has agreed, under Common Article 3, to carry out sentences and executions only after "previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people."

Given your premise and the obligation cited above, where in American jurisprudence do you find support for the concept that a person accused can be tried and convicted on evidence which that person has no opportunity to see, confront, or rebut?

Further, if a CIA paramilitary operative were captured in Iran and put on trial by the Iranian government as an unlawful enemy combatant and the Iranian prosecutor provided evidence to the judge and jury marked secret to convict the American agent that he would never see or rebut, would you object to this procedure as a violation of Common Article 3? If the Iranian government provided a defense attorney to the agent and their rules prevented the defense attorney from discussing the evidence presented to the jury with his client, would we object on behalf of the American agent as this procedure being a violation of their Common Article 3 obligations?

Madame Secretary, I can assure you that I would object to such a trial with every ounce of my being and I am afraid the Administration's proposal legitimizes convictions by the use of secret evidence that the accused is unable to rebut. Not only would this procedure put in jeopardy our military and civilian personnel fighting the War on Terror, it would surely never survive judicial scrutiny by our own courts.

I look forward to your timely response and continuing to work with you and Administration to solve these difficult questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Graham", written over the word "Sincerely,".

Lindsey O. Graham
United States Senator