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Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

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January 24, 1990

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MAJORITY—225-3951
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The Honorable Richard L. Thornburgh
 Attorney General of the United States
 Department of Justice
 Washington, D.C. 20530

Dear Mr. Attorney General:

On December 7, 1989, I wrote to you about the Subcommittee's request for a copy of an Office of Legal Counsel opinion on FBI "snatch authority." Recently, we had an opportunity to do some further research regarding disclosure of OLC opinions, which indicates that prior Attorneys General, other Department officials and officials in other agencies who received OLC opinions have provided them to various Congressional oversight committees.

For example, in 1983-84, the Committee on the Judiciary investigated the role of the Department of Justice in the withholding of certain EPA documents from the Congress. In the course of that investigation, the Justice Department provided the Committee with a 1984 OLC opinion addressed to the Attorney General, which is reprinted in the appendix to the Committee's report.

Additionally, the appendix to the EPA report contains a memorandum from Ronald Reagan dated November 4, 1982, stating:

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.... Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue....

In April 1986, the House Committee on Government Operations conducted a hearing on regulations governing access to Nixon Presidential materials. Charles Cooper, Assistant Attorney General, Office of Legal Counsel, testified and submitted for the record an OLC opinion he had prepared at the request of OMB. The opinion is reprinted in the hearing record after Mr. Cooper's testimony.

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Moreover, the appendix to that hearing contains a letter from John Bolton, Assistant Attorney General for Legislative Affairs, to Chairman Glenn English noting that Justice was "anxious to cooperate to the greatest extent possible with the Subcommittee's inquiry." Referring specifically to the OLC opinion requested by the Subcommittee, Mr. Bolton stated, "We hope to satisfy members of the Subcommittee and others who may disagree with our legal opinion that the opinion is consistent with governing legal authorities, is soundly reasoned, and in any event represents OLC's best, independent legal analysis of the questions presented. Accordingly, we are willing ... to furnish to the Subcommittee ... the Office of Legal Counsel opinion" Mr. Bolton noted that one category of documents would be withheld, namely those that "reflect the purely internal deliberations and work products of Justice Department attorneys." This suggests that OLC opinions were not considered internal deliberative documents.

In addition to the foregoing and the examples listed in my December 7 letter, we found the following instances within the last decade in which OLC opinions were provided to Congressional committees and printed in hearing transcripts.

-- March 1982. The House Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings on the implementation of the Equal Access to Justice Act. The appendix to the printed transcript of the hearings contains an OLC opinion to John Fowler of the Department of Transportation.

-- March 1983. Donald J. Devine's prepared statement before the House Subcommittee on Civil Service contained a copy of Theodore Olson's OLC opinion for Fred F. Fielding, Counsel to the President, which was reprinted in the transcript.

-- June 1983. In testimony before the House Subcommittee on Administrative Law and Governmental Relations, Christopher DeMuth of OMB cited two OLC opinions in his prepared statement, and the opinions were reproduced in full in the hearing appendix.

-- June 1983. In the course of testifying before the House Subcommittee on Immigration, Refugees, and International Law, Assistant Attorney General Theodore Olson included for the record a copy of his OLC opinion for David W. Crosland of INS.

-- August 1986. At a hearing before the House Committee on Government Operations on oversight of the Office for Civil

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Rights at the Department of Health and Human Services, Assistant Attorney General Charles Cooper testified and submitted for the record an OLC opinion to Ronald E. Robertson of the Department of Health and Human Services.

-- June 1987. In testimony before this Subcommittee on the Fair Housing Amendments Act of 1987, Assistant Attorney General William Bradford Reynolds asked that two OLC opinions addressed to him be made part of the record.

There are undoubtedly other instances in which OLC opinions were provided to Congressional committees but not made part of any hearing record.

As before, this controversy can be resolved simply by authorizing the FBI to release the opinion to us. The above evidence indicates that this action would be fully consistent with the past practices of the Department of Justice.

Sincerely,



Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jdb