



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 23, 2009

The Honorable Carl Levin
Chairman
The Honorable John McCain
Ranking Minority Member
Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Chairman Levin and Ranking Member McCain:

This letter expresses the strong support of the Department of Justice for the Levin-Graham-McCain amendment to S. 1390, the "National Defense Authorization Act for Fiscal Year 2010," regarding classified information procedures for military commissions.

The amendment would establish a system for addressing classified information issues in military commissions that is similar to the system provided by the Classified Information Procedures Act ("CIPA") for criminal cases prosecuted in Federal court. Although CIPA might need to be updated in some respects to address terrorism cases more effectively, we believe it has generally worked well both in protecting national security and ensuring fair proceedings. The Levin-Graham-McCain amendment adapts CIPA to the military commissions context, with some modifications to reflect lessons learned from past terrorism prosecutions. The amendment expressly provides that the judicial construction of CIPA shall, in most instances, be authoritative in interpreting the analogous provisions in the amendment. It sets substantive standards for providing the defense access to classified information in the discovery phase, and for the use of classified information at trial. It also establishes a range of tools and procedures, such as protective orders, *ex parte* hearings, alternatives to disclosure of classified information, expanded interlocutory appeal rights, and sanctions for failure to comply, that will provide appropriate guidance to military judges in handling these complex issues as they arise in the course of military commission proceedings.

The Department of Justice consulted at length with committee staff as they developed this amendment, and we are grateful for their work on this important issue. We believe the amendment will advance the President's objective of reforming the commissions and ensuring that they are a fair, legitimate, and effective forum for the prosecution of law of war offenses.

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The Honorable John McCain
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The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Ronald Weich
Assistant Attorney General