Brennan Center for Justice | Transparency in the First 100 Days: A Report Card

Subject	Administration's Action	Recommendation	Grade
Open Government			
1. "Day One" emphasis on transparency	Signaled commitment to transparency by issuing transparency orders and statements on "Day One"	Back up the promises with action – particularly in matters pertaining to civil liberties and national security	A*
2. Freedom of Information Act guidelines	Issued order/memorandum restoring presumption of disclosure under FOIA; agreed to stay some cases, not others	Conduct thorough review of all pending cases; strictly apply presumption of disclosure to all requests	A-*
3. Public access to policy-making	Invited public input on transparency policy, but not on interrogation or Guantánamo task forces	Direct the task forces to inform the public about how they are operating and solicit public input on policy options	B
4. Media's right to report	Opened Dover Air Force Base to reporters; stated qualified support for media shield law	Support a carefully tailored national security exception to the media shield law	A-
Presidential Records/Communications			
5. Litigation over White House e-mails	Opened settlement talks on litigation regarding e-mails "lost" by Bush White House	Agree to a process for reconstructing and releasing the e-mails and ensuring proper retention of electronic records going forward	Incomplete
6. Litigation over congressional subpoenas for White House aides' testimony	Facilitated settlement allowing Congress to obtain information from Bush White House aides Karl Rove and Harriet Miers	Reject Bush's claim of absolute testimonial immunity; support the Brennan Center's forthcoming proposal for an Executive Privilege Codification Act	B
7. Executive order on Presidential Records Act	Issued executive order limiting former presidents' ability to block public access to records	Carefully assess privilege claims by former presidents and limit public access to presidential records only when strictly necessary	A*
8. Transparency of President's schedule	Has added private meetings and written read-outs of calls to public schedule	Develop and disclose criteria for placing items on public schedule; make schedule available on White House website	A-/B+

Secret Law			
9. Release of OLC opinions	Released several key Bush-era OLC opinions; others pending	Provide an exhaustive list of unreleased OLC memoranda and promptly release them, redacting only properly classified information	A-
10. Nomination of Dawn Johnsen	Nominated champion of OLC transparency to head the office	Strongly defend Johnsen's nomination	A
11. Transparency of signing statements	Identified statutory provisions and objections to those provisions with relative specificity	Specify every objectionable statutory provision … or even better, cease reliance on this type of signing statement	B
Accountability			
12. Use of state secrets privilege	Invoked overbroad claims of privilege in three key cases	File supplemental briefs withdrawing overbroad privilege claims; support the State Secrets Protection Act	F
13. Defense of immunity for telecom companies	Is defending immunity for telecom companies that violated the Foreign Intelligence Surveillance Act by assisting in Bush's warrantless wiretapping program	Promote and support legislation overriding the statutory immunity provision and/or withdraw Attorney General Mukasey's certification	D
14. Position on independent commission of inquiry	Opposes a commission of inquiry to examine torture and other counter-terrorism abuses	Support the commission proposal and use the influence of the Office of the President to gain support in Congress and the public	C-/D+
15. Signing statement on whistleblower protection	Declared authority to disregard, in some instances, statutory provision designed to protect executive branch whistleblowers	Publicly commit to prohibiting interference with, or retaliation for, government employees' efforts to disclose government waste, fraud, or abuse; support legislation to strengthen whistleblower protections	C-*