MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN ‘ATASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	**AE551N (AAA)** **Mr. al Baluchi’s Notice of** Government Noncompliance with RTMC 19-4(c) and AE551I Ruling 6 March 2020

1. **Timeliness:** This motion is timely filed.

2. **Notice:**

The military commission website has now released AE628RRRRR Notice of Exhibits, which was the subject of AE551M (AAA) Motion to Compel Immediate Public Release of AE628RRRRR. But rather than release the unclassified information in AE628RRRRR Attachments C-E, the government redacted every word of those 81 pages of evidence.

During the examination of Drs. Mitchell and Jessen, the military commission recommended that Mr. al Baluchi rely on the release of relevant evidence to the public by the military commissions website. For example, on 31 January 2020, counsel for Mr. al Baluchi had the following colloquy with the military commission:[1]

[1] Unofficial/Unauthenticated Transcript of 31 January 2020 at 32508.

MJ [Col COHEN]: No, absolutely. My point is that this doesn't mean that you aren't using the evidence. I mean, the evidence is -- the evidence is admitted, right? I mean, Ms. Bormann said the other day is, is, you know, well this is -- it is. The moment you filed it with me, it became part of the record. I've even made it very clear that if there are unclassified documents that you all want to be -- be able to get out in a more expeditious manner so that the public can review your evidence, I definitely want you to do that.

ADC [MS. PRADHAN]: Yes, sir.

Counsel for the government further explained that they considered the information referenced in Attachments C-E of AE628RRRRR to be unclassified:[2]

TC [MR. GROHARING]: Judge, just briefly, our objections are not based in -- this is unclassified information. We have no objection to that being released to the public through the normal process. No objection whatsoever in that regard.

The military commission heard oral argument on AE551M (AAA) on 20 February 2020. As explained by counsel for Mr. al Baluchi, Attachments C-E to AE628RRRRR, declassified and marked U//FOUO, are critical to public's understanding of the context in which suppression witnesses are being examined by Mr. al Baluchi. During oral argument, counsel for the government explained that 12 days had elapsed since the filing of AE628RRRRR, and that "there is a rule that states the OIC of the review team should alert the chief clerk if that 15 business days

[2] *Id*. at 32509.

is going to be exceeded or likely to be exceeded."[3] Additionally, the government acknowledged that the information in Attachments C-E was relevant to the suppression witnesses.[4]

The "Cases" section of the military commission website was inoperable for a period of time encompassing at least 26 February – 5 March 2020. On 5 March 2020, counsel for Mr. al Baluchi accessed the publicly released version of AE628RRRRR on the military commissions website. The publicly released version of AE628RRRRR redacts the existence of Attachments C-E from the notice of exhibits, and every page of those U//FOUO attachments is completely blacked out.

3. **Attachments:**

A. Certificate of Service

B. AE628RRRRR(AAA) Mr. al Baluchi's Notice of Exhibits (publicly released version)

Very respectfully,

//s//
JAMES G. CONNELL, III
Learned Counsel

//s//
STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

//s//
ALKA PRADHAN
Defense Counsel

//s//
BENJAMIN R. FARLEY
Defense Counsel

//s//
ANN MARIE BUSH
Maj, USAF
Defense Counsel

Counsel for Mr. al Baluchi

[3] Unofficial/Unauthenticated Transcript of 20 February 2020 at 33057: "I went through [the 82 pages of material at Attachments C-E] pretty carefully . . . if a witness is on the stand and they're going to put different pages in front of them, I believe given the motion to suppress here that's before the commission, a lot of that material will wind up being relevant."
[4] *Id*. at 33064.

Attachment A

CERTIFICATE OF SERVICE

I certify that on the 6th day of March, 2020, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//
JAMES G. CONNELL, III
Learned Counsel

Attachment B

MILITARY COMMISSIONS TRIAL JUDICIARY,
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	~~(U)~~ **AE628RRRRR (AAA)** **CORRECTED COPY*** ~~(U)~~ **Defense Notice of Exhibits** ~~(U)~~ 29 January 2020

~~(U)~~ 1. The attached exhibits are submitted in support of the evidentiary hearing in the AE628 series.

~~(U)~~ **2. Attachments:**

A. ~~(U)~~ Certificate of Service (U)

B. ~~(U)~~ AAA-RDI-007076 – AAA-RDI-007089 (U)

[redacted]

* Corrected copy is submitted to remove a page that the government inadvertently produced.

~~FOR OFFICIAL USE ONLY ATTACHMENTS~~

~~(U)~~ Very Respectfully,

~~(U)~~ //s//
JAMES G. CONNELL, III
Learned Counsel

~~(U)~~ //s//
STERLING R. THOMAS,
Lt Col, USAF
Defense Counsel

~~(U)~~ //s//
ALKA PRADHAN
Defense Counsel

~~(U)~~ //s//
BENJAMIN R. FARLEY
Defense Counsel

~~(U)~~ //s//
MARK E. ANDREU
Capt, USAF
Defense Counsel

~~(U)~~ *Counsel for Mr. al Baluchi*

~~(U)~~ Attachment A

~~(U)~~ **CERTIFICATE OF SERVICE**

~~(U)~~ I certify that on the 29th day of January 2020, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

~~(U)~~ //s//
JAMES G. CONNELL, III
Learned Counsel

~~(U)~~ Attachment B

AAA-RDI-007076

Approved for Release: 2017/12/01 C06630764

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

(b)(3) NatSecAct

SUBJECT: EYES ONLY - [redacted] ON ABU ZUBAYDAH AS OF 2300 HOURS

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

TOR: 181656Z JUN 02 (b)(1) 10487
(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

(b)(3) NatSecAct

SUBJECT: EYES ONLY - [redacted] ON ABU ZUBAYDAH AS OF 2300 HOURS
TIME: 18 JUNE 2002

REF: A. [redacted] 10484
B. [redacted] 10482
C. [redacted] 10483
D. [redacted] 10300

(b)(3) NatSecAct

(b)(1)
(b)(3) NatSecAct

TEXT:

1. ACTION REQUIRED: -- PLEASE ENSURE THAT SUBSTANTIVE POR[redacted]
OF INFORMATION BELOW ARE SHARED WITH FBI HQS MARKED ATTENTION

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

Approved for Release: 2017/12/01 C06630764

AAA-RDI-007077

Approved for Release: 2017/12/01 C06630764

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

2. OVERALL STATE OF PLAY: AFTERNOON OF 18 JUNE 02, [redacted] INTERROGATION TEAM MEMBERS [redacted] AND FBI SA (b)(6) DELIVERED A CAREFULLY SCRIPTED MESSAGE TO ABU ZUBAYDAH (SUBJECT) AS OUTLINED IN REF B. THE SESSION WAS SHORT AND DELIBERATE LASTING FROM 1335 - 1350 HOURS.

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

Approved for Release: 2017/12/01 C06630764

Approved for Release: 2017/12/01 C06630764

(b)(1)
(b)(3) NatSecAct

THE TONE OF THE COMMENTS BY THE INTERROGATORS WAS PROFESSIONAL AND BUSINESSLIKE. THE TONE OF THE SUBJECT'S RESPONSES WERE FRUSTRATED AND AT TIMES WILDLY ANXIOUS.

SUBJECT SAT ON HIS MAT, PRAYED, AND DRANK WATER DURING THE HOUR OR TWO THAT PRECEDED THE "CRISIS PRECIPITATION" EVENT. AT 15:15, THE "CRISIS PRECIPITATION" EVENT BEGAN AS SIX SECURITY STAFF ENTERED THE SUBJECT'S CELL, HANDCUFFED HIM HIGH ON THE BARS, AND THEN HOODED HIM. THE TEAM IC PSYCHOLOGIST THEN ENTERED THE CELL AND PROCEEDED TO CUT THE SUBJECT'S CLOTHES FROM HIM FOLLOWING THE SAME PROCEDURE USED ON 19 MAY. THE SUBJECT WAS THEN RELEASED FROM THE BARS AND HAD HIS HANDS CUFFED BEHIND HIS BACK. THE IC TEAM PSYCHOLOGIST THEN PULLED THE SUBJECT TOWARD HIM USING A CONTROLLED ATTENTION GRAB (AS ROUTINELY USED IN SERE PROGRAM) AND SIMULTANEOUSLY DELIVERED A MESSAGE CONTAINING THE AGREED UPON THEMES, ESSENTIALLY TELLING THE SUBJECT THAT NO ONE WOULD TOLERATE BEING JERKED AROUND BY HIM ANYMORE WHEN THEY ASK FOR INFORMATION. SUBJECT WAS THEN TURNED BACK AROUND TOWARD THE BARS AND HANDCUFFED IN THE ROUTINE FASHION. THE IC TEAM PSYCHOLOGIST AND ALL BUT TWO OF THE SECURITY STAFF DEPARTED THE CELL. SUBJECT WAS RELEASED FROM HIS HANDCUFFS, UNHOODED, AND LEFT ALONE IN HIS CELL. THE "CRISIS PRECIPITATION" EVENT SCENARIO CONCLUDED AT 16:01. AFTER BEING LEFT ALONE, SUBJECT SLOWLY TURNED FROM THE CELL BARS AND APPEARED SOMEWHAT BEFUDDLED AND UNSETTLED. AFTER STANDING MOTIONLESS FOR SEVERAL SECONDS, HE SLOWLY STEPPED BACKWARDS AND EFFORTLESSLY LOWERED HIMSELF TO A SITTING POSITION. HE PULLED HIS LEGS UP CLOSE TO HIS BODY AND LEANED HIS BACK AGAINST THE WALL. HE SAT THERE LOOKING DEJECTED AND DISTRESSED. OUR ASSESSMENT OF HIS EMOTIONAL RESPONSES IS THAT HE WAS INITIALLY ANXIOUS, BUT THEN BECAME ANGRY WHEN HE REALIZED THAT HE HAD NOT ACTUALLY BEEN HARMED. HIS ATTITUDE AND DEMEANOR SUGGESTS THAT, AFTER HE REALIZED HE WASN'T GOING TO BE HURT, HE WAS INSULTED THAT WE WOULD TREAT HIM THAT WAY AND STARTED TO SULK.

ASSESSING SUBJECT'S RESISTANCE POSTURE:

BASED ON AN ONGOING ASSESSMENT OF THE SUBJECT'S BEHAVIOR PATTERNS A DECISION BY THE TEAM WAS MADE TO ASSESS THE SUBJECT'S RESISTANCE POSTURE AND GIVE HIM A FACE SAVING OPPORTUNITY TO PROVIDE THE REQUESTED THREAT INFORMATION.

(b)(1)
(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

Approved for Release: 2017/12/01 C06630764

AAA-RDI-007079

Approved for Release: 2017/12/01 C06630754

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

THIS SESSION ENDED WITH THE SUBJECT SAYING, "WHAT I HAVE, I GIVE IT ALL...I HAVE NO MORE." IT IS OUR OPINION THAT THE SUBJECT IS IN PART ATTEMPTING TO DEMONSTRATE TO HIS CAPTORS THAT USING PHYSICAL THREATS AGAINST HIM IS COUNTER-PRODUCTIVE.

AT THIS JUNCTURE, THE ISOLATION PHASE WAS STARTED. NEEDLESS TO SAY WE WILL CAREFULLY MONITOR SUBJECT'S BEHAVIOR AND REACTIONS OVER THE NEXT 24 HOURS.

4. THREAT UPDATE: NO NEW THREAT INFORMATION TO REPORT AS OF THIS WRITING.

5. MEDICAL UPDATE: SUBJECT'S DRESSING WAS CHANGED X 1. THE WOUND IS HEALING WELL AND VITAL SIGNS ARE STABLE. SUBJECT'S CONDITION REMAINS UNCHANGED.

6. MINIMIZE CONDITIONS CONSIDERED.

(b)(3) CIAAct
(b)(3) NatSecAct

Approved for Release: 2017/12/01 C06630754

AAA-RDI-007080

Approved for Release: 2017/12/01 C06630754

END OF MESSAGE

Approved for Release: 2017/12/01 C06630754

AAA-RDI-007081

Approved for Release: 2016/06/10 C06541506

Date: 20020715

TO: ALEC

FROM:

SUBJECT: EYES ONLY - ADDITIONAL OPERATIONAL AND SECURITY CONSIDERATIONS FOR THE NEXT PHASE OF ABU ZUBAYDAH INTERROGATION

BODY

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

(b)(3) NatSecAct PAGE 001 (b)(3) NatSecAct
TOR: 151006Z JUL 02 10536
(b)(1)
~~S E C R E T~~ 151003Z JUL 02 STAFF (b)(3) NatSecAct

(b)(1)
CITE (b)(3) NatSecAct (b)(1)
(b)(3) NatSecAct
TO: IMMEDIATE ALEC INFO DIRECTOR,

FOR: (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

SLUGS:

SUBJECT: EYES ONLY - ADDITIONAL OPERATIONAL AND SECURITY CONSIDERATIONS FOR THE NEXT PHASE OF ABU ZUBAYDAH INTERROGATION

REF: (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

TEXT:

(b)(1)
(b)(3) NatSecAct
(b)(5)

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UNCLASSIFIED//FOR PUBLIC RELEASE

AAA-RDI-007082

Approved for Release: 2016/06/10 C06541506

(b)(1)
(b)(3) NatSecAct
(b)(5)

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Source: ACLU

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AAA-RDI-007083

Approved for Release: 2016/06/10 C06541506

(b)(1)
(b)(3) NatSecAct
(b)(5)

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AAA-RDI-007084

Approved for Release: 2016/06/10 C06541506

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(5)

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AAA-RDI-007085

Approved for Release: 2016/06/10 C06541506

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(5)

IF SUBJECT DEVELOPS A SERIOUS MEDICAL CONDITION WHICH MAY INVOLVE A HOST OF CONDITIONS INCLUDING A HEART ATTACK OR ANOTHER CATASTROPHIC TYPE OF CONDITION, ALL EFFORTS WILL BE MADE TO ENSURE THAT PROPER MEDICAL CARE WILL BE PROVIDED TO SUBJECT. IN THE EVENT SUBJECT DIES WE NEED TO BE PREPARED TO ACT ACCORDINGLY KEEPING IN MIND THE LIAISON EQUITIES INVOLVING OUR HOSTS. IF SUBJECT DIES, WE PLAN ON SEEKING ASSISTANCE FOR THE CREMATION OF SUBJECT.

(b)(1)
(b)(3) NatSecAct
(b)(5)

REGARDLESS WHICH OPTION WE FOLLOW, HOWEVER, AND ESPECIALLY IN LIGHT OF THE PLANNED PSYCHOLOGICAL PRESSURE TECHNIQUES TO BE IMPLEMENTED, WE NEED TO GET REASONABLE ASSURANCES THAT SUBJECT WILL REMAIN IN ISOLATION AND INCOMMUNICADO FOR THE REMAINDER OF HIS LIFE.

(b)(1)
(b)(3) NatSecAct
(b)(5)

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AAA-RDI-007086

Approved for Release: 2016/06/10 C06541506

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(5)

END OF MESSAGE

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Approved for Release: 2016/06/10 C06541506

Hon. Justin L. Quackenbush

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

SULEIMAN ABDULLAH SALIM, MOHAMED AHMED BEN SOUD, OBAIDULLAH (AS PERSONAL REPRESENTATIVE OF GUL RAHMAN),

Plaintiffs,

v.

JAMES ELMER MITCHELL and JOHN "BRUCE" JESSEN,

Defendants.

NO. 15-CV-0286 (JLQ)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties, by and through their respective attorneys of record, hereby stipulate and agree pursuant to Fed. R. Civ. P. 41(a)(1)(A)(2) that any and all claims by plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and Obaidullah, as the personal representative of the estate of Gul Rahman, against defendants James Elmer Mitchell and John "Bruce" Jessen shall be dismissed with prejudice, pursuant to a Confidential Settlement Agreement entered into between the parties.

DATED: August 17, 2017

GIBBONS PC

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Lawrence S. Lustberg
(admitted *pro hac vice*)

DATED: August 17, 2017

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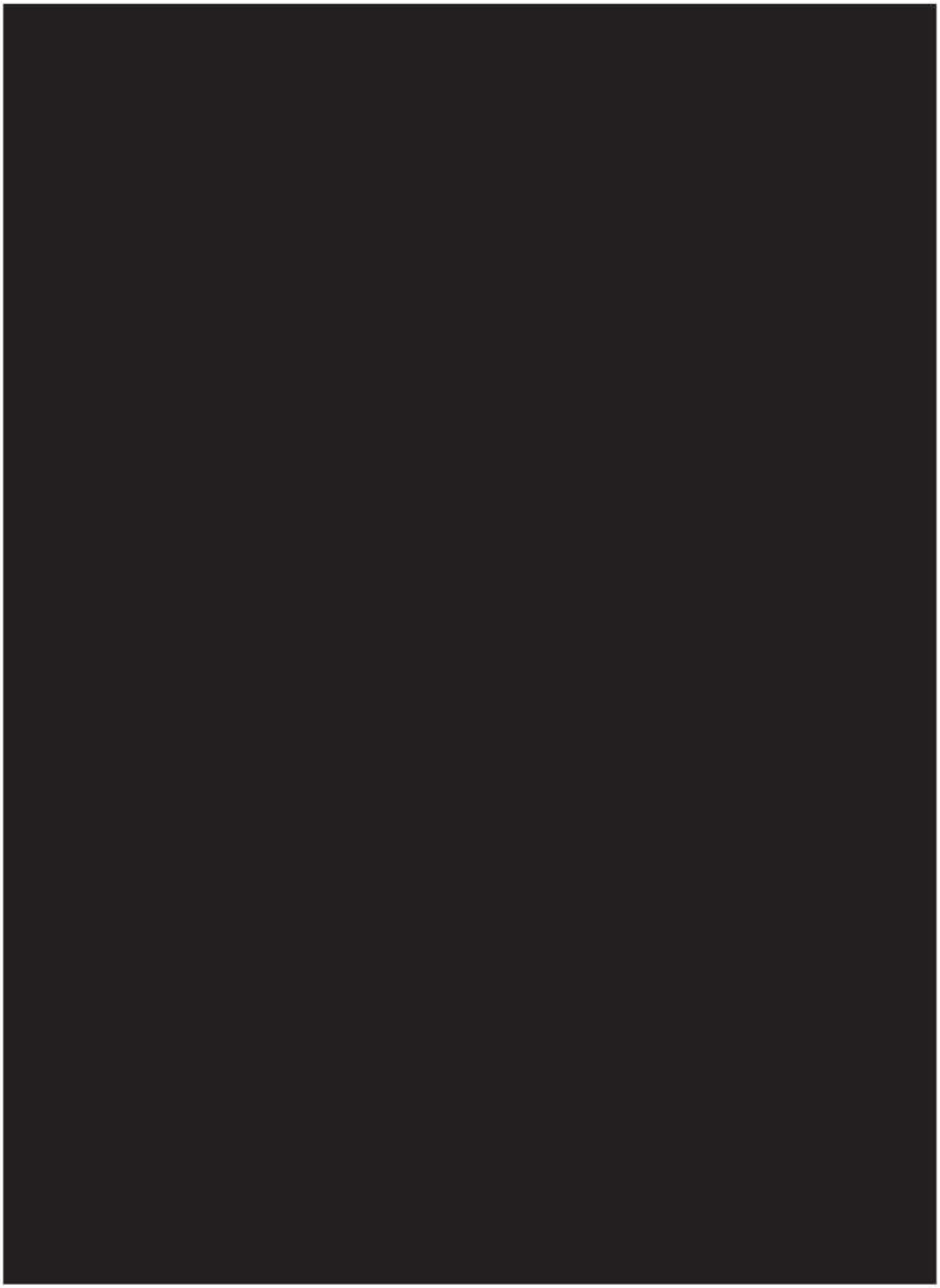
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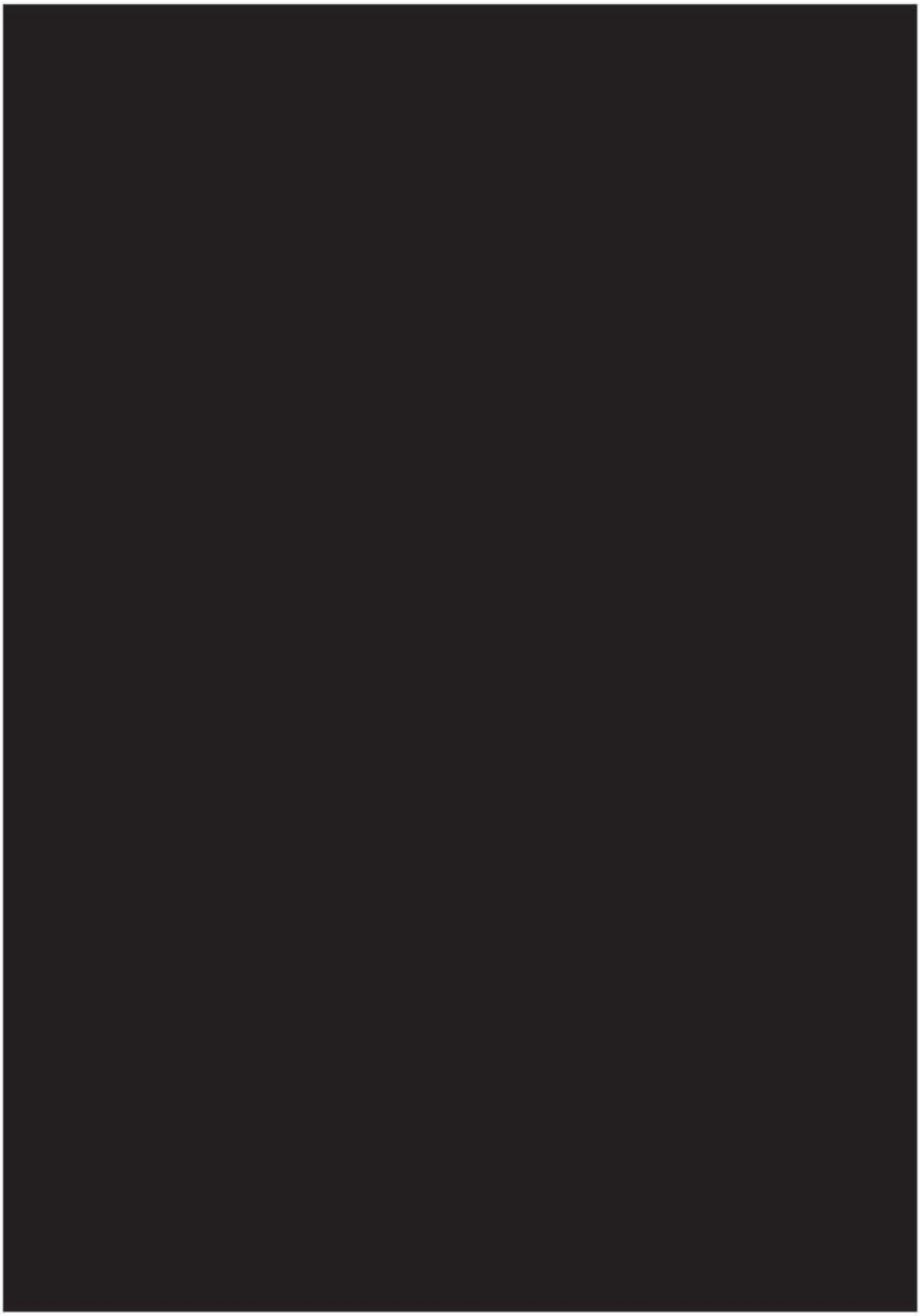


~~(U)~~ Attachment C









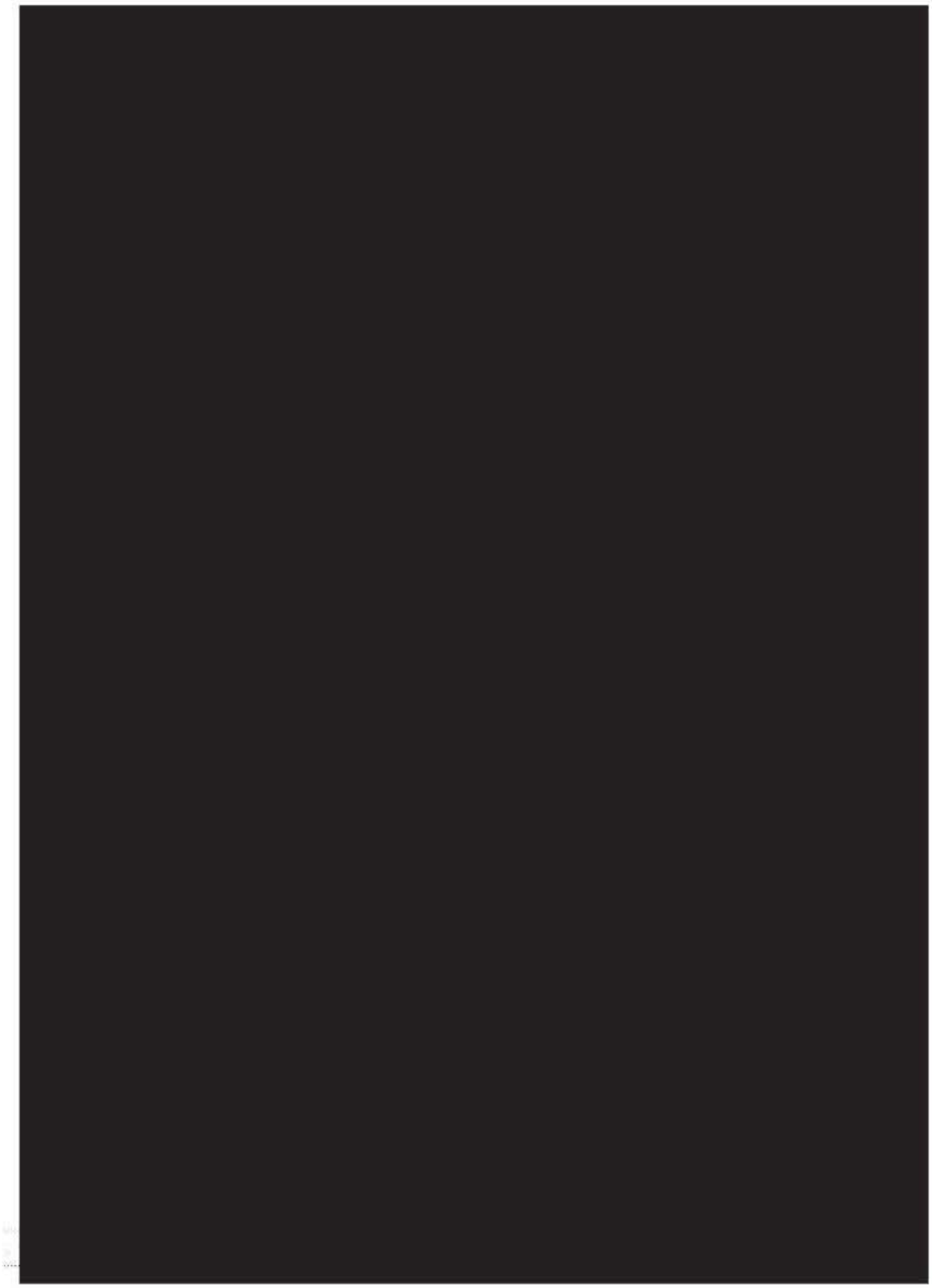










































































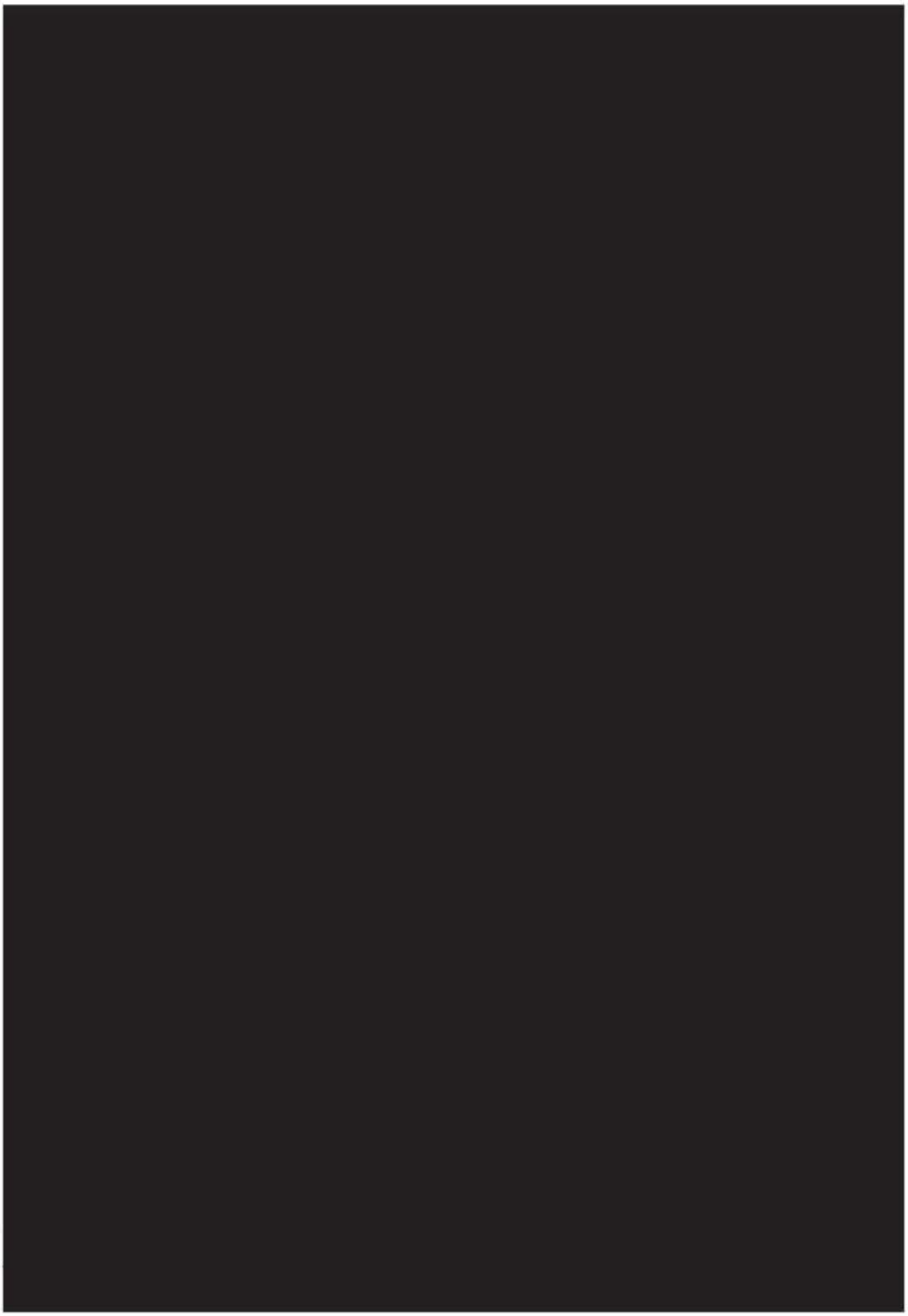






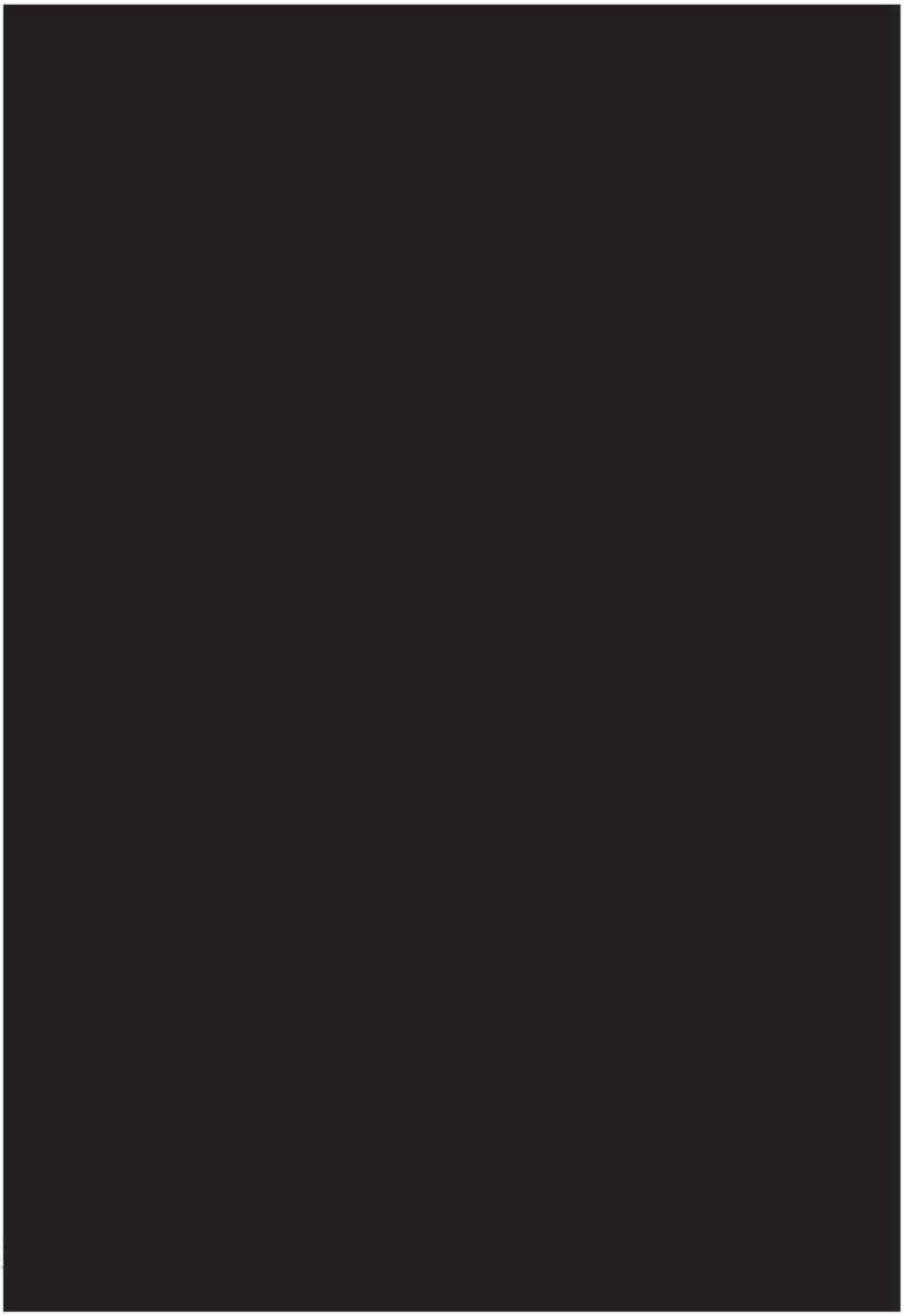








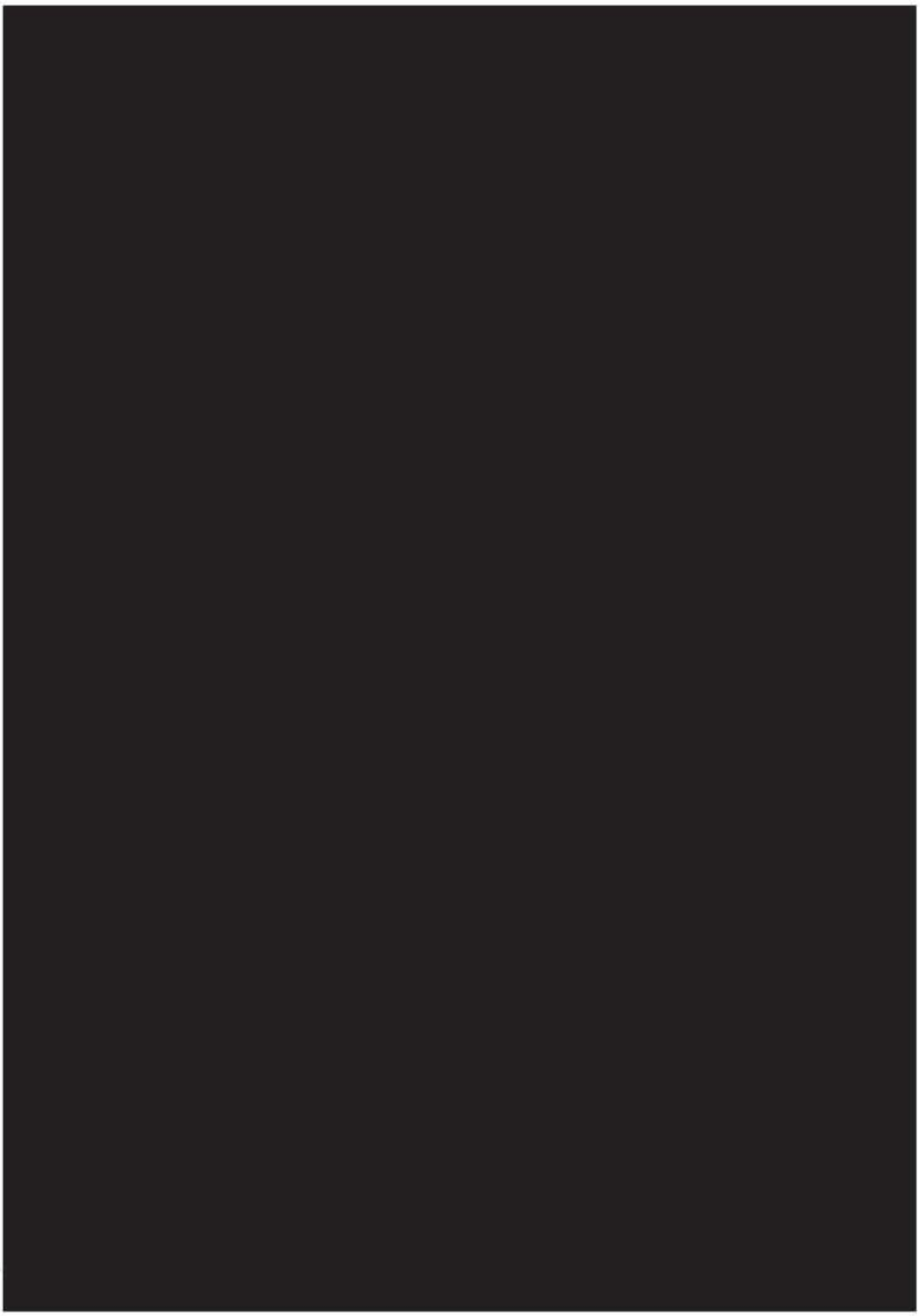






































~~(U)~~ Attachment D







~~(U)~~ Attachment E





