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From: Comey, James (ODAG)

Sent: Wednesday, April 27, 2005 5:49 PM

To: Rosenberg, Chuck

Subject: Interrogation

Chuck:

Because I will be on travel tomorrow, you asked that I update you on where we are on OLC's draft interrogation opinions.

As you know, OLC has been working for some time to complete a classified analysis of specific interrogation techniques, in the wake of the unclassified December 30, 2004 OLC memo defining torture.

As OLC has worked on the memos, one of which addresses each technique in turn, and the second of which addresses "combined effects," they have occasionally shared drafts with Pat Philbin, who has provided comments. Patrick kept me generally informed. Some weeks ago he alerted me to his

serious concerns about the adequacy of the “combined effects” analysis, particularly as it relates to the category of “severe physical suffering,” which the December 30 opinion had, for the first time, concluded was a separate category that needed to be considered in deciding whether something amounted to torture. In particular, Pat reported that he was repeatedly marking up drafts to highlight the inadequacy of the analysis under that category -- especially in the combined effects memo -- only to have his comments ignored.

I then read a draft and agreed with his concerns. At a meeting last Friday with Pat, the AG, and Steve Bradbury in the AG conference room, I expressed my concerns, saying the analysis was flawed and that I had grave reservations about the second opinion. The AG explained that he was under great pressure from the Vice President to complete both memos, and that the President had even raised it last week, apparently at the VP's request and the AG had promised they would be ready early this week. He added that the VP kept telling him “we are getting killed on the Hill.” (Patrick had previously reported that Steve was getting constant similar pressure from Harriet Miers and David Addington to produce the opinions. Parenthetically, I have previously expressed my worry that having Steve as “Acting” -- and wanting the job -- would make him susceptible to just this kind of pressure.)

Yesterday morning, I got the most recent draft of the second opinion and read it. My concerns were not allayed, only heightened. Patrick felt just as strongly that this was wrong. I made some notes on the document and separately on small yellow note paper and booked time to see the AG alone at 515 pm.

In our private meeting yesterday afternoon, I told him the AG I was here to urge him not to allow the “combined effects” memo to be finalized. I told him it would come back to haunt him and the Department. I told him the first opinion was ready to go out and I concurred. I told him I did not concur with the second and asked him to stop it.

After I explained my concerns in detail, urging him to view them through the lens of hindsight that would be applied at a future hearing, he said he agreed and that I was to instruct OLC to finalize the first, but not the second, opinion and that he would speak to Harriet Miers and share the concerns. He also directed me to call John Rizzo and the CIA and give him some comfort by saying the first would be done and that we would need to do additional work on the second. Last, he asked me to try to come up with a way to alter the second opinion to address the concerns I raised.

I informed Patrick and asked him to direct OLC, which he did. I also suggested a possible way to narrow the focus of the second opinion to be more responsible. Patrick reported back that he spoke to Steve, who seemed "relieved" that we would not be sending out the second memo as is.

Today, I left a message for Rizzo. Patrick came to me a short while ago to tell me he had met with Steve and Ted Ulliot (who is apparently now read-in). After visiting the WH today, the AG's instructions were that the second opinion was to be finalized by Friday, with whatever changes we thought appropriate. Pat explained to me (as he had to them) that we couldn't make the changes I thought necessary by Friday. I told him to go back to them and reiterate that fact and the fact that I would oppose any opinion that was not significantly reshaped (which would involve fact gathering that we could not complete by Friday).

Please stay in touch with Pat on this. He has been very strong and principled, as usual, but they will put a lot of pressure on him in my absence. Keep me posted.

Jim

-----Original Message-----

From: Comey, James (ODAG) <James.Comey@[REDACTED]>  
To: Rosenberg, Chuck <Chuck.Rosenberg@[REDACTED]>  
Sent: Thu Apr 28 20:33:45 2005  
Subject: Re: Interrogation

Chuck:

I just finished a long call from Ted Ulyot. He said he was calling to tell me that "circumstances" were likely to require that the second opinion "be sent over tomorrow." He said Pat had shared my concerns, which he understood as concerns about the prospective nature of the opinion and its focus on "prototypical" interrogation.

I responded by telling him that was a small slice of my concerns, which I then laid out in detail, just as I had for the AG. I told him that this opinion would come back to haunt the AG and DOJ and urged him not to allow it.

He asked if I felt like I had had the chance to adequately air my views with the AG. I told him I had, so much so that the AG had agreed with me, which left me puzzled about the need to send the opinion now.

I told him that the people who were applying pressure now would not be

there when the \_\_\_ hit the fan. Rather, they would simply say they had only asked for an opinion. It would be Alberto Gonzales in the bullseye. I told him that my job was to protect the Department and the AG and that I could not agree to this because it was wrong. I told him it could be made right in a week, which was a blink of an eye, and that nobody would understand at a hearing three years from now why we didn't take that week.

I suggested to him that he explain to the White House that "that [\_\_\_\_\_] DAG" (my words) had gone on record against this, which would jam them in the future, so we needed to wait. I told him I was leaving and was perfectly willing to catch that spear, as I had in other contexts.

He mentioned at one point that OLC didn't feel like it could accede to my request to make the opinion focused on one person because they don't give retrospective advice. I said I understood that, but that the treatment of that person had been the subject of oral advice, which OLC would simply be confirming in writing, something they do quite often.

At the end, he said that he just wanted me to know that it appeared the second opinion would go tomorrow and that he wanted to make sure I knew that and wanted to confirm that I felt I had been heard. I told him I understood, that I had been heard, and that I was sorry to be so blunt, but that I was opposed and believed this was a big mistake.

I then spoke to Patrick, and relayed the above. He asked if I thought I should reach out to the AG and ask him what had happened. I told him I didn't see a need, given that I had just said things to his chief of staff that would have lit the prior AG's COS's hair on fire.

He pointed out that Ayres would never allow this and never allow the AG to be in such jeopardy. I said that I thought perhaps Ted didn't yet have a clear enough sense of who his principal was. Pat agreed that everyone seemed to be thinking as if they still work at the White House and not the United States Department of Justice.

Anyway, that's where we are. It leaves me feeling sad for the Department and the AG. I don't know what more is to be done, given that I have already submitted my resignation. I just hope that when all of this comes out, this institution doesn't take the hit, but rather the hit is taken by those individuals who occupied positions at OLC and OAG and were too weak to stand up for the principles that undergird the rest of this great institution.

Once again, Patrick Philbin has been the voice of intellectual rigor and honesty, and principle. The world will never know what a hero that young man is. With Jack Goldsmith, he managed to rescue the president and executive branch from disaster on that other classified program. He has tried to do the same on interrogation, but he (and I) have not carried the day.

People may think it strange to hear me say I miss John Ashcroft, but as intimidated as he could be by the WH, when it came to crunch-time, he stood up, even from an intensive care hospital bed. That backbone is gone.

I will let you know if I hear more.

Jim

## Comey, James (ODAG)

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**From:** Comey, James (ODAG)  
**Sent:** Tuesday, May 31, 2005 7:05 PM  
**To:** Rosenberg, Chuck

Pat Philbin and I met with the AG and Steve Bradbury this morning to prep the AG for his NSC PC.

The AG began by saying that Dr. Rice was not interested in discussing details and that her attitude was that if DOJ said it was legal and CIA said it was effective, then that ended it, without a need for detailed policy discussion. Pat and I urged the AG in the strongest possible terms to drive a full policy discussion of all techniques. I said I was not going to rehash my concerns about the legal opinion, but that it was simply not acceptable for Principles to say that everything that may be "legal" is also appropriate. In stark terms, I explained to him what this would look like some day and what it would mean for the President and the government. I sketched out for him the "summation" that could be made to demonstrate that some of this stuff is simply awful. I told him it would all come out some day and be presented in the way I was presenting it. I mentioned that I had heard there was a video of an early session, which would come out eventually.

I told him that it was simply not fair to him or to this institution for him to allow a truncated discussion because DOJ had rendered a legal opinion. To allow that would bring great damage to him and this department. I explained that even he and Bradbury believed that the legal question was extremely close; given that, and the details of what we are talking about, there needed to be a detailed factual discussion, followed by a full policy discussion. It would land on the President eventually and it simply could not be that the Principles would be willfully blind. At the close of the meeting, I gave him a card on which I had written a listing of all techniques, including some things that never get mentioned because they are "preliminary." He took it with him.

Late this afternoon, after our sentencing discussion, the AG spoke to me in front of the sentencing meeting participants. He said the meeting had gone very well, and that there had been a full factual and policy discussion. He said the issues were fully presented and he had drawn my "worst-case scenario" for them. At the end, he said, all Principles approved the full list. He gave me no details. I relayed this to Pat Philbin just a few minutes ago. Both of us were quite surprised at that report, but agreed that we did not know exactly what had been presented and discussed, which is a vice -- and, to some, a virtue -- of the "Principles Only" meeting.

Jim