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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