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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