

Newly Released E-Mails Reveal Cheney Pressured DOJ to Approve Torture

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Global Research, December 14, 2014
[Public Record](#) 7 June 2009

Region: [USA](#)

Theme: [Crimes against Humanity](#),
[Intelligence](#), [Law and Justice](#), [Terrorism](#)

Originally published in August 2009,

Today Cheney is on the defensive, following the release of the Senate report on Torture.

One of Comey's 2005 e-mails said then Attorney General Alberto Gonzales was "weak" and had essentially allowed Cheney and Addington to politicize the Justice Department. The e-mails can be found here: [Documents: Justice Department Communication on Interrogation Opinions](#).

"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," Comey wrote. Gonzales "added that the VP kept telling him 'we are getting killed on the Hill.'"

"It leaves me feeling sad for the Department and the AG... I just hope that when this all comes out, this institution doesn't take the hit, but rather the hit is taken by those individuals who occupied positions at [Office of Legal Counsel] and [Office of the Attorney General] and were too weak to stand up for the principles that undergird the rest of this great institution."

The New York Times obtained the e-mails, which were likely used to help form the narrative of a Justice Department watchdog's report that will determine whether Office of Legal Counsel attorneys violated professional standards when authorizing the Bush administration's interrogation program.

But the Times appears to have seriously mischaracterized the substance of some of Comey's e-mails in a story the newspaper published Saturday.

The Times reported that Comey "went along with a 2005 legal opinion asserting that the techniques used by the Central Intelligence Agency were lawful." But the issue is much more complex than that.

Comey's e-mails tell a far more disturbing story about the way in which the Bush administration had politicized the Justice Department and pressured attorneys to come up with a legal rationale for torturing "war on terror" prisoners. Comey had gone so far as to say in one e-mail that he would accept the blame for thwarting the White House's efforts to legalize torture.

The e-mails also clearly state that Comey had vehemently objected to torture on moral and constitutional grounds and predicted that the matter would become the focus of a congressional hearing “three years from now” if White House officials failed to heed his warnings.

Prior Battles

Comey had previously butted heads with Cheney, Addington and Gonzales over the legality of the Bush administration’s domestic surveillance program.

In March 2004, then-Attorney General John Ashcroft was hospitalized with acute pancreatitis and it fell upon Comey to recertify the program. But Comey and his colleagues at the DOJ refused to do so because the program appeared to be illegal.

In testimony before the Senate Judiciary Committee two years ago, Comey said Bush, Dick Cheney, Gonzales, who was White House Counsel at the time, tried to override his refusal to reauthorize the surveillance program by pressuring Ashcroft, who was hospitalized and barely conscious, to sign off on the program, which Ashcroft had refused to do.

So beginning on March 11, 2004, on orders from Bush, the National Security Agency illegally operated the surveillance program for about three weeks when administration officials could not obtain approval from the Justice Department leading to an internal revolt at the agency which nearly resulted in Comey and Ashcroft’s resignation.

Pleading With Gonzales

A year later, Comey found himself in a similar situation over the Bush administration’s torture program.

In April 2005, several weeks before the Office of Legal Counsel (OLC) issued the first of three torture memos, Comey sent an e-mail to his chief of staff, Chuck Rosenberg, stating that he had met privately with Gonzales after reading a draft version of a legal opinion that allowed CIA interrogators to employ a combination of torture techniques against detainees, such as waterboarding, prolonged stress positions and slamming detainees into walls.

“In our private meeting yesterday afternoon, I told [Gonzales] I was here to urge him not to allow the ‘combined effects’ memo to be finalized,” Comey wrote on April 27, 2005. “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.”

Surprisingly, Gonzales said he agreed with Comey and instructed him to tell OLC to finalize the first opinion-authorizing the CIA to torture—but not the second—the combination of techniques—that is until OLC could come up with a way to make it work legally, according to Comey’s e-mail.

Gonzales said, “He would speak with [White House Counsel] Harriet Miers and share the concerns.”

“He also directed me to call [acting general counsel of the CIA] John Rizzo and give him some comfort by saying the first [torture memo] would be done and that we would need to do additional work on the second,” Comey added in his e-mail to Rosenberg.

'Retrospective Advice'

Another e-mail, this one sent on April 28, 2005, appears to suggest Comey was told the torture memos needed to be drafted quickly to provide retroactive cover for torture that already occurred.

Gonzales's Chief of Staff Ted Ulyot "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," Comey wrote to Rosenberg. "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."

The identity of the detainee Comey had referred to is unknown.

A month before Comey's e-mail to Rosenberg, according to a report in last week's Washington Post, Cheney briefed members of Congress about the torture program. At the time, some members of Congress had begun to question its legality and even suggested they may support an investigation.

"Lawmakers at times challenged Cheney and CIA officials about the legality of the program and pressed for specific results that would show whether the techniques worked. In response, the CIA briefers said that half of the agency's knowledge about al-Qaeda's plans and structure had been obtained through the interrogations," the Washington Post reported.

"On March 8, 2005 — two days after a detailed report in the New York Times about interrogations — Cheney gathered [Sen. Jay] Rockefeller, [Rep. Jane] Harman, [the ranking Democrats on the Senate and House intelligence committees], and the chairmen of the intelligence panels, Sen. Pat Roberts (R-Kan.) and Rep. Peter Hoekstra (R-Mich.).

"Weeks earlier, Roberts had given public statements suggesting possible support for the investigation sought by Rockefeller. But by early March 2005, Roberts announced that he opposed a separate probe, and the matter soon died."

The Post had also reported that former CIA Deputy Inspector General Mary McCarthy alleged that the CIA had lied to members of Congress about the legality of the torture program in briefings in February and June 2005. The June briefing would have taken place just weeks after OLC finalized the torture memos.

That adds weight to suggestions by Comey in his e-mails to Rosenberg that Cheney, Addington and even Bush had pressured OLC to quickly draft the legal memos to provide the White House with retroactive cover for torture that had already been administered to a detainee(s).

Warnings Ignored

Comey was not the only one concerned with the authorization to the CIA to use "combined effects" during interrogations. Patrick Philbin, the OLC's deputy assistant attorney general, also raised red flags.

"Pat alerted me to his serious concerns about the adequacy of the 'combined effects' analysis, particularly as it related to the category of 'severe physical suffering,'" Comey wrote in his e-mail to Rosenberg on April 27, 2005.

But Gonzales, after sharing Comey's concerns with the Principals Committee, who included then Secretary of State Condoleezza Rice, Cheney, Addington and others, told Comey they were not persuaded by his arguments. Cheney and Addington were pressuring him to have the memos authorizing torture and the combination of brutal methods finalized and signed immediately.

"I told [Gonzales] the people who were applying pressure now would not be there when the [shit] hit the fan," Comey wrote in an April 28, 2005 e-mail. "It would be Alberto Gonzales in the bull's-eye. I told him it was my job 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."

Additionally, Comey said he told Gonzales that he should tell the White House that Comey "had gone on record against this" and that he was willing to bear the brunt of the blame for blocking efforts to get the DOJ to authorize the torture program.

"I told [Gonzales] I was leaving and was perfectly willing to catch that spear, as I had in other contexts," Comey wrote Rosenberg in the April 28, 2005 e-mail.

Recounting the episode that unfolded a year earlier at Ashcroft's hospital bed, Comey told Rosenberg that he missed Ashcroft because, unlike Gonzales, Ashcroft had a "backbone."

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

Torture Memos Approved

The opinion on combined techniques was approved on May 10, 2005. Another memo issued on that date discussed "whether CIA interrogation methods violate the cruel, inhuman and degrading treatment standard under federal and international law."

That second legal opinion concludes that past and present CIA interrogation methods do not constitute cruel, inhuman and degrading treatment. A third memo that provided a legal definition of torture in the context of "enhanced interrogations" was signed on May 30, 2005.

Steven Bradbury, who was the acting head of the Justice Department's Office of Legal Counsel during Bush's second term, signed the May 2005 memos that reversed efforts led by former Assistant Attorney General Jack Goldsmith in 2003 and 2004 to scrap earlier OLC memos asserting Bush's powers.

Senior Bush administration officials, including Addington and Cheney, were furious that Goldsmith, who was supported by Comey and Philbin, withdrew a previous memo by former OLC lawyers John Yoo and Jay Bybee, which Goldsmith had said were "sloppily reasoned" and "legally flawed."

In his book, *The Terror Presidency* Goldsmith recounted his collaboration with Comey in trying to restore some integrity to the legal advice under which the Bush administration had operated after the 9/11 attacks.

“Ever since Comey had come on board in December of 2003, he had been my most powerful ally in correcting the flawed interrogation opinions,” Goldsmith wrote. “He always acted with a sensitivity to upholding the integrity of the Justice Department.”

As Goldsmith struck down a key Yoo-Bybee opinion drafted in August 2002, he and Comey encountered angry resistance and even ridicule from Bush insiders, particularly David Addington, the legal adviser to Vice President Dick Cheney.

Goldsmith described one White House meeting at which Addington pulled out a 3-by-5-inch card listing the OLC opinions that Goldsmith had withdrawn.

“Since you’ve withdrawn so many legal opinions that the President and others have been relying on,”- Addington said with sarcasm in his voice, “we need you to go through all of OLC’s opinions and let us know which ones you will stand by.”

Yoo and Bybee had worked closely with the White House to create legal arguments for Bush to claim his Commander-in-Chief power essentially let him operate beyond the law and Addington and Cheney found that person in Bradbury.

In the May 2005 memos, Bradbury reinstated key elements of the Yoo-Bybee memos clearing the way for additional use of “enhanced interrogation techniques” against detainees and even expanded on some methods.

One of Comey’s e-mails to Rosenberg said that Bradbury had clearly succumbed to pressure from Cheney and Addington because he wanted to be nominated for the job as head of OLC.

“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,” Comey wrote in his e-mail to Rosenberg.

Bradbury Rewarded

In her book, *The Dark Side*, author and New Yorker reporter Jane Mayer, recounted the episode Comey had described in his emails.

“In late spring of 2005, Comey went to the Attorney General and said in essence, “OK-I get it that you won’t accept my interpretation of the law,” Mayer wrote.

Comey then argued, “Just because you think you can do these things, it doesn’t mean you should.”

Mayer also added some insight into Bradbury’s work on the May 2005 memos.

“The White House was so pleased with Bradbury’s work that the day after he completed his opinion legalizing the cruelest treatment of U.S.-held in history, President Bush sent his name forewarned to the FBI to begin work on a background check, so that Bradbury could be formally nominated to run the OLC. Evidently, the White House had received the ‘work product’ it wanted; Bradbury had passed his probation,” Mayer wrote.

Final Warning

One day after Bradbury signed the last of three torture memos issued in May 2005, copies

of which were declassified and released in April, Comey sent another e-mail to Rosenberg summarizing his conversation with Gonzales.

“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,” says Comey’s May 31, 2005, e-mail to Rosenberg.

In that same e-mail, Comey said that he and Philbin and Bradbury met with Gonzales that morning to prepare him for his meeting with the Principals Committee.

Gonzales “began by saying that Dr. Rice was not interested in discussing details [of the list of torture techniques] 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 [Philbin] and I urged [Gonzales] 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 it was simply not acceptable for Principles [sic] 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 look like for the President and the government...I told him it would all come out some day and be presented in the way I was presenting it.”

On Aug. 15, 2005, in his farewell speech, Comey urged his colleagues to defend the integrity and honesty of the Justice Department.

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