

TOP SECRET

0000055

US Classification//Non US//SCI//Codeword//FGI//Dissem. Control//Non-Intell//Declass (as appropriate)

EXECUTIVE CORRESPONDENCE ROUTING SHEET

1. Origination Office OGC/FO		2. Date 01/16/2007	
3. FROM	Name John Rizzo	Room No. and Building	Phone
4. Subject Letter to SSCI Chairman regarding John Rizzo's nomination and offer to brief SSCI on the legal bases for the CIA's detention program.			
5. Originating Office Control # OGC-FO-2007-50003	5a. Response to DAC # (Originating Office to Complete) DAC -04001-2006-1	5b. DAC Control # (DAC Use Only) DAC - 00005-2007	
6. Justification / Summary (Required for Immediate and Priority Actions) <input type="checkbox"/> Routine <input type="checkbox"/> Priority <input checked="" type="checkbox"/> Immediate Per request of ODCIA's office.			

7. Coordination
 Please note that the letter is unclassified, but the reference attached to the left side of the folder is classified.
Letter has been coordinated with ODCIA

NOTE: All correspondence sent to ODCIA must be sent via ExDir and ODCI

DATE	TITLE	SIGNATURE	STATUS	DATE
JAN 16 2007	DAC		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	JAN 16 2007
JAN 16 2007	DCIA		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	16 Jan 07
	TITLE		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
	TITLE		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
	TITLE		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	
	TITLE		<input type="checkbox"/> SIGNATURE <input type="checkbox"/> CONCUR <input type="checkbox"/> FYI	

TOP SECRET



THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 January 2007

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510-2202

Dear Mr. Chairman:

I am writing concerning the President's nomination of John Rizzo to be the Central Intelligence Agency's (CIA) General Counsel. As you know, I fully support John's nomination and look forward to his confirmation.

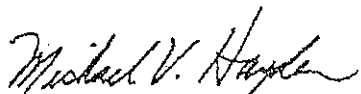
Since your August 23, 2006 letter, which, among other things, requested information concerning the legal basis for the CIA's detention program, I have provided comprehensive briefings to the Senate Select Committee on Intelligence regarding the details of the CIA's detention program. In those briefings, I made it clear that the CIA's detention program had been, and would continue to be, in full compliance with the Constitution, U.S. law, and U.S. treaty obligations. I also informed the Committee that I would work with the Administration to provide you additional information about the program, to include its legal foundation.

After discussions with the Attorney General and others within the Administration, and in keeping with my previous statements to the Committee, I am offering your Committee a briefing by officials from the CIA's Office of General Counsel and the Department of Justice's Office of Legal Counsel on the legal bases for CIA's detention program. By doing so, we can address the Committee's outstanding concerns about the program, as well as address the issues

The Honorable John D. Rockefeller IV

in your August 23 letter. My Office of Congressional
Affairs will contact your staff to schedule this briefing.

Sincerely,

A handwritten signature in cursive script that reads "Michael V. Hayden".

Michael V. Hayden
General, USAF

cc: The Honorable Christopher Bond, Vice Chairman, SSCI

The Honorable John D. Rockefeller IV

DEI/OGC/FOI

(12 January 07)

S:\DCI\OGC\Front Office Users

Rockefeller Letter re Rizzo nomination.doc

OGC-FO-2007-50003

Distribution:

Orig - Addressee
1 - AD/CIA
1 - DE/CIA
1 - D/OCA
1 - OGC FO
1 - OAC

~~TOP SECRET//SI//203108Z~~

~~***ORIGINATED~~

~~TOP SECRET//SI//203108Z~~

~~TOP SECRET~~
OFFICE OF THE DIRECTOR
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, DC 20505

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20540-2025

JAMES P. HERRICK, CLIA DIRECTOR AND CHIEF OF BUREAU
ANDREW R. GIBSON, CLIA DEPUTY DIRECTOR
PATRICK W. SULLIVAN, CLIA DEPUTY DIRECTOR

August 23, 2006

SSM# 2006-3305

General Michael V. Hayden
Director of the Central Intelligence Agency
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Hayden:

(U) John Rizzo's nomination to be General Counsel of the Central Intelligence Agency is one of the Select Committee on Intelligence's important remaining items of business this Congress.

(U) I very much hope that the hearing on the nomination will achieve two objectives. It should provide a fair opportunity for Mr. Rizzo to present to the Committee his long experience at the CIA, with a special focus on his leadership role in the General Counsel's office since September 11. It should also provide the Committee with a fair opportunity to assess Mr. Rizzo's performance of that responsibility. To that end, I urge you to facilitate the provision to the Committee of the documentary record that will make it possible to attain both objectives. I have spoken to Director Negroponte about the importance of providing to the Committee key documents. Because the nomination is to a high position at your Agency, I thought I should also communicate directly to you and request that you take the necessary steps to ensure that the Members of the Committee receive what they require.

(U) Mr. Rizzo served as CIA Acting General Counsel from November 2001 to November 2002. During that time, fundamental decisions were made about the legal rules for the Nation's counterterrorism efforts. Since that time, as Senior Deputy General Counsel and again as Acting General Counsel, he has continued to have a leadership role in formulating and implementing CIA legal policy. For

~~TOP SECRET~~

~~TOP SECRET~~

most nominations, the Senate's task is to project how a nominee will perform new responsibilities. In Mr. Rizzo's case, he has held the job for which he has been nominated. It is essential to carefully examine what he has done.

(U) 1. The Nominee's Writings

(S) The nominee has been employed in the Office of CIA General Counsel for thirty years. He does not have published writings. In addition to his answers and supplementary response to our prehearing questions, the Committee has received one document authored by Mr. Rizzo, the nominee's response to the draft CIA IG report on nonregistration of detainees:

In order to be able to fully and fairly understand the work he has done, it is important to review other documents he may have written or for which he had major supervisory responsibility.

(S) As is clear from the nominee's written answers to the Committee's prehearing questions, one of his major responsibilities has been to present to DOJ's Office of Legal Counsel requests for legal opinions. In his July 18, 2006 letter to Committee counsel, Mr. Rizzo described OGC's role as providing OLC with "an objective, complete, detailed factual presentation of our proposed activity."

(S) As I will reiterate below, the Committee should receive for the consideration of all Members the opinions of the Office of Legal Counsel that constitute (in Mr. Rizzo's words) "final, definitive" determinations of law for the CIA. But even apart from access to OLC's opinions, the documentary record of OGC presentations to OLC that were authored by or with the nominee's participation form a key part of his work. Any OGC memoranda to OLC setting forth the presentation that led to the Second Bybee Memo should be among the documents provided to the Committee. Also, based on Mr. Rizzo's submission to

~~TOP SECRET~~

~~TOP SECRET~~

us and as discussed below, OLC has provided written guidance applicable to CIA counterterrorism activities. Once a list of those is provided, it may be possible to identify other OGC documents, written by Mr. Rizzo or for which he had responsibility, that should be provided to the Committee.

(S) The Committee requested that the nominee identify documents authored or reviewed by him, or to which he had made a significant contribution, that conveyed to CIA personnel directions or guidance for actions that they could or could not take on detention, interrogation, or rendition matters. He answered that since September 11, OLC has regularly provided guidance to the field consistent with OLC legal guidance. We are interested in the best documentary evidence of that.

(S) Mr. Rizzo has told the Committee that neither he nor other OGC lawyers produced legal opinions or memoranda "per se" about detention, interrogation, or rendition issues, but that those matters were addressed case-by-case through operational cables. He related that typically this review and approval was done by OGC lawyers assigned to operational components rather than by the General Counsel or Acting General Counsel personally. However, as Acting General Counsel, the nominee, in his words, was

(S) It is important for the Committee to assess how the nominee applied OLC guidance. The OLC guidance appears to have been applied in at least two ways: (a) through

(S) With respect to please provide documentation of the OGC's participation in the formulation of those guidelines. Further, the entire Committee, and the members of our staff who have responsibility to assist in the nominee's hearing, should have access to the guidelines.

~~TOP SECRET~~

~~TOP SECRET~~

~~(PS)~~

~~(PS)~~) The focus of the requests described above concerns matters relating to and following the August 2002 Second Bybee Memo. There were also important decisions about U.S. legal policies related to counterterrorism, including on such matters as the application of the Geneva Conventions, that preceded the Bybee Memos. It is my understanding that the nominee had a role in that process, both within the CIA and outside of it. It will therefore be important to assess his participation in the formulation of those policies. Accordingly, in addition to documents relating directly to the Second Bybee Memo, please provide documents authored by the nominee, or prepared under his supervision, that set forth the nominee's contribution to the development of U.S. legal policy after the September 11 attacks.

(b) 2. IG Reports

~~(PS)~~) In his answer to a prehearing question about reports of the CIA Inspector General, the nominee identified the OIG Special Review of Counterterrorism Detention and Interrogation Activities (May 7, 2004) as a report that was critical of the Office of General Counsel. In his subsequent letter to Committee counsel, the nominee explained that the Special Review was critical of the Agency generally and that he construed that criticism as including OGC. The copies of the IG report that are at the Committee are restricted to the Chairman and Vice Chairman; also three staff members have been able to read it -- our Staff Directors and the Chairman's Senior Policy Advisor. In preparing for the hearing on Mr. Rizzo's nomination, all Members of the Committee and the members of our staff who have responsibility for the hearing should have access to it.

~~TOP SECRET~~

~~TOP SECRET~~

~~(S)~~ j. If the Inspector General has any other report commenting on the Office of General Counsel, or a report in progress (such as on any rendition) that discusses the work of the OGC, your assistance would be appreciated in making the necessary arrangements for the provision to the Committee of completed reports or a briefing by the IG about reports in progress.

(U) 3. OLC Opinions

~~(S)~~ j. The Committee requested that the nominee provide a list of all opinions and memoranda of the Office of Legal Counsel that have been provided to the CIA, either directly or through another office or officer of the Executive Branch, that set forth legal guidance for the CIA, or applicable to the CIA, on detention, interrogation, or rendition. For each, the Committee requested the date, the author, the addressee, the title or subject, and the classification.

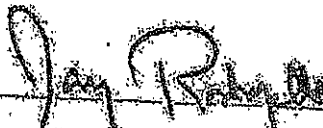
~~(S)~~ j. One value of a list is that it would enable the Committee to discuss with you whether particular items on it should be provided for this nomination proceeding. It is hard to imagine a justification for not providing a classified list. Accordingly, it should be provided. But even as that is being resolved, we all know about one item that is on it, namely, the Second Bybee Memo. For that opinion, the question is not whether it should be delivered here, for it is here, but whether all Members of the Committee and the staff assisting them in preparing for the hearing may read it. The Senate has referred the nomination to the full Committee, not to the Chairman and Vice Chairman alone. Each Member must decide how to vote. In doing that, each should be able to ask those questions that he or she deems necessary for an informed vote. The memo was requested from OLC for the CIA by the nominee and he had responsibility for implementing it. Members may therefore wish to question him about it.

~~TOP SECRET~~

~~TOP SECRET~~

(U) We have received strong words of support from people who have worked with Mr. Rizzo. I am committed to a process that is fair to him. But that process also needs to be a fully informed one. To the extent that decisions in the White House are necessary for this to happen, I urge you to be a strong advocate along with the DNI and to advise us as soon as possible about the results of your effort.

Sincerely,



John D. Rockefeller IV
Vice Chairman

cc: The Honorable John D. Negroponte

~~TOP SECRET~~