U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 19, 2010

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This follows up on our previous responses to your letter, dated March 4, 2009, and subsequent discussions with staff concerning the Committee's interest in receiving the same documents and other information that the Department discloses to the Senate Judiciary Committee about the investigation by the Office of Professional Responsibility (OPR) of Department attorneys who, while employed in the Office of Legal Counsel (OLC), provided legal advice regarding interrogation of individuals captured and detained as a result of the Nation's response to the terrorist attacks of September 11, 2001. In response to your request, we are herewith providing to you the same information and documents that the Department is disclosing today to the Senate Judiciary Committee.

OPR issued its final report on July 29, 2009. That report contained adverse findings against former OLC Assistant Attorney General Jay Bybee and former OLC Deputy Assistant Attorney General John Yoo. Consistent with longstanding Department practice regarding accusations of professional misconduct, Messrs. Bybee and Yoo were afforded the opportunity to challenge those adverse findings by submission of responses to an Associate Deputy Attorney General (ADAG). Since the 1990s, that ADAG, a career Department attorney for over 40 years, has been the Department official who has resolved challenges to negative OPR findings against former Department attorneys, most often in the context of proposed bar referrals. The reviewing ADAG received Mr. Bybee's and Mr. Yoo's responses on October 9, 2009. He issued a decision memorandum to the Attorney General and Deputy Attorney General on January 5, 2010.

In short, after reviewing OPR's final report and the responses from the subjects, the ADAG declined to adopt OPR's findings of professional misconduct and concluded instead that Mr. Yoo and Mr. Bybee exercised poor judgment in connection with the drafting of the pertinent memoranda. The analytical framework OPR typically uses to evaluate allegations of attorney misconduct provides, "An attorney exercises poor judgment when, faced with alternative courses of action, he or she chooses a course of action that is in marked contrast to the action that the Department may reasonably expect an attorney exercising good judgment to take. Poor judgment differs from professional misconduct in that an attorney may act inappropriately and thus exhibit poor judgment even though he or she may not have violated or acted in reckless disregard of a clear obligation or standard." Although attorneys still employed by the Department could face administrative disciplinary action based on a finding of poor judgment, neither Mr. Yoo nor Mr. Bybee is currently employed by the Department.

While OPR reports have not ordinarily been disclosed outside of the Department, we have determined that, in this instance, the Department's final decisions cannot be completely understood without reviewing the report and additional documents. This conclusion is consistent with the view of the Associate Deputy Attorney General who issued the decision memorandum, as you will note. Accordingly, while our public disclosure of these materials might be prohibited by the Privacy Act, we are providing them to you in response to the Committee's request. See 5 U.S.C. 552a(b)(9). Consistent with established third agency practice, we have consulted with another agency, which provided some of the information in these records. Based upon that consultation, classified and limited internal deliberative information has been redacted from the enclosed documents. We also have redacted some text to protect individual privacy, although these enclosed documents still implicate significant individual privacy interests. The documents enclosed are:

1. OPR first draft report, dated December 23, 2008;
2. OPR second draft report, undated (issued approximately February 20, 2009);
3. Response of John Yoo to the OPR second draft report, dated May 4, 2009;
4. Response of Jay Bybee to the OPR second draft report, dated May 4, 2009;
5. OPR final report, dated July 29, 2009;
6. Response of John Yoo to the OPR final report, dated October 9, 2009;
7. Response of Jay Bybee to the OPR final report, dated October 9, 2009; and
8. Decision memorandum of the Associate Deputy Attorney General, dated January 5, 2010.

In addition, we will provide the classified versions of these documents to the Committee under appropriate arrangements for handling of such information.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance regarding this, or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Lamar Smith
Ranking Minority Member