

September 6, 2007

The Honorable John D. Rockefeller IV
Senate Select Committee on Intelligence
Washington, DC 20510

The Honorable Christopher S. Bond
Senate Select Committee on Intelligence
Washington, DC 20510

Dear Chairman Rockefeller and Vice Chairman Bond:

We are writing to urge you to reject the nomination of John Rizzo to serve as General Counsel of the Central Intelligence Agency on the basis of his June 19, 2007 testimony before the Senate Select Committee on Intelligence.

During the open session of his confirmation hearing, Mr. Rizzo confirmed that he received and read the infamous “torture memo” dated August 1, 2002 (Memorandum for Alberto Gonzales written by Assistant Attorney General Jay Bybee). He confirmed that he “did not object” to the memorandum or “any specific part” of it. Indeed, he said that he found it “reasonable.” Even with years of hindsight, he would not say that he should have objected to the memorandum. The most critical thing he was willing to say was that the Bybee Memorandum was “overbroad for the issue that it was intended to cover.”

These are deeply troubling statements given that the memorandum makes the outrageous claim that “physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” The memorandum contains an extraordinarily narrow definition of psychological torture. Further, it asserts that the President, as Commander in Chief, has the constitutional authority to ignore laws that have been enacted by Congress and therefore cannot be prevented from authorizing U.S officials to use torture. But Mr. Rizzo says that he found the memorandum “persuasive” and does not feel – even now – that he should have raised objections to it.

As the acting chief legal officer at the Central Intelligence Agency, Mr. Rizzo occupied a position of extraordinary trust with the American people. He was privy to discussions and decisions that were not revealed to the public. The American people relied on him – as did the President and Mr. Rizzo’s colleagues at the CIA – to say “no” when offered specious legal theories redefining torture and arguing that the President can disregard duly adopted criminal statutes.

We found other answers offered by Mr. Rizzo to the Committee deeply troubling. His parsing of the nature of the CIA’s obligations under Common Article 3 hinted that perhaps the only fully binding prohibitions were those made criminal offenses by Congress in the Military Commissions Act. He declined to offer the same assurance offered in public by President Bush

when he said that the United States would never render a prisoner to a country that used torture. *But it is a more than sufficient basis to reject his nomination that he found the “torture memorandum” reasonable and persuasive and does not – even now – see why he should have raised objections to it.*

The Committee should note that lawyers in other agencies did risk the ire of their superiors and perhaps their careers to raise objections to spurious legal theories and abusive interrogations. Alberto Mora, the General Counsel of the Navy, senior members of the military’s Judge Advocate General Corps, the State Department Legal Advisor and the National Security Council legal advisor are all reported to have raised vigorous objections when the threat of terrorism was used to justify policies and legal interpretations violating both the letter and the spirit of the Geneva Conventions and the domestic and international prohibitions on torture. Within the CIA, the Inspector General John Helgerson reportedly argued that CIA interrogation techniques “appeared to constitute cruel, inhuman, and degrading treatment” prohibited under international law. But Mr. Rizzo did not object and testified that, in his words, he could not “honestly sit here today and say I should have objected....”

To confirm Mr. Rizzo would send an extraordinarily negative message both to the world and to those lawyers who did perform the vital function of saying “no” when that was required. When Alberto Mora learned about abusive interrogation methods he told his superior that such acts violated “domestic and international legal norms in that they constituted, at a minimum, cruel and unusual treatment and, at worst, torture....” He urged his superior: “Protect your client.” (Statement for the Record, Alberto Mora, July 7, 2004)

When Mr. Rizzo failed to object to legal arguments that defended torture, he failed to protect his clients – the President, his CIA colleagues and the American people. He compounded this failure by effectively telling the Committee that he would do the same thing again. Consequently, the Committee has ample grounds to reject his nomination and we urge that it do so.

Sincerely,



Kenneth Roth, Executive Director
Human Rights Watch



Leonard Rubenstein, President
Physicians for Human Rights



Morton H. Halperin, Executive Director
Open Society Policy Center



Mark D. Agrast, Senior Fellow
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Maureen Byrnes, Executive Director
Human Rights First

CC: The Honorable Dianne Feinstein
The Honorable Ron Wyden
The Honorable Evan Bayh
The Honorable Barbara A. Mikulski
The Honorable Russell D. Feingold
The Honorable Bill Nelson
The Honorable Sheldon Whitehouse
The Honorable John Warner
The Honorable Chuck Hagel
The Honorable Saxby Chambliss
The Honorable Orrin Hatch
The Honorable Olympia J. Snowe
The Honorable Richard Burr

The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Carl Levin
The Honorable John McCain