

FBI RETIREES WARN AGAINST JIM COMEY, TORTURE, AND INDEFINITE DETENTION

When one of the unions that represent FBI Agents floated a trial balloon supporting Mike Rogers to be FBI Director, it got a lot more press attention than the unlikelihood of their request merited.

Let's see whether this letter – from 5 retired FBI Agents – gets similar press attention. It raises concerns about two parts of Jim Comey's past: his concurrence with a May 10, 2005 memo authorizing (among other things) torture – which I wrote about here – and his support for the indefinite detention of Jose Padilla.

However, the public record also shows that Mr. Comey concurred with a May 10, 2005 Office of Legal Counsel opinion that justified those same enhanced interrogation techniques for use individually. These techniques include cramped confinement, wallstanding, water dousing, extended sleep deprivation, and waterboarding, all of which constitute torture or cruel, inhuman, or degrading treatment in contravention of domestic and international law. Further, Mr. Comey vigorously defended the Bush administration's decision to hold Jose Padilla, a United States citizen apprehended on U.S. soil, indefinitely without charge or trial for years in a military brig in Charleston, South Carolina.

Among the signatories is Jack Cloonan, a former member of the Osama bin Laden team who watched as CIA started interrupting successful interrogations to subject the detainee to

torture instead. I'd be surprised, too, if he didn't know Comey from the Southern District of NY days.

The letter suggests that Comey might not guard the FBI's legacy as nobly as Robert Mueller (!) did.

The FBI, while not a perfect institution, has a proud history of dealing with terrorism suspects in accordance with the law. When other agencies and departments resorted to "enhanced interrogation" techniques, FBI Director Mueller directed FBI agents not to participate and in many cases FBI agents were pulled from the field where there were concerns about complicity with unlawful interrogation approaches. To date, the FBI has played a role in prosecuting within the civilian criminal justice system nearly 500 international terrorism cases—often leading to substantial periods of incarceration—without having to resort to indefinite detention. Even Jose Padilla was ultimately given a trial in a civilian court, despite claims by Mr. Comey that prosecuting Padilla or otherwise affording him traditional due process protections would compromise national security.

They also tied Comey's confirmation process to the declassification of the Senate Intelligence Committee's torture report.

The Agents ask only that Comey "reject" the May 10, 2005 OLC memo. Me, I'd like the Senate to demand a full explanation for the circumstances of it. The memo was retroactive to cover someone who had already been tortured (though of course probably served to authorize Abu Faraj al-Libi's torture, among others). At the very least the Senate Judiciary Committee could demand that Comey explain the circumstances of that

retroactive approval.