

From [TPM](#) | Original Article

By [Zachary Roth](#)

Over the weekend, the *New York Times* [reported](#) that Justice Department lawyers agreed in 2005 that harsh interrogation techniques were legal. The impact of the story -- which was based largely on email messages written at the time by James Comey, then a high-ranking Justice Department official -- has been, it seems, to [bolster the Dick Cheney position](#) in the ongoing torture debate in Washington.

But the *Times* also, to its credit, [released Comey's emails in full](#), allowing us all to make our own judgments about what they show. And after a close look at the emails, it seems clear that the paper could have used them to write a very different story -- with a very different effect on the public debate.

Here's the story the *Times* could have written:

WASHINGTON -- Alberto Gonzales told Justice Department lawyers in 2005 that he was under great pressure from Vice President Dick Cheney to complete memos approving the use of harsh interrogation techniques, and that President Bush had also asked about them, according to emails written at the time by a top Justice Department official and obtained by the New York Times

The emails, written by James Comey, the deputy attorney general, make clear that Comey and other DOJ lawyers raised frequent and strenuous objections to the use of the techniques. They show Comey expressing the view that the White House placed extreme pressure on the

department to approve the techniques without taking the time needed for a full consideration of the issues raised, and show him lamenting that department officials -- including, it appears, Gonzales -- had caved to that pressure. And they also suggest that Condoleezza Rice, the secretary of state, tried to short-circuit a discussion among senior administration officials, sought by DOJ, about the wisdom of employing the harsh techniques.

Comey's emails, written in April and May 2005 to his chief of staff, Chuck Rosenberg, suggest that Comey strongly objected to a DOJ opinion stating that the "combined effects" of using the various techniques did not amount to torture. Comey wrote that at a meeting with Gonzales and Steven Bradbury, then a lawyer at the Office of Legal Counsel, he had expressed "grave reservations" about the opinions, and later that he had told Gonzales that "some of this stuff is simply awful."

Comey appealed to Gonzales to take a hard line by invoking the judgment of history. "In stark terms," he wrote of a meeting with the AG, "I explained to him what this would look like some day, and what it would mean for the President and the government....I told him that it would all come out some day and be presented as I was presenting it."

Comey's emails also paint a picture of a Department of Justice under extreme pressure from the White House to approve the techniques. In response to Comey expressing his reservations about the opinion, according to one of Comey's emails, Gonzales said that he had been under pressure from Cheney to complete the memos, with the vice president telling Gonzales "we are getting killed on the Hill." Gonzales also said the president had asked about them.

The White House pressure didn't stop there, apparently. Comey also wrote that a deputy, Patrick Philbin, had told him that Bradbury had received "similar pressure" from David Addington, and Harriet Miers, the top lawyers to Cheney and Bush respectively. Comey worried that having Bradbury serving as acting head of OLC, but wanting the position permanently, left him "susceptible to just this kind of pressure."

The emails also portray Gonzales, the attorney general, as unwilling or unable to stand up to such pressure even when warned by deputies that not doing so would put the department's reputation at risk.

Comey wrote that, after his initial concerns about the issue of "combined effects" were not adequately addressed, he sought out a private meeting with Gonzales, where he told the attorney general that signing off on that opinion "would come back to haunt him and the department," and asked him directly to stop it. Gonzales agreed, saying he would pass on the concerns to Miers, and asked Comey to alter the opinion to address Gonzales' and Comey's concerns.

But after meeting with the White House, according to Comey, Gonzales gave word that the changes needed to be completed in two days. Comey and Philbin objected that this wasn't nearly long enough to conduct the additional fact-finding that was necessary. Referring to a conversation with Gonzales' chief of staff, Ted Ulyot, Comey wrote: "I told him that it could be made right in a week, which was a blink of the eye, and that nobody would understand at a hearing three years from now why we didn't take that week."

But Gonzales stuck to the expedited schedule, leaving Comey to write: "It leaves me feeling sad for the Department and the AG." He added that he hoped that blame for approving the techniques would fall on "those individuals who occupied positions at OLC and OAG and were too weak to stand up for the principles that undergird a great institution."

The episode left Comey nostalgic for the leadership shown by the previous attorney general -- not usually seen as an antagonist of the Bush White House. "People may think it strange to hear me say I miss John Ashcroft," wrote Comey, "but as intimidated as he could be by the WH, when it came to crunch-time, he stood up, even from an intensive care hospital bed. That backbone is gone."

Another of Comey's emails suggests that Rice, the secretary of state, sought to avoid a full high-level discussion of whether the harsh tactics were advisable. Comey writes that, in a sit-down to prep Gonzales for a meeting on the issue with the National Security Council, the attorney general said that Rice's 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."

Later that day, according to the email, Gonzales reported back on the meeting, saying that a full policy discussion had occurred, but that the principals at the meeting nonetheless approved the full list of techniques at issue. Gonzales did not give further details.

Ok, maybe not quite *Times* style, but you get the idea. The impact of a story like that on the ongoing torture debate would be quite different, one would think.

It's worth noting, of course, that the *Times* writes that its story is based not just on the Comey emails, but also on "interviews and newly declassified documents."

But, leaving aside (sort of) the issue of the *Times'* news judgments, it's by no means clear that the key information that's been uncovered acts to vindicate the Bush administration's torture proponents. Indeed, it seems more like the emails cut in the other direction -- by adding to our understanding of the way that the nominally apolitical Justice Department was pressured by the White House to override the concerns of high-ranking officials and approve the use of harsh and shocking techniques.