

Written Questions for Steve Engel
Submitted by Senator Patrick Leahy
May 17, 2017

- 1. If the President seeks legal justification to do something unlawful or unconstitutional, should the Office of Legal Counsel say no and refuse to provide that justification? If so, are you prepared to say “no” to this White House?**

Response: Yes, that is part of the job. The Office of Legal Counsel has the responsibility to provide candid, independent, and principled advice, even if that advice would contravene the wishes of policy makers. If the President proposes a course of action that is unlawful, then the Office of Legal Counsel has a duty to tell him so. In my experience, in both private practice and government service, clients respect lawyers who provide such advice and benefit in the long run from receiving it.

- 2. Last week, President Trump cited the FBI’s investigation into Russian interference in the 2016 election as a basis for dismissing Director Comey. The Deputy White House Press Secretary said, “We want this to come to its conclusion . . . And we think that we’ve actually by removing Director Comey, taken steps to make that happen.” President Trump himself admitted that “I was gonna fire [Comey] regardless of [Mr. Rosenstein’s] recommendation. . . . And in fact when I decided to just do it, I said to myself, I said you know, this Russia thing with Trump and Russia is a made up story.” Should those statements and justifications for FBI Director Comey’s dismissal raise concerns?**

Response: I am not familiar with the facts and circumstances concerning Mr. Comey’s termination. Because I do not have complete information about this matter, I do not believe it would be appropriate for me to comment.

- 3. Is it proper for the President to pressure a law enforcement official to terminate an ongoing investigation into one of the President’s associates?**

Response: Because I am not familiar with the facts and circumstances considering these matters, I do not believe it would be appropriate for me to comment on that hypothetical.

- 4. Have you ever been asked by the President, or any other individual associated with the White House, to express loyalty to President Trump? If so, please describe that conversation in detail, including the participants of that conversation.**

Response: No.

- 5. If confirmed, will you be loyal to the Constitution or to President Trump? Do you believe there is a difference? If so, will you put your obligation to uphold the Constitution above any personal loyalty to President Trump?**

Response: If I am confirmed, I will take an oath of office to support and defend the Constitution of the United States and bear true faith and allegiance to the same. I am deeply committed to the independence and integrity of the Office of Legal Counsel.

- 6. Is a sitting President who violates Federal law subject to Federal prosecution? If not, what remedies are available?**

Response: I have not examined the issue myself, but in 2000, the Office of Legal Counsel addressed this issue and issued a published opinion concluding that a sitting President was not subject to federal prosecution.

7. **During your prior tenure at the Office of Legal Counsel, did you review, research, draft, discuss, or provide any feedback on the following memoranda or their underlying analysis? If so, please describe your role in detail.**

Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques That May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees (July 20, 2007) ("2007 Bradbury memo")

Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities (Aug. 31, 2006)

Response: When I was a Deputy Assistant Attorney General, the Office required that draft opinions be reviewed by at least two Deputy Assistant Attorneys General. Consistent with that practice, I reviewed and commented upon the draft July 2007 opinion. With respect to the August 31, 2006 opinion, I did not receive access to classified information concerning the CIA's interrogation program until shortly before President Bush publicly disclosed the CIA program on September 6, 2006. At that point, I would have first seen the August 31 opinion, but to the best of my recollection, it was either final or near final.

8. **More specifically, were you the Counsel or primary or secondary Deputy assigned to either of the memos referenced above? If not, did you otherwise participate in reading, reviewing, or discussing their analysis?**

Response: I do not believe that I was the primary or second deputy for either opinion. As noted, given the timing of the August 31, 2006 issuance, I do not recall having any substantive involvement. To the best of my recollection, the work on the July 2007 opinion (and any formal assignments) began prior to my becoming a Deputy Assistant Attorney General, but I did review and comment upon the draft opinion.

9. **Please describe any role you had in drafting, discussing or reviewing the following documents, or any communications with either OLC or CIA personnel regarding the CIA detention and interrogation program:**

Letter for the Associate General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Nov. 7, 2007)

Letter for the Associate General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Nov. 6, 2007)

Letter for the Associate General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Aug. 23, 2007)

Letter for the Associate General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (July 24, 2007)

Letter for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel (Aug. 31, 2006)

Response: I do not recall playing any direct role with respect to the 2007 letters. With respect to the August 31, 2006 letter opinion, I would have become aware of that opinion upon receiving access to classified information concerning the CIA's interrogation program shortly before President Bush's September 6, 2006 speech. At that point, I would have first seen the August 31 letter, but it would either have been final or near-final at that time.

If confirmed, you will lead the office responsible for issuing authoritative opinions that are binding on the Executive branch. This is critical role where close attention to statutory and regulatory language is essential. Please consult 28 C.F.R. § 600.1 and answer the following questions in the same way you would address similar questions presented during your previous tenure in OLC.

10. 28 C.F.R. § 600.1 states that in appropriate situations, the Attorney General or Acting Attorney General "will appoint a Special Counsel." Is it correct that "will," unlike "may," indicates that this decision is not discretionary once the relevant conditions have been established?

Response: I agree that close attention to statutory and regulatory language is essential to the role at OLC. However, I am not familiar with the regulation and not in position to opine. If I am confirmed and asked to provide advice on the matter, I will review the relevant regulations and precedents in the area and then provide advice.

11. 28 C.F.R. § 600.1(a) refers to matters that "would present a conflict of interest for the Department." What kind of conflicts of interest are contemplated by the regulation? Would that include a case where political leadership of the Justice Department are potential witnesses or subjects for the investigation?

Response: I agree that close attention to statutory and regulatory language is essential to the role at OLC. However, I am not familiar with the regulation and not in position to opine. If I am confirmed and asked to provide advice on the matter, I will review the relevant regulations and precedents in the area and then provide advice.

12. 28 C.F.R. § 600.1(a) also refers to "other extraordinary circumstances." With reference to historical examples, such as the Valerie Plame leak case, please explain what constitutes "extraordinary circumstances" for purposes of this regulation.

Response: I agree that close attention to statutory and regulatory language is essential to the role at OLC. However, I am not familiar with the regulation and not in position to opine. If I am confirmed and asked to provide advice on the matter, I will review the relevant regulations and precedents in the area and then provide advice.

13. 28 C.F.R. § 600.1(b) adds a requirement “[t]hat under the circumstances, it would be in the public interest to appoint an outside Special Counsel.” If the conditions in 600.1 (a) are met, is it possible that nevertheless it might not be in the public interest to appoint a Special Counsel?

Response: I agree that close attention to statutory and regulatory language is essential to the role at OLC. However, I am not familiar with the regulation and not in position to opine. If I am confirmed and asked to provide advice on the matter, I will review the relevant regulations and precedents in the area and then provide advice.

14. Is public confidence in the Justice Department or the handling of a particular investigation a component of determining whether the appointment of a Special Counsel is in the public interest?

Response: I agree that close attention to statutory and regulatory language is essential to the role at OLC. However, I am not familiar with the regulation and not in position to opine. If I am confirmed and asked to provide advice on the matter, I will review the relevant regulations and precedents in the area and then provide advice.