

# **EXHIBIT 46**

SECRET//MR

11/10/2005 07:25 PM

To: Dusty Foggo

cc:

Subject: short backgrounder - part 2

Dusty - ok - on the Zabaydah tapes - - I am no longer feeling comfortable. While I understand Jose's 'decision' (and believe the tapes were bad news) I was just told by Rizzo that [REDACTED] DID NOT concur on the cable - It was never discussed with him (this is perhaps worse news, in that we may have 'improperly' destroyed something). In fact, it is unclear now whether the IG did as well. Cable was apparently drafted by [REDACTED] and released by Jose; they are only two names on it, so I am told by Rizzo. Either [REDACTED] lied to Jose about 'clearing' with [REDACTED] and IG (my bet) or Jose misstated the facts. (It is not without relevance that [REDACTED] figured prominently in the tapes, as [REDACTED] was in charge of [REDACTED] at the time and clearly would want the tapes destroyed.) Rizzo is clearly upset, because he was on the hook to notify Harriet Miers of the status of the tapes because it was she who had asked to be advised before any action was taken. Apparently, Rizzo called Harriet this afternoon and she was livid, which he said was actually unusual for her. Rizzo does not think this is likely to just go away. Rizzo has advised [REDACTED] of this latest 'wrinkle.' Sounds like we will regroup on Monday.

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