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Opening Statement

This is an unusual trial. It is occurring in the form of a book that lays out the evidence that high-level officials of the George W. Bush administration have ordered, authorized, implemented, and permitted war crimes, in particular the crimes of torture, and cruel, inhuman, and degrading treatment. I am Michael Ratner, an attorney and the president of the Center for Constitutional Rights (CCR). With others at CCR, I will present this case against what we call the "torture defendants."

We are proceeding by way of a trial-by-book, because at this point there appears to be no other means of holding high Bush administration officials criminally responsible for their war crimes. Certainly no one in the administration is willing to do so; until recently, the Department of Justice was headed by one of the accused, Alberto Gonzales, and until recently, the Department of Defense was headed by another of the accused, Donald Rumsfeld. Even if both of these two defendants were no longer in government, no criminal actions would be filed.

The government did launch several investigations and released numerous reports following the wake of the public outcry over the Abu Ghraib torture and abuse. The Taguba, Schlesinger, and Fay-Jones reports, together, criticized the interrogation methods

and confirmed that the entire chain of command was responsible for the torture and abuse at the Iraqi prison.

But the Bush administration is not about to investigate itself.

Efforts made to begin investigations in other countries so far have been unsuccessful. The major effort by the Center for Constitutional Rights in Germany failed. A case filed in France in October 2007 was also not successful. Despite Rumsfeld's presence in Paris, the French prosecutor failed to arrest him or issue a warrant to obtain his testimony. Sadly, efforts to get Congress to hold the Bush administration accountable, even a Congress controlled by the Democrats, also have not been successful. There have not even been serious hearings on the responsibility of high Bush administration officials for the planning and implementation of the torture program. To make matters worse, the Senate confirmed someone for Attorney General, Michael Mukasey, who refuses to admit that waterboarding is torture.

In these circumstances there is an obligation to set forth the facts, give the defendants their chance to defend, and make a determination of whether or not they are guilty. We cannot and should not sit idly by while high-level officials in the most powerful country in the world are allowed to torture with impunity. Think about the message that sends to other countries that contemplate using torture: it is a green light to do so. Think about what it means if U.S. soldiers are captured: the U.S. will have no moral or legal authority to complain. How could we object if a U.S. soldier is waterboarded? Torture is difficult to eliminate; it becomes impossible if the country that could set the moral example refuses to do so. That is why we must hold those responsible for torture accountable. We cannot put the genie back in the bottle. We cannot go back in time and stop what has occurred. Perhaps we can deter future conduct if we send a message to the world that torturers, like the pirates of old, are enemies of all humankind and will be brought to justice no matter their power or high office.

The Torture Program

We will present you, the readers who comprise the jury, with overwhelming evidence that the defendants have committed and are responsible for heinous war crimes. Torture committed during a time of war is a war crime. The torture revealed in the photographs at Abu Ghraib, sadly, is illustrative of only a small part of a torture program implemented by the defendants after 9/11. It was a torture program that took place throughout the world, in Afghanistan, Iraq, Guantánamo, secret CIA prisons, and other places unknown.

Sadly, that torture program has not ended, and the Bush administration insists it will and must continue to use torture. It has fashioned laws so it can continue the torture program. In September 2006 President Bush, while claiming that he had not authorized torture, insisted that his administration could still employ an "alternative set of procedures" when prisoners stopped talking. These include torture and inhuman techniques such as sleep deprivation, stress positions including standing for long periods of time, raising and lowering of temperatures, and even the classic torture of waterboarding. Waterboarding is a medieval torture technique in which water is poured over and into the nose and mouth of victims to make them feel as if they are drowning. Evidence that this torture technique continues was revealed by the *New York Times*, which published information demonstrating that even after the administration publicly repudiated torture, it secretly issued opinions condoning waterboarding and other supposedly banned techniques. Evidence also comes from an unindicted co-conspirator, Vice President Dick Cheney, who in October 2006 admitted that he had no problem with waterboarding. A television reporter asked, "Would you agree a dunk in water is a no-brainer if it can save lives?" Cheney responded, "Well, it's a no-brainer for me." As the evidence will demonstrate, Cheney was one of the key architects of the torture program.

I want to say a word about the defendants in this case, those charged and those who are not. For now I will just give you their names, but you will hear more about each as we continue with this trial. Defendants include:

- Former Secretary of Defense Donald Rumsfeld
- Former CIA Director George Tenet
- Undersecretary of Defense for Intelligence Dr. Stephen Cambone
- Lieutenant General Ricardo Sanchez
- Major General Geoffrey Miller
- Major General Walter Wojdakowski
- Colonel Thomas Pappas
- Major General Barbara Fast
- Colonel Marc Warren
- Former Chief White House Counsel Alberto Gonzales
- General Counsel of the Department of Defense William James Haynes II
- Vice President Chief Counsel David Addington
- Former Deputy Assistant Attorney General John C. Yoo
- Former Assistant Attorney General Jay Bybee

You may have noticed that the two highest officials in the Bush administration, President Bush and Vice President Cheney, have not been named as defendants. This is not because of a lack of evidence against them. Both officials, in their public statements and in their private actions, have demonstrated their direct responsibility for the torture program. Some of the evidence against both of them is secret, but we know enough to demonstrate that they were instrumental in approving the torture program. We know, for example, that President Bush approved the non-application of the Geneva Convention to alleged terrorists—that eliminated a key legal restriction on torture; we know he signed an order that said detainees were to be treated humanely unless military necessity required otherwise—in other

words, torture them if you need to; and we know he lied to the American people when he said, "We do not torture." We know that Cheney was one of the architects of the torture program and that he approved using "any means at our disposal" for dealing with alleged terrorists. Despite this, they cannot yet be defendants in this case, as Bush is the head of state and Cheney is the successor head of state; as such, they have immunity from criminal indictment while they are in office for acts that occurred during their tenure. The moment their terms are over, they can join the others as defendants. However, in this trial they have been named as unindicted co-conspirators for their role in the conspiracy to commit torture.

As you may also have noticed, some of the defendants in this case are attorneys. It is these attorneys—Alberto Gonzales, John Yoo, James Bybee, David Addington, and William Haynes—who provided the legal basis for much of the torture and abuse that occurred at Guantánamo, Abu Ghraib, and other U.S. detention facilities around the globe. While they may claim merely to have given legal opinions, those opinions were given in a context in which these defendants knew that torture would be the result of their fallacious legal reasoning. Without these opinions, the torture program would not have occurred. Lawyers can be liable criminally if they knowingly give unwarranted and false legal advice in situations where it is foreseeable that death or serious harm to people will result from that advice. Under this standard, there is sufficient evidence against the lawyer defendants in this case to warrant their conviction.

You may also ask, if these attorneys are defendants in this case, why isn't former Attorney General John Ashcroft listed as a defendant, even though he was in office during the time that the torture program was crafted? We fully expect evidence to come to light that will show without a doubt that President Bush, Vice President Cheney, and John Ashcroft were intimately involved in the creation of the torture program.

And this evidence is already beginning to come to light: according to an ABC News story from April 2008, Donald Rumsfeld, Dick Cheney, Colin Powell, Condoleezza Rice, George Tenet, and John Ashcroft held dozens of secret meetings to discuss the torture of detainees held in CIA custody. In these secret meetings, they apparently provided explicit approval of specific techniques to be used on individual detainees, including waterboarding, as well as the use of abusive interrogation techniques in combination.

Any torture is by definition barbaric. The Bush administration developed and implemented a scientific torture program, one that maximized the destruction of the human personality. You will be shocked, as the world has been, by what you see and what you read about this torture program. Human beings were stripped, hung from ceilings, beaten, threatened and attacked by dogs, sexually abused, subjected to hot and cold temperatures, deprived of food and sleep, waterboarded, and held in isolation day after day, month after month. More than occasionally, they died from torture.

This torture was not carried out by just a few "bad apples" as the defendants would have you believe. It was policy and practice ordered and approved at the highest levels of the Bush administration by the defendants listed earlier. The defendants have attempted to divert attention from their own actions by prosecuting low-level soldiers, particularly those photographed in the torture photos. But those pictures of torture were only the tip of the iceberg. The torture program was massive and ordered from the very top—from the Pentagon, from the CIA, and from the White House. To date no one high up in the chain of command, no one above the rank of Lt. Colonel has been prosecuted—and that officer, Steven Jordan, was not found guilty of any charges relating to torture. That is why we are here at this trial. We, the public, are the court of last resort. Our opinion perhaps can force some existing court somewhere to bring high-level officials of the Bush administration, the perpetrators of torture, to justice.

The Bush administration has made efforts, through public statements and publicly released memos, to mount a defense against the serious accusations of torture made against it. We will present you with their defenses and let you judge their adequacy. The Bush administration has argued from both sides of its mouth in its efforts simultaneously to deny that it has engaged in a torture program and to justify the use of torture. On the one hand, it claims it does not torture and treats prisoners humanely. As you will see, it makes this claim because it has redefined torture and inhuman treatment so that the coercive interrogations it employs do not come within what courts, treaties, and lawyers always found constituted torture. At the same time that it denies employing torture, the Bush administration insists that it needs harsh interrogation tactics to get information, and that the president, in the name of national security and self-defense, may employ torture. In fact, his lawyers argue that there are no limits on the cruelties he can impose on others if he thinks he needs to do so to make us safer. It will be for you to decide whether or not the Bush administration has engaged in torture, and it will be for you to decide whom among the administration to hold responsible.

The evidence will refute each of these so-called torture defenses. The Bush administration's assertion that it is not bound by any law is simply false. Democracies are built on certain principles, and the key principle is that authority of the executive is under law and not above law. Authority that operates above law is a dictatorship. We saw the principle that authority must adhere to law violated in Germany during the Nazi regime when the only law was what Hitler said the law was—it was called Führer's Law. The principle that authority is under law goes back at least to the Magna Carta of 1215 and is embodied in the core principles of the U.S. Constitution.

Nor is the claimed defense that torture can be employed in self-defense valid. Torture is immoral and illegal no matter the

claimed necessity. In this prosecution of administration officials, we hesitate to argue that torture does not work. It does not, but we hesitate because we do not believe there are any circumstances that justify torture. Torture is a moral and legal issue, not a practical one.

Our experience has been that tortured people say whatever they can to stop the torture, and often the information is false. We think most of you know that torture is wrong, illegal, and immoral. However, many people in the United States either do not want to acknowledge that this is a country of torture or, out of fear of another terrorist attack, are willing tacitly to accept torture as necessary to make us safer. The Bush administration has played on this fear as a means of justifying its violations of fundamental rights including the prohibition against torture. But torture does not make us safer. It angers those who are tortured, and it angers people throughout the world. In the post-9/11 world, torture of Muslims at Abu Ghraib and Guantánamo angers Muslims who might otherwise be sympathetic to the United States. Imagine if it were Jews or Christians being tortured—would not people of those religions be angry? And that anger directed at the United States does not make us safer.

You might say, well, if torture does not work and it angers Muslims who might then attack us, why does the United States torture? Defendants claim that they need to get information and get it quickly in order to stop the next terrorist attack, and that torture helps them do so. This would still not make torture legal, but it would make the defendants appear more reasonable. The defendants say torture works and is necessary. Yet, history has shown the inefficiency of torture. The Gestapo used it in later years, but the results were completely unsuccessful. Many military officers and law enforcement officials, including senior members of the FBI, argue persuasively that torture does not work. The tortured person will say whatever is necessary to get the torture to stop, and rarely is the information true: the CIA's own Human Resource

Exploitation Manual of 1983 stresses that the use of force only induces the victim to say what he or she thinks the torturer wants to hear. An FBI interrogation instructor—Joe Navarro—stated in a December 2004 internal memo that, "the only thing that torture guarantees is pain, it never guarantees the truth."[1] Other FBI agents have also said torture doesn't work.[2] These officials say that softer, less coercive methods obtain information that is far superior. The evidence is strong that they are correct.

I do not know what was and is in the minds of the defendants and why, if torture does not work, they continue to insist on its use. Vengeance may be one motive. Another may be that the Bush administration wants to send its own message of terror to the Muslim world, wants to threaten those who might think about opposing U.S. policies with the terror of torture and imprisonment at places like Guantánamo. However, no matter the motives of the defendants, torture remains illegal and a violation of fundamental human rights.

In the next few pages I will outline the torture program of the Bush administration. This will give you an overview of the evidence. We will follow this brief introduction with undeniable proof, much of it from documents written by the defendants themselves, that these crimes were not committed by a few "bad apples" but were integral to a policy and practice authored and approved at the highest levels of the Bush administration. Its direct victims are in the thousands. Its indirect victims are all of us who care about morality, a government under law, and our own safety.

The Law

We begin with the law: the basic prohibition against torture and cruel, inhuman, and degrading treatment. These prohibitions are reflected in various treaties and statutes that were and are

binding on the defendants. These include the Convention Against Torture, the Geneva Conventions, the War Crimes Statute and the Torture Statute. U.S. statutes provide long prison sentences and even the death penalty for those who torture. Torture, when committed during a war, is a war crime. These laws prohibit torture in any circumstances, by anyone—even if ordered or committed by a head of state. Nothing justifies torture. These laws, as well as legal precedents, also define torture and the types of treatment that are prohibited. The Convention Against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession." International law, such as the Geneva Conventions, also prohibits less severe physical or mental pain. *Any form of physical treatment used to coerce someone during an interrogation is illegal.* When you read the evidence you will know that the Bush administration has engaged in torture and violated fundamental laws.

Torture and war crimes are considered so serious by the international community that they constitute an international crime that can be prosecuted and punished, irrespective of where, by whom, or against whom the act was committed. For such international crimes, the principle of universal jurisdiction applies—they can be prosecuted by any country. As you familiarize yourself with the evidence, keep in mind the seriousness of the universal prohibition against torture.

Systematic Torture

The first evidence we will present to you is example after example of the use of torture—the use of torture at Guantánamo, the use of torture at Abu Ghraib, and the use of torture at U.S. prisons and secret sites all over the world. Most of you will be aware of

the photographs at Abu Ghraib, but torture was not limited just to that particular section of a certain prison in Iraq.

For example, the Center for Constitutional Rights represents Guantánamo detainee Mohammed al Qahtani in a case of torture in which the defendant, former Secretary of Defense Rumsfeld, was directly involved. The case was documented in a Guantánamo interrogation logbook for a period of 160 days. Al Qahtani was interrogated on 48 out of 160 days for eighteen to twenty hours a day. He was stripped, made to stand with spread legs in front of female guards, and mocked (so-called "invasion of space by a female"). He was forced to wear women's underwear on his head and to put on a bra, he was threatened by dogs and led on a leash, his mother was called a whore. In December 2002, al Qahtani was the target of a faked abduction and rendition. He was kept in the cold, given substances intravenously, not given access to a toilet, and deprived of sleep for weeks. At one point his heart rate fell to thirty-five beats per minute. In the case of al Qahtani, Rumsfeld and Major General Geoffrey Miller personally ordered practices that aimed to keep al Qahtani awake more than twenty hours per day for at least two months; probably longer.

CCR also represented former Guantánamo detainees called the Tipton Three. When I traveled to England, they told me their story. They said, "Well, we were picked up by one of the Northern Alliance war lords in Afghanistan, put into one of those shipping containers, and eventually sold to the Americans." They said, "We were assumed guilty when we went to Guantánamo." The interrogators showed them a picture of Osama bin Laden in a field with forty bearded Muslim men. And they said, "Isn't that you, and isn't that you in the picture?" And our clients said, "No, no, that's not us; we never met Osama; we never went to the al Farooq Training Camp. It's not us; we were working in Curry's in the U.K. at that time." But they were assumed guilty.

Then they told me about something I didn't know: the United States torture program. The men were put into small rooms and

locked to a big metal bolt in the center of the floor. The temperature was taken up and down, they were stripped, they were hooded, they were sexually harassed, and then the interrogators would bring a dog in. American soldiers did all of this, including sleep deprivation, for a period of about ninety days to these men. This was standard at Guantánamo at this time. We didn't know it then, in March 2004. And I have to tell you, I was sitting there, and I sort of doubted some of their story. I said to myself, "Well, you know, maybe they're just exaggerating." This is before the photos of Abu Ghraib became public on April 28, 2004.

They told me that after being tortured, they made a false confession. They said that it *was* them in the photograph, even though it wasn't, and they said, "Yes, we knew Osama; we were trained in the al Farooq Training Camp."

Their story, or "confession," was completely false. But the details of their torture were not. Subsequently, the now famous Rumsfeld interrogation techniques were revealed, and the coercive torture methods used on the Tipton Three were outlined step by step in Rumsfeld's memo, which you can see in Chapter 3. On December 2, 2002, Rumsfeld signed the memorandum that allowed these techniques, including hooding, stripping, dogs, and sleep deprivation. At the end of this memorandum there is a note handwritten by Rumsfeld, which referred to the fact that prisoners were left standing in stress positions for up to four hours. In the note he wrote: "I stand 8 to 10 hours a day. Why is it limited to 4 hours?"

These are just some examples of the torture and inhuman treatment revealed by the evidence. They are by no means unique; nor do they reflect the worst of the treatment. There are literally thousands of cases of such torture. As you will discover, these tortures did not happen by chance, they did not happen because of the fog of war, and they did not happen because of a few rogue soldiers. The torture of these human beings was authorized and directed from the very highest levels of the U.S. government, by the very defendants that are before you.

Going to the Dark Side: The Case Against the Defendants

In the next few pages, I will give you a brief overview of evidence regarding the defendants' responsibility for the torture program. The defendants did not hide their plans, and they gave us warnings. For example, shortly after 9/11, Vice President Cheney practically acknowledged that unlawful methods would be employed. In an interview on national television, he stated: "We have to work the dark side, if you will." Beyond public statements of their intentions, their memoranda, orders, and actions deeply implicate the defendants in the authorization of torture.

Some of the first evidence we have of the defendants' culpability comes from early 2002. On January 19, 2002, defendant Rumsfeld informed the chief of the U.S. military, Richard B. Myers, that those detained in the war against Afghanistan would not be granted prisoner-of-war status as would normally be required by the Geneva Conventions. They would not even be given hearings to determine if they were prisoners of war. The government would "for the most part, treat them in a manner that is reasonably consistent with the Geneva Conventions to the extent appropriate."[3] With these few words, defendant Rumsfeld bypassed the humane protections of the Geneva Conventions and opened the door to torture.

This Rumsfeld memo was followed by an extraordinary memo written on January 25, 2002, by defendant Gonzales. In his memo Gonzales supported Rumsfeld and told the president why the United States should not follow the Geneva Conventions. A day later Secretary of State Colin Powell followed with a rebuttal. In his own memo Powell said that for the United States not to apply Geneva would undercut America's moral authority in the world and would endanger our soldiers. He argued that the United States was a pioneer in the development of the Conventions. In fact, the laws proscribing inhuman treatment came out

of our own Civil War and were written to protect rights of all people. Powell argued that accepting Gonzales's memo would mean abandoning fundamental moral and legal principles.

Gonzales won the day. His memorandum paved the road to Abu Ghraib. He said that we had to interrogate people for intelligence, we had to give them summary trials, and Geneva's provisions on interrogation were obsolete, because while they allow you to interrogate people, they don't allow you to treat people inhumanly or to torture them. Gonzales noted that the War Crimes statute, a special criminal statute in the United States, prohibits violations of the Geneva Conventions. So he said to the president, in effect, "Look, the definition of 'inhuman' is vague, some prosecutor may come along in the future and decide that the way we're treating people is inhuman, and therefore we might be prosecuted, and the best way to avoid prosecution is simply to say the Geneva Conventions don't apply. If they don't apply, we can't violate them."

So what Gonzales really said in his memo was that yes, we are going to be treating people inhumanly, contrary to Geneva, and we must cover ourselves legally for the torture and inhuman treatment we are planning to inflict on prisoners. The president agreed with this memo and on February 7, 2002, issued a public statement denying prisoner-of-war status for the Taliban and any Geneva Conventions protection to alleged terrorists. He said all detainees should be treated humanely—but, and it is a big but—only "to the extent military necessity required." In other words, if torture was "necessary," it was permissible. The consequences of this stance would prove to be fatal.

Defendant Gonzales, with a push from Cheney and defendant Addington, asked for more memos to help make his argument that torture was legal; the most famous was called the Bybee/Yoo memo. That memorandum redefined torture so narrowly that classic and age-old tortures such as waterboarding were authorized to be employed and were subsequently employed by U.S.

officials. That memo would also be used to immunize those who tortured.

Defendant Bybee is now a federal judge in the Ninth Circuit, one of the most important circuits in the country, having been elevated to that job by the Bush administration. In the memo he wrote with John Yoo, dated August 1, 2002, Bybee made at least two sharp departures from legality. First, he took what I call the Pinochet defense. Pinochet, you all remember, tortured and murdered at least three thousand people in Chile in the name of national security. Defendant Bybee basically said (and I am paraphrasing here), "Look, in the name of national security, the president is exempt from laws prohibiting torture. He can do whatever he wants in the name of national security. The fact that we're signatories to and have ratified the Convention Against Torture, which makes it a crime, the fact that we have a criminal law that makes it a crime to torture people in the United States or outside the United States, the fact that it's customary international law not to torture, the fact that the Eighth Amendment to the Constitution essentially prohibits torture—none of that matters, because the president can do whatever he wants in the name of national security. And if the president can authorize torture, he can authorize those under him to torture, and that will be a defense to a criminal prosecution of all torturers."

Defendant Bybee also declared that torture is not torture. He redefined torture very narrowly so that almost any coercive interrogation technique would not constitute torture. Interrogators could do what they wanted to detainees. Therefore, taking a growling dog up to a naked man and saying, "It's going to bite your genitals off"—today that's not torture according to the Bybee/Yoo memo. Hanging someone from his or her wrists is not torture. Bybee and Yoo said in roughly these words that "Only physical pain that leads to organ failure or death is torture." Under that definition, almost none of what was seen in the pictures at Abu Ghraib constituted torture. In his testimony at his

confirmation hearing for attorney general, Gonzales acknowledged that he had agreed with the conclusions of the Bybee memo. It was only three years later, at that hearing in January 2005, that Gonzales said the Bush administration now rejects that narrow definition and has gone back to one that the world accepts: torture is torture—intentionally inflicting significant pain, or putting someone in fear of serious physical injury is torture. So for over two-and-a-half years, under a definition of torture that essentially allowed everything short of murder, detainees around the world were tortured. Even today, Gonzales and the Bush administration hold to their view that non-citizens held outside the United States can be treated inhumanly and that neither the Geneva Conventions nor the prohibition on cruel, inhuman, and degrading treatment in the Convention Against Torture protects them. Their argument for this outrage is devoid of any legal merit.

After the Gonzales and the Bybee memos, we have the authorization for mistreatment and torture written by defendant Donald Rumsfeld. Did Rumsfeld know in advance about American soldiers piling naked prisoners in a heap in Abu Ghraib? I can't say for sure. But did his policy—the memos he authorized that said we don't have to pay attention to the Geneva Conventions, that we can use dogs against people, that we can use extreme interrogation techniques, that we can treat people inhumanly—did those memos and authorizations lead to Abu Ghraib? Absolutely. Did Rumsfeld authorize conduct that constituted war crimes? Absolutely.

The United States-led invasion of Iraq in the spring of 2003 led to the question of how the prisoners of war and so-called "illegal fighters" should be treated. This is when torture techniques started to be exported from Guantánamo to Iraq and used in the military prison of Abu Ghraib and other detention centers. This export was accomplished through a series of memoranda and instructions, in whose production and implementation, according to the report of the government's Schlesinger investigation, the entire military chain of command was involved.

In the wake of Abu Ghraib and the exposure of the torture memos, the Bush administration claims that it was not responsible for torture and inhuman treatment. The administration blames these behaviors on a "few bad apples" in Iraq and Afghanistan who chained some detainees to a ceiling and beat the heck out of them or sexually abused them, holding that those bad apples are responsible for excesses. But complicity in torture goes all the way up the chain of command, from Lt. General Sanchez in Iraq and General Miller, who was in Guantánamo and then traveled to Iraq, up to Secretary of Defense Rumsfeld, and finally to the President of the United States.

Upholding the laws prohibiting torture means acting against its propagation and insisting on the punishment of those directly responsible for torture as well as those who organize the practice of torture. This is the context in which the accusations in this trial should be understood. None of the defendants fulfilled their legally mandated roles to prohibit torture; all were complicit in the propagation of torture.

Continuing impunity for those who pulled the strings that led to the war crimes committed at Abu Ghraib and elsewhere is not acceptable. Condoning American torture emboldens other governments of the world to continue what is unfortunately their all-too-common practice of torture. It is precisely this situation that the U.S. Chief Prosecutor at the Nuremberg Trial, Robert Jackson, had in mind when he said this in his opening speech on November 21, 1945:

> Let me make clear that while this law is first applied against German aggressors, the law, if it is to serve a useful purpose, must condemn aggression by any other nations, including those which sit here now in judgment. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law.

American torturers should not go unpunished.

2

Summary of the Indictment

I. Charges of War Crimes, Torture, and Other Forms of Cruel, Inhuman, or Degrading Treatment

The right of every human being to be free from torture and cruel, inhuman, or degrading treatment is universal and absolute. Under the laws of war, commission of such acts constitutes war crimes. War crimes and acts of torture are some of the most serious international crimes that exist. They are an attack on humanity as a whole, and it is in the interest of all that the authors of these crimes be prosecuted. For these reasons, international law provides that all states have an obligation to prosecute the alleged perpetrators of these crimes or turn them over to another state for prosecution. This obligation, first stated in the Geneva Conventions (Geneva III, art. 129; Geneva IV, art. 146), applies regardless of the nationality of the perpetrator, the nationality of the victim, or the place where the crime was committed, and applies regardless of the rank or political station of the perpetrator up to and including heads of state. This is the principle of universal jurisdiction, reaffirmed in the preamble of the Rome Statute of the International Criminal Court to which, in 2007, 104 countries are State Parties (but not the United States); universal jurisdiction is a principle now enacted by many states in their legislation.

Pursuant to international humanitarian law contained in the four Geneva Conventions of 1949,[1] ratified by the United States; pursuant to international human rights law under the International Covenant on Civil and Political Rights (ICCPR, arts. 7 & 10) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), both of which are ratified by the United States; pursuant to the principles of customary international law applicable to all states; pursuant to the U.S. War Crimes Act of 1996 (18 U.S.C. § 2441) and to the Torture Victims Protection Act of 1994 (18 U.S.C. § 2340A), the following named individuals—**Donald Rumsfeld, George Tenet, Stephen Cambone, Ricardo Sanchez, Geoffrey Miller, Walter Wojdakowski, Thomas Pappas, Barbara Fast, Marc Warren, Alberto Gonzales, William Haynes, David Addington, John Yoo, and Jay Bybee**—are accused as guilty of war crimes and torture, and other cruel, inhuman, or degrading treatment.

II. Statement of the Offense

Hundreds of individuals were victims of gruesome crimes under international and American law, not only at the infamous Abu Ghraib prison, but in other U.S. detention centers in Iraq, Afghanistan, and Guantánamo Bay. The detainees' dignity—a natural and inalienable right possessed by all human beings—was taken from them. They were severely beaten, excessively deprived of sleep and food, sexually abused, raped or sodomized, sexually or religiously humiliated, stripped naked and hooded, and exposed to extreme temperatures and extreme noise. Some were killed, waterboarded, psychologically tortured, secretly detained, or rendered to a third country for torture. These acts consist of torture; cruel, inhuman, or degrading treatment; and war crimes.

III. The Defendants' Personal Responsibility

It is well established under international law and also under American law that individual criminal responsibility is not limited to persons who have directly perpetrated a crime. An individual is equally responsible for ordering, soliciting, aiding, or abetting a crime, and also responsible if he or she failed, as a civilian superior or as a military commander, to prevent its commission by subordinates, or failed to punish them.

Since September 11, 2001, and in the context of the so-called "war on terror," from Donald Rumsfeld on down, these political and military leaders have been personally in charge of ordering, implementing, and supervising the execution by lower-level soldiers of "harsh" interrogation techniques. These techniques were systematically used against hundreds of detainees in U.S. custody in Iraq, Afghanistan, and in the Guantánamo Bay prison camp. There is undeniable evidence, as we will show, that 1) these techniques amount to torture and/or cruel, inhuman, or degrading treatment, 2) in the context of an international armed conflict they also constitute war crimes, and 3) American military and civilian high-ranking officials are personally responsible for these crimes.

The defendants will deny personal responsibility or even knowledge, but we will show how their personal liability and knowledge has now been stated in a wide variety of official and nonofficial documents made public over the past few years. Following are summaries of the charges against each of them.

We begin with Department of Defense and high-ranking military officials, going all the way down the chain of command. We conclude with the legal architects of the Bush administration's torture program.

1. Donald Rumsfeld

Donald Rumsfeld was Secretary of Defense from 2001 until he resigned in November 2006. He is liable as a civilian commander over the military for his control over individuals accused of war crimes in Afghanistan, Guantánamo, and Iraq. In his position he was ultimately responsible for military policy. Former Secretary Rumsfeld was authorized by presidential military order to "detain individuals under such conditions [as] he may prescribe and to issue related orders and regulations as necessary."[2] Accordingly, Rumsfeld directed Department of Defense General Counsel, William Haynes, to establish a working group to study interrogation techniques. The working group played a significant role in relaxing the definition of torture, enabling Rumsfeld to authorize techniques viewed as impermissible by both military manuals and international law.

Donald Rumsfeld was directly responsible for war crimes. The severest abuses at Abu Ghraib occurred in the immediate aftermath of a decision by Rumsfeld to step up the hunt for "actionable intelligence" among Iraqi prisoners.

Former Secretary Rumsfeld approved a program for the use of force in interrogations, originally a Special Access Program (SAPs) for al Qaeda suspects, but also for use against numerous persons rounded up as detainees in Iraq. As Bart Gelman reported in the *Washington Post* in January 2005, Rumsfeld concluded that such operations need not be disclosed to Congress.

Two applicable directives of the Department of Defense (DOD), Directives 2310.1 and 5100.77, require that the U.S. military services comply with the principles, spirit, and intent of international laws of war; that the DOD observe and enforce the U.S. obligations under the laws of war; that personnel know the laws of war obligations; and that personnel promptly report incidents violating the laws of war and that the incidents be thoroughly investigated.

The interrogation training in use under the Bush administration is certainly inadequate when considered in light of these directives. The Army Field Manual 34-52 (FM 34-52), with its list of seventeen authorized interrogation methods, has long been the standard source of interrogation doctrine within the DOD. With a December 2, 2002, decision, Donald Rumsfeld authorized the use of sixteen additional techniques at Guantánamo, tactics ordinarily forbidden by the Army Field Manual. In April 2003, former Secretary Rumsfeld approved a list of about twenty interrogation techniques for use at Guantánamo Bay, that remain in force today; the techniques permit, among other things, reversing the normal sleep patterns of detainees and exposing them to heat, cold, and "sensory assault," including loud music and bright lights, according to defense officials. Documents exist proving that Rumsfeld directly and specifically approved such treatment for Guantánamo detainee Mohammed al Qahtani.

As Secretary of Defense, Rumsfeld was the penultimate civilian commander over the military, after President Bush. There is no doubt Rumsfeld had control over the individuals who committed war crimes; indeed, he ordered the commission of some war crimes, and set the conditions for the commission of others. Additionally, Rumsfeld failed to take appropriate action such as reporting and punishing when he first learned of the abuses, allowing the crimes to continue.

General Antonio Taguba, who investigated Abu Ghraib, submitted over a dozen copies of his report through channels at the Pentagon and the Central Command headquarters, and spent weeks briefing senior military leaders, said Rumsfeld was in public denial of the abuse up until the night of his Congressional testimony.

2. George Tenet

George Tenet became Acting Director of the Central Intelligence Agency (CIA) of the United States in 1996, and assumed the

position of director in 1997, where he remained until his resignation in June 2004. As the director, Tenet had ultimate authority over all of the doings of the CIA and over all of its employees.

Tenet is responsible for war crimes when he personally solicited the detention of a "ghost detainee"—referring to people who are kept in CIA secret detention—and authorized programs in which CIA agents would unlawfully imprison, forcibly transfer, and torture people. As a result of the coercive techniques applied by the CIA under Tenet's leadership, numerous detainees in CIA custody have been killed during interrogation. Under Tenet's direction, the CIA also conducted false flag operations—hanging the flag of another country in the interrogation room in order to deceive the captive into thinking that he is imprisoned in a country with a reputation for brutality—a form of psychological torture prohibited by international law.

George Tenet failed to supervise those under his command where he had knowledge that war crimes and acts of torture were committed by his subordinates, and he did nothing to prevent those crimes.

Additionally, Tenet and the CIA failed to comply with requests to produce documentation for the various investigations conducted by the International Committee of the Red Cross (ICRC) and by the Department of Defense. While Tenet has instituted investigations into some of the deaths of those in custody, those investigations have occurred far too late, long after Tenet first had sufficient awareness of the CIA's illegal interrogation techniques. Tenet also ordered a general investigation into the CIA's interrogation techniques, but this order in May 2004 also came years after Tenet's knowledge of abuses by CIA agents.

3. Dr. Stephen Cambone

Dr. Stephen Cambone was the Undersecretary of Defense for Intelligence from 2003 until 2006. This position was created by

Secretary of Defense Donald Rumsfeld in his restructuring of the DOD. Cambone reported directly to Secretary Rumsfeld and was responsible for DOD intelligence activities. His official duties included coordinating DOD intelligence and intelligence-related policy, such as plans, resource allocations, and overseeing provision of intelligence support.

There is evidence that Cambone played a central role in the creation of secret interrogation operations. When the abuse of Iraqi prisoners at Abu Ghraib was revealed, Cambone was central to the bureaucratic chain of command that oversaw the interrogations. As Jason Vest reported in *The Nation*, the interrogations "were part of a highly classified Special Access Program (SAP) code-named Copper Green, authorized by Defense Secretary Donald Rumsfeld and ultimately overseen by Under Secretary of Defense for Intelligence Stephen Cambone."[3] Seymour Hersh revealed in an article in *The New Yorker* that while Copper Green had started out in Afghanistan using trained special operations personnel, in Iraq it involved using intelligence officers and other personnel not trained for the role.[4] After the CIA withdrew from the program, Cambone reportedly assigned Major General (MG) Miller, the former Guantánamo Bay interrogations chief, to oversee Iraq's prison system. It was after MG Miller's visit to Abu Ghraib that the most serious abuses occurred.

Cambone effectively had actual authority and control, as he was directly responsible to the Secretary of Defense for intelligence operations. Cambone had access to the Red Cross reports and the numerous complaints in the media about detainee conditions. Yet he failed in his duty to investigate further and failed to take action to halt impending war crimes.

4. Ricardo Sanchez

Ricardo Sanchez was a Lieutenant General (LTG) of the United States Army. After the fall of Baghdad in the spring of 2003, LTG

Sanchez assumed command of Combined Joint Task Force Seven (CJTF-7), which encompassed all U.S. armed forces in Iraq including those at all of the detention facilities. He held this position from June 14, 2003, until June 28, 2004.

Sanchez's September 14, 2003, authorization of certain interrogation procedures overstepped standard army doctrine and violated the Geneva Conventions' prohibition of inhuman treatment. The authorized methods included the use of military dogs, temperature extremes, yelling, loud music, light control, reversed sleep patterns, sensory deprivation, stress positions, prolonged isolation, and dietary manipulation. A month later, after Central Command of the Armed Forces had disapproved of the September techniques, LTG Sanchez issued an October 12, 2003, update of procedures that included "segregation" (or isolation) for extended periods and suggested that military dogs could still be used in interrogations.

The "Interrogation Rules of Engagement" were prominently posted in Abu Ghraib. The rules explicitly state that these methods could be used if the "CG's" (LTG Sanchez's) approval was sought and approved in writing. Sanchez himself acknowledged that "in twenty-five separate instances, he approved holding Iraqi prisoners in isolation for longer than thirty days, one of the methods listed in the posted rules."

LTG Sanchez knew of the abuses occurring at detention facilities under his command by late summer 2003 as a result of several reports, including the ICRC report. However, he did little, if anything, to stop those abuses or to implement the recommendations of these reports. LTG Sanchez retired on November 1, 2006.

5. Geoffrey Miller

Geoffrey Miller is a Major General with the United States Army. He was commander of Joint Task Force-Guantánamo (JTF-Guantánamo) from November 2002 until April 2004, when he

became Deputy Commanding General of Detention Operations in Iraq, the position he held until July 31, 2006, when he resigned his post. As commander of JTF-Guantánamo, MG Miller oversaw both military intelligence and military police functions and had them work together to "soften up"[5] detainees for interrogation. In Iraq, Miller was responsible for all detainee operations, interrogation operations, and legal operations for multinational forces.

At MG Miller's direction, detainees at Guantánamo were held without contact with the outside world. Released detainees describe a range of treatments that individually and collectively amount to torture: being short-shackled in painful "stress positions" for many hours at a time, receiving deep flesh wounds and permanent scarring; being threatened by unmuzzled dogs; being forced to strip; being photographed naked; being subjected to repeated forced body cavity searches; being exposed to extremes of heat and cold for the purpose of causing suffering; being kept in filthy cages for twenty-four hours per day with no exercise or sanitation; being denied access to necessary medical care; being deprived of adequate food, sleep, communication with family and friends, and of information about their status; and being violently beaten by guards.

MG Miller was on notice of general abuses and the fact that conditions were ripe for abuse, yet he failed to take measures to ensure that abuses would not occur. As MG Miller encouraged the "softening up" of detainees, he authorized the abuses to take place, and when they did, he failed to take appropriate action by reporting these abuses to the proper authority. Miller has retired from duty as of July 31, 2006.

6. Walter Wojdakowski

Walter Wojdakowski is a U.S. Army Major General. He was the Deputy Commanding General (DCG) of the former CJTF-7 under Ricardo Sanchez. CJTF-7 encompassed all U.S. armed forces in

Iraq, including those deployed to detention facilities. MG Wojdakowski's CJTF-7 primary responsibility was to support such facilities. He also had direct responsibility and oversight of the separate brigades assigned to CJTF-7.

MG Wojdakowski directly authorized illegal interrogation techniques. The *Washington Post* revealed this fact in May 2004: "[Colonel Thomas] Pappas said, among other things, that interrogation plans involving the use of dogs, shackling, or similar aggressive measures followed [LTG] Sanchez's policy, but were often approved by Sanchez's deputy, Maj. Gen. Walter Wojdakowski, or by Pappas himself." MG Wojdakowski's approval of certain interrogation procedures contravened standard army doctrine and the Geneva Conventions' prohibitions of inhuman and degrading treatment.

As the DCG of CJTF-7 with direct responsibility over the 205th Military Intelligence (MI) Brigade and Colonel (COL) Pappas, MG Wojdakowski's general responsibility over all U.S. armed forces in Iraq and over commanders of these forces cannot be questioned.

Wojdakowski knew about the abuses as early as November 2003, and then failed to inform his immediate supervisor. The authors of the Schlesinger, Fay-Jones, and Taguba reports—all key investigations into the torture and abuse at Abu Ghraib—as well as congressional testimony, have underscored MG Wojdakowski's failure to provide proper guidance, supervision, and oversight of detention operations and staff. MG Wojdakowski is now Commanding General of Fort Benning.

7. Thomas Pappas

Thomas Pappas is a Colonel of the U.S. Army. Since July 1, 2003, he has been the Commander of the 205th MI Brigade deployed in Iraq. From November 19, 2003, until February 6, 2004, COL Pappas was designated by the CJFT-7 as the Commander for Force Protection and Security of Detainees of Forward Operating Base

(FOB) Abu Ghraib and thus took tactical control of the prison of Abu Ghraib during that time.

COL Pappas authorized and ordered the misuse of dogs to support interrogations to "fear up"[6] detainees. He said MG Miller told him dogs were acceptable for use in setting the atmosphere during interrogations. COL Pappas requested the use of navy dogs to intimidate the detainees. When an army investigator asked Pappas how intimidation with dogs could be allowed under existing treaties, Pappas gave the chilling reply, "I did not personally look at that with regard to the Geneva Convention."

Since COL Pappas had effective authority over Abu Ghraib, the 205th MI Brigade and therefore the 800th Military Police (MP) Brigade, he was responsible for his subordinates' acts. Evidence shows that not only did COL Pappas have knowledge of crimes committed by his subordinates, but that he was present when they occurred. COL Pappas told MG Taguba that intelligence officers sometimes instructed Military Police to strip detainees naked and to shackle them in preparation for interrogation when there was no good reason to do so. On November 4, 2003, Iraqi detainee al-Jamadi died at Abu Ghraib while being questioned by a CIA officer and Navy Seal soldiers, face down and handcuffed. The autopsy showed the death stemmed from a blood clot caused by injuries sustained during apprehension. According to Captain Donald Reese, COL Pappas was the senior officer present during the death.

The Taguba report stated that COL Pappas "[f]ailed to ensure that Soldiers under his direct command were properly trained in and followed the Interrogation Rules of Engagement; Failed to ensure that Soldiers under his direct command knew, understood, and followed the protections afforded to detainees in the Geneva Convention relative to the Treatment of Prisoners of War."

Pappas was punished only nonjudicially, not through a court-martial or other court proceeding. No substantive criminal charges have been brought against him. Pappas currently has the same

job he had when the abuses at Abu Ghraib occurred: Commander of the 205th MI Brigade.

8. Barbara Fast

Barbara Fast is a Major General with the United States Army. She was a Senior Intelligence Officer with the CTJF-7 in Iraq and a member of the Detainee Release Board. She was a subordinate of LTG Sanchez, the Commander of the CTJF-7 and intermittently Pappas's superior.

Barbara Fast is alleged to have refrained from preventing war crimes from being committed by her subordinates, despite her authority to do so.

The Schlesinger Report explicitly points out that the CJTF-7 Commander 2, Barbara Fast, Director of Intelligence, failed to advise the commander (Sanchez) properly on directives and policies needed for the operations of the Joint Interrogation and Debriefing Center [JIDC]. The JIDC is the physical location for the exploitation of intelligence information from enemy prisoners of war. The JIDC may also interrogate civilian detainees, refugees, and other nonprisoner sources.

According to the report of 2004 by George R. Fay on Intelligence Activities at Abu Ghraib, Fast also inadequately monitored "the activities of Other Government Agencies" (CIA operations at the Abu Ghraib facility) "within the Joint Area Operations."

In her role as a chief military intelligence officer in Abu Ghraib, she then had actual and effective control over the ongoing incidents. In fact, although the soldiers who perpetrated the abuses in Abu Ghraib were not her direct subordinates, she still had the authority and control to prevent further crimes. She did not do so, yet no disciplinary action has been taken against her and no criminal investigation is contemplated.

Barbara Fast is currently the commanding General of the Army Intelligence Center at Fort Huachuca, where, disturbingly,

troops learn interrogation methods and the army rules on the treatment of prisoners.

9. Marc Warren

Marc Warren is a Colonel with the United States Army. Under the command of LTG Ricardo Sanchez, in 2003-04, he was a staff judge advocate for the CJTF-7 and as such the highest legal expert within the U.S. military apparatus in Iraq. His assignment was to provide legal advice to General Sanchez on whether or not his orders and memoranda were pursuant to the Geneva Conventions.

Marc Warren mandated Captain Brent Fitch, Major Daniel Kazmier, and Major Franklin D. Raab to draft new reliable interrogation rules. Captain Fitch adopted the memorandum of the Secretary of Defense Donald Rumsfeld from April 16, 2003, "almost verbatim" and added proposals of the 519th Military Intelligence Battalion, which included some further abusive techniques such as the use of dogs, which he authorized for all detainees. This document was approved by Warren.

Sanchez trusted the advice of his Judge Advocate that he had the authority to enact a directive of aggressive interrogation methods as the Commander of the Combined Joint Task Force. Sanchez's decisions were grounded on Warren's legal advice.

After the first surprise visit to the Abu Ghraib prison of the ICRC in mid-October 2003 and its following report—which already included images of naked detainees and detainees in women's underwear—Warren claimed that neither he nor anyone else from CJTF-7 headquarters was present in Abu Ghraib when the Red Cross arrived for its investigations.

The Fay-Jones report documents that Warren and Wojdakowski attended a meeting in the beginning of December 2003 to debate the response to the ICRC report with the aim of invalidating its allegations. The Schlesinger report asserts that "[t]he CJTF-7 Staff Judge Advocate failed to initiate an appropriate response to the

November 2003 ICRC report on the conditions at Abu Ghraib." The reply letter to the ICRC was drafted by the office of Marc Warren, and was sent over with Warren's signature. Warren denied in his testimony before the Senate Armed Services Committee on May 19, 2004, that he had written the letter, but said he "believed" that others in his office did. The letter informs the Red Cross that the U.S. military need not fully apply the Geneva Conventions at Abu Ghraib.

10. Alberto Gonzales

Alberto Gonzales was commissioned as chief White House counsel (WHC) to President George W. Bush in January 2001, and remained in that position until he was sworn in as attorney general on February 3, 2005. As chief WHC, Gonzales was responsible for advising the president on all legal issues concerning the president and the White House. He was also responsible for coordinating communications between the White House and the Justice Department's Office of Legal Counsel (OLC). It is important to note that while many think the WHC is the president's personal counsel, the WHC is in fact employed by the American public and is meant to serve their interests, not the president's.

In this capacity, he presumably briefed the president on all of the major memoranda sent to the president on the applicability of the Geneva Conventions and the scope of the Convention Against Torture and the federal War Crimes Act.

In his own memorandum to the president of January 25, 2002, Gonzales endorsed legal opinions supporting extreme presidential authority to remove the protections afforded by these Conventions and also endorsed opinions that found the obligations under international treaties to be nonbinding. His advocacy of the withdrawal of Geneva protections was a necessary precursor to the creation of the legal black hole that allowed torture to take place.

Under the most basic standards of complicity in aiding and abetting torture and committing war crimes, Gonzales's activities make him personally criminally responsible for advocating for the removal of the protections guaranteed under the Geneva Conventions. His omissions—in the form of failing to object to arguments advanced by the subordinates—make him legally responsible for paving the way for violations of the Geneva Conventions and the Convention Against Torture, charges that constitute war crimes. As a consequence of Gonzales's actions, hundreds of detainees have been abused and tortured in U.S.-operated detention facilities.

Finally, in October 2007, it was revealed by the *New York Times* that a series of secret memos and legal opinions had been approved by Attorney General Gonzales in 2005, for the first time explicitly authorizing U.S. interrogators to use a combination of brutal interrogation techniques in tandem. The approved techniques include, for example, the use of extreme cold and head slapping, and, for the first time, waterboarding was explicitly authorized. These secret memos remain, today, the prevailing legal justifications for the ongoing torture of those held by the CIA.

11. William Haynes

Former General Counsel William Haynes was, beginning in May 2001, the direct legal advisor to former Secretary of Defense Donald Rumsfeld. Haynes was one of the architects and chief defenders of the Bush administration's illegal policies regarding detainee treatment. Haynes ignored domestic law as well as U.S. treaty obligations and established principles of international law when he recommended approval of interrogation techniques that amounted to cruel, inhuman, and degrading treatment. Haynes's blanket approval of illegal techniques gave the green light to U.S. servicemen to abuse and torture detainees in U.S. custody.

Haynes led a DOD working group that advocated circumventing

detainee treatment safeguards prescribed by U.S. domestic law, the Geneva Conventions, and longstanding U.S. military practice. In the face of serious legal criticism from career military attorneys, the working group approved interrogation techniques amounting to cruel, inhuman, and degrading treatment; limited the number of prohibited techniques by narrowly redefining torture; argued that the president has the authority to ignore U.S. law prohibiting torture and to immunize officials who violate the law; and claimed that U.S. law governing detainee treatment does not apply in Guantánamo Bay and other territories outside the United States. As a consequence of Haynes's actions, individuals not charged with any crime have been denied their most basic rights.

The legal opinion provided by General Counsel Haynes was legally derelict. At the same time, it is highly unlikely that Rumsfeld would or could have approved torture tactics without justification and approval from his top legal advisor. Had Haynes provided an accurate assessment of the state of the law instead of manipulating the law to arrive at his desired outcome, Rumsfeld most likely would not have authorized the interrogation tactics. Haynes's conduct constituted a "substantial effect" on Rumsfeld's approval of illegal interrogation methods.

There has been no disciplinary action taken against former General Counsel Haynes. President Bush nominated him to the U.S. Court of Appeals for the Fourth Circuit; because of strong opposition, Haynes withdrew from consideration. He resigned as General Counsel of the Department of Defense in February 2008.

12. David Addington

David Addington was Vice President Richard Cheney's chief of staff from December 28, 2000, until he was promoted in October 2005 to Chief Counsel. He reviews the statements of the vice president and advises on legal issues as they relate to policy. He also advises the staff about questions of ethics. The chief of staff is

responsible for directing, managing, and overseeing all policy development, daily operations, and staff activities for the vice president.

A series of memoranda written in the first months after 9/11 by John Yoo of the Justice Department's OLC were allegedly heavily influenced by Addington.[7] The first, on September 25, 2001, claimed that the president was not bound by proscriptions on torture in international treaties or domestic statutes and "claim[ed] that there were virtually no valid legal prohibitions against the inhuman treatment of foreign prisoners held by the C.I.A. outside the U.S."[8] This conclusion is patently legally false.

Addington has consistently averred—in the face of massive precedents to the contrary—that under the constitution, the president has unlimited powers as commander-in-chief during wartime. Addington helped to shape an August 2002 opinion from the Justice Department's OLC that said torture might be justified in some cases. According to a government insider who was a part of early internal debates following 9/11, Addington accused those who favored compliance with international law of being "soft on terrorism."

13. John C. Yoo

John C. Yoo served as deputy assistant attorney general in the OLC within the Department of Justice from July 2001 through June 2003. As deputy assistant attorney general, Yoo worked under the OLC assistant attorney general, Jay S. Bybee.

Yoo's memos created the legal justification for torture and abuse of detainees held in the U.S. war on terror. His January 9, 2002, memo stripped away the floor of fundamental rights that the Geneva Conventions provide to both formal POWs and to "unlawful combatants," which is not a legal category, but a term coined by the Bush administration. By arguing that the Geneva Conventions did not apply in any way to these detainees and by

failing to articulate any kind of minimal standard for detainee treatment outside of Geneva, Yoo provided a legal justification for interrogation methods that included torture and cruel, inhuman, or degrading treatment. His memorandum from August 2002 narrowed the definition of torture to acts that inflicted pain equivalent to major organ failure or death, effectively authorizing a range of interrogation methods commonly considered to be torture.

Yoo reasserted some of his most irresponsible, least-founded legal conclusions on torture and unbridled executive power in the April 2003 Working Group Report, which was used to justify several official interrogation techniques that constituted torture or cruel, inhuman, and degrading treatment. The total result of these legal opinions was the granting of legal cover to the systematic torture of detainees held in the so-called "war on terror."

As the author of these memoranda, Yoo aided and abetted war crimes under international law, and facilitated torture and cruel, inhuman, and degrading treatment of detainees in Guantánamo Bay, Afghanistan, and Iraq.

No disciplinary action has been taken against John Yoo. After leaving the OLC in 2003, Yoo returned to his tenured position as Professor of Law at Boalt Hall, University of California Berkeley.

14. Jay Bybee

Jay Bybee was the assistant attorney general for the OLC in the Justice Department from October 2001 until March 2003.

At the OLC, Bybee wrote memos outlining the Bush administration's legal framework for the war on terrorism. The most important memo is the August 1, 2002, so-called "torture memo," which examined a 1994 statute ratifying the United Nations Convention against Torture (CAT). To constitute torture under this convention, Bybee concluded, physical pain must be "equivalent in intensity to the pain accompanying serious physical

injury, such as organ failure, impairment of bodily function, or even death." Moreover, inflicting that severe pain must have been the "specific intent" of the interrogator. Bybee also asserted that the U.S. ratification of the 1994 statute could be unconstitutional if it interfered with the president's commander-in-chief powers. Bybee incorrectly asserted that the CAT leaves cruel, inhuman, or degrading treatment "without the stigma of criminal penalties." Bybee nowhere mentions that cruel and degrading treatment is forbidden under the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, a serious dereliction of his legal duties.

The torture memo was used by the Bush administration as "sweeping legal authority" for harsh interrogations of foreign detainees and became national policy for twenty-two months until, after widespread criticism of the torture memo, the Justice Department rescinded it on December 30, 2004.

Bybee's actions satisfy the requirements of aiding and abetting liability. By writing the torture memo with knowledge that OLC's legal opinions carry great weight to the executive branch, and by keeping the memo secret from the public, Jay Bybee knowingly facilitated illegal abuses at Abu Ghraib and elsewhere.

Bybee is currently a federal judge for the 9th Circuit U.S. Court of Appeals.