

What Were The Torture Lawyers Thinking?

By Dan Froomkin

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A long-awaited internal Justice Department report promises to shed some much-needed light on the relationship between the Justice Department lawyers who wrote the infamous "[torture memos](#)" and the White House. The central question, of course: Whether the lawyers were themselves just following orders.

The report has not yet been released -- or even finalized -- but a growing number of leaks make it clear that the internal inquiry concluded that the memos were legally indefensible.

The report also apparently includes e-mails between the lawyers and the White House. But what's not clear to me at this point is whether the report reaches a definitive conclusion about whether the wild legal arguments were the result of a profound lack of judgment by the lawyers or were consciously concocted to justify techniques the White House had already approved. (Or both.)

The inquiry has apparently concluded that two lawyers in particular committed serious enough lapses to merit disciplinary action by their state bars -- though not criminal prosecution. That suggests the investigators didn't find "smoking gun" evidence of a conspiracy to violate federal statutes. But there's sure to be a lot of fascinating material in their report nonetheless.

[David Johnston and Scott Shane](#) write in the New York Times: "An internal Justice Department inquiry has concluded that Bush administration lawyers committed serious lapses of judgment in writing secret memorandums authorizing brutal interrogations but that they should not be prosecuted, according to government officials briefed on its findings.

"The report by the Office of Professional Responsibility, an internal ethics unit within the Justice Department, is also likely to ask state bar associations to consider possible disciplinary action, which could include reprimands or even disbarment, for some of the lawyers involved in writing the legal opinions, the officials said....

"The draft report is described as very detailed, tracing e-mail messages between the Justice Department lawyers and officials at the White House and the Central Intelligence Agency. Among the questions it is expected to consider is whether the memos were an independent judgment of the limits of the federal anti-torture statute or were deliberately skewed to justify the use of techniques proposed by the C.I.A.....

"The main targets of criticism are John Yoo, Jay S. Bybee and Steven G. Bradbury, who, as senior officials of the department's Office of Legal Counsel, were principal authors of the opinions."

[Josh Meyer and Julian E. Barnes](#) write in the Los Angeles Times: "The OPR investigation found that memos attempting to make organ failure the defining line between pain and torture was something any lawyer would find unreasonable. It also concluded that Bybee and Yoo had violated a lawyer's duty to provide 'reasonable legal advice,' according to one source familiar with the report."

The report is apparently frustrating people on both sides of the torture divide. [Carrie Johnson](#) writes in The Washington Post about this development: "Former Bush administration officials have launched a behind-the-scenes campaign to urge Justice Department leaders to soften an ethics report criticizing lawyers who

blessed harsh detainee interrogation tactics, according to two sources familiar with the efforts.

"Representatives for John C. Yoo and Jay S. Bybee, subjects of the ethics probe, have encouraged former Justice Department and White House officials to contact new officials at the department to point out the troubling precedent of imposing sanctions on legal advisers, said the sources, who spoke on the condition of anonymity because the process is not complete."

And [Devlin Barrett](#) writes for the Associated Press: "Vincent Warren, executive director of the Center for Constitutional Rights, called the decision not to seek criminal charges 'inconceivable, given all that we know about the twisted logic of these memos.'

"Warren argued the only reason for such a decision 'is to provide political cover for people inside the Obama White House so they don't have to pursue what needs to be done.'"

[Andrew Sullivan](#) blogs for the Atlantic: "Who in the White House ordered up these memos to provide phony legal cover for a plainly illegal torture policy already decided upon? That's what we need to find out."

[Marc Ambinder](#) blogs for the Atlantic that the draft report "suggests that, at the direction of the White House, the OLC worked to justify a policy that had already been determined and did not begin their inquiry from a neutral position."

[Emily Pierce](#) writes for Roll Call that the "explosive report...could set the stage for potential judicial impeachment hearings in the House and for a renewed partisan battle over how the previous administration approved the use of harsh interrogation methods against detainees."

Democratic Senators [Dick Durbin and Sheldon Whitehouse](#) released a statement yesterday expressing their disappointment that Bradbury was allowed "to participate in OLC's 'review and response' to the report - despite the fact that he played a leading role in drafting the memos under review." But, they wrote, "we look forward to the prompt completion of this report, and we are pleased by the strong implication in the letter that former OPR chief Marshall Jarrett's pledge to release the report will be honored."

[Ari Shapiro](#) reports for NPR: "The Justice Department has been trying not to make the investigation seem like a witch hunt. Some congressional staffers complain that the effort has gone too far. They are especially critical of the decision to allow Bradbury to participate in the inquiry as acting head of the Office of Legal Counsel.

"How they could have made the decision to let him be part of the official review, not as a target, but as acting head of OLC, boggles the mind,' one Judiciary Committee staffer said."

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