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White House Rejected All Advice from Government Agencies That Torture Was Illegal

Report names 30 Bush Officials Complicit in Torture

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REPORT NAMES 30 BUSH OFFICIALS COMPLICIT IN TORTURE

President Bush and his aides repeatedly ignored warnings that their torture plans were illegal from high State Department officials as well as the nation's top uniformed legal officers, the Judge Advocates General of the Army, Navy, Air Force and Marines, a new published report states.

"These warnings of illegality and immorality given by knowledgeable and experienced (government) persons were ignored by the small group of high Executive officers who were determined that America would torture and abuse its prisoners and who had the decision-making power to secretly require this to be done," said Lawrence Velvel, chairman of the "Steering Committee of the Justice Robert H. Jackson Conference On Planning For The Prosecution of High Level American War Criminals." Velvel is a noted reformer in the field of American legal education.

"Far from American officials and lawyers authorizing or engaging in torture because it was lawful, they authorized and engaged in it because they wanted to (and) kept their actions secret from interested officials for as long as they could lest there be strong opposition to the torture and abuse they were perpetrating," Velvel said. "They deliberately ignored repeated warnings that the torture and abuse were illegal and could lead to prosecutions, and they ignored these warnings even when they came from high level civilian and military officers."

A preliminary Report by the Steering Committee seeking Federal prosecution of American officials "who ordered, authorized, approved or committed war crimes," released January 9th, 2009, says they are guilty of "wholesale" violations of statutes that include Common Article 3 of the Geneva Conventions, the Federal War Crimes Act, the Convention Against Torture, plus numerous other violations of U.S. and international laws.

The Report said prisoners were subjected to savage beatings, sleep deprivation, slow drowning, hanging by chains, being slammed head-first into concrete walls, temperature extremes, food deprivation, burial alive in coffin-like boxes for extended periods, and even threats against their families.

Among other things, the Report charges the General Counsel of the Central Intelligence Agency(CIA), knowingly approved of at least 117 renditions to torture and that such renditions were "personally encouraged by President George W. Bush…"

In addition to President Bush, those named for prosecution by the Steering Committee include:

Vice President Dick Cheney and his former chief of staff and legal counsel David Addington, former Defense Secretary Donald Rumsfeld, Secretary of State Condoleeza Rice and her predecessor Colin Powell, former Attorneys-General John Ashcroft and Alberto Gonzales, Department of Homeland Security Secretary Michael Chertoff and his aide Alice Fisher, former deputy assistant Attorney General; and Tim Flanigan, a deputy White House attorney.

Also named by the Steering Committee is I. Lewis ("Scooter") Libby, former assistant to President Bush. Libby was convicted of perjury, obstruction of justice and making false statements to Federal investigators in the Valerie Plame affair. President Bush commuted Libby's 30-month prison sentence. Additionally, Douglas Feith, former Undersecretary of Defense for Policy; Defense Undersecretary Stephen Cambone, General Michael Dunlavey, and Major General Geoffrey Miller, former commander of Guantanamo prison, Cuba.

CIA officials cited in the Report are former Director of Central Intelligence George Tenet; Cofer Black, head of the CIA's Counterterrorist Center; James Pavitt, former CIA Deputy Director for Operations; General Counsel Scott Muller; Acting General Counsel John Rizzo; David Becker; contract officer James Mitchell, and an unidentified woman that formerly headed the CIA's Al Qaeda unit and also briefed President Bush.

Among the lawyers guilty of war crimes are former Assistant Attorneys General Jay Bybee and John Yoo; Defense Department chief legal officer Jim Haynes; Robert Delahunty, special counsel with Office of Legal Counsel, Department of Justice; Patrick Philbin, deputy assistant Attorney General; Steven Bradbury, head of the White House's Office of Legal Counsel; Lt. Col. Diane Beaver, a former Staff Judge at Guantanamo; Mary Walker, General Counsel of the Air Force and Jack Goldsmith, former head of the Office of Legal Counsel, Department of Justice.

"Torture and abuse were discussed at meetings of the so-called Principals Committee, where George Tenet presented graphic details of interrogations to a Committee which included some of Bush's highest associates, including Rice, Powell, Rumsfeld, Ashcroft and Cheney and, at times, John Yoo.

The above-mentioned Bush officials were involved in shaping or carrying out torture policies despite written and/or verbal warnings given by high government officials in the Pentagon, State Department, FBI, and other agencies. Among these objectors were:

William Howard Taft IV, the Legal Advisor to the State Department whose 40-page memo of January 11, 2002 warned Bush's claim the Geneva Conventions were not applicable to prisoners held by the U.S. could subject Bush to prosecution for war crimes. State Department lawyer David Bowker further warned "there is no such thing" as a person that is not covered by the Geneva Conventions.

The Defense Department's own Criminal Investigative Task Force headed by Col. Brittain Mallow warned Haynes that tactics used at Guantanamo could be illegal. His warning were ignored by Haynes, whose position was based on statements of Yoo and Chertoff.

FBI Director Robert Mueller barred FBI agents from participating in coercive CIA

interrogations, “a warning-fact well known to many in the Executive,” the Steering Committee Report said. Also, Marion Bowman, head of the FBI’s national security law section in Washington called lawyers in Jim Haynes’ office in the Pentagon to express his concern but said he never heard back.

David Brant, head of the Naval Criminal Investigative Service learned about the torture and abuse at Guantanamo and took the position that “it just ain’t right” and expressed his concern to Army officials in command authority over military interrogators at Guantanamo but “they did not care,” the Report said.

A senior CIA intelligence analyst that visited Guantanamo in 2002 reported back that the U.S. was committing war crimes there and that one-third of the detainees had no connection to terrorism. The report alarmed Rice’s lawyer John Bellinger and National Security Council terrorism expert General John Gordon but their concerns were “flatly rejected and ignored” by Addington, Flanigan and Gonzales, as well as by Rumsfeld’s office.

Navy General Counsel Alberto Mora carried his concern over Guantanamo torture to Haynes and to Mary Walker, head of a Pentagon working group that was drafting a DOD memo based on Yoo’s work that authorized torture. Mora said what was occurring at Guantanamo was “at a minimum cruel and unusual treatment, and, at worst, torture.” His warning was ignored.

“The Judge Advocates General of the Army, Navy, Air Force and Marines are the country’s top uniformed legal officers,” appointed to Walker’s working group, “were appalled at what they were seeing, and each wrote a memo of dissent to torture and abuse,” the Steering Committee’s Report said.

“Their memos warned not just that what was being approved was contrary to the legal and moral training American servicemen have always received, and not just that there would be international criticism, but also that interrogators and the chain of command were being put at risk of criminal prosecutions abroad.” But these warnings by the nation’s top uniformed legal officers were ignored.

“If Bush, Vice President Dick Cheney, and others are not prosecuted,” Velvel said, “the future could be threatened by additional examples of Executive lawlessness by leaders who need fear no personal consequences for their actions, including more illegal wars such as Iraq.”

Besides Velvel, members of the Steering Committee include:

Ben Davis, a law Professor at the University of Toledo College of Law, where he teaches Public International Law and International Business Transactions. He is the author of numerous articles on international and related domestic law.

Marjorie Cohn, a law Professor at Thomas Jefferson School of Law in San Diego, Calif., and President of the National Lawyers Guild.

Chris Pyle, a Professor at Mount Holyoke College, where he teaches Constitutional law, Civil Liberties, Rights of Privacy, American Politics and American Political Thought, and is the author of many books and articles.

Elaine Scarry, the Walter M. Cabot Professor of Aesthetics and the General Theory of Value

at Harvard University, and winner of the Truman Capote Award for Literary Criticism.

Peter Weiss, vice president of the Center For Constitutional Rights, of New York City, which was recently involved with war crimes complaints filed in Germany and Japan against former Defense Secretary Donald Rumsfeld and others.

David Swanson, author, activist and founder of AfterDowningStreet.org/CensureBush.org coalition, of Charlottesville, Va.

Kristina Borjesson, an award-winning print and broadcast journalist for more than twenty years and editor of two recent books on the media.

Colleen Costello, Staff Attorney of Human Rights, USA, of Washington, D.C., and coordinator of its efforts involving torture by the American government.

Valeria Gheorghiu, attorney for Workers' Rights Law Center.

Andy Worthington, a British historian and journalist and author of books dealing with human rights violations.

Initial actions considered by the Steering Committee, Velvel said, are as follows:

Seeking prosecutions of high level officials, including George Bush, for the crimes they committed.

Seeking disbarment of lawyers who were complicitous in facilitating torture.

Seeking termination from faculty positions of high officials who were complicitous in torture.

To arrange for interviews, please contact Sherwood Ross at sherwoodr1@yahoo.com or (305)205-8281. Chair Velvel may be reached at velvel@mslaw.com or (978) 681-0800.

FULL REPORT

PRELIMINARY MEMORANDUM OF THE JUSTICE ROBERT H. JACKSON CONFERENCE ON FEDERAL PROSECUTIONS OF WAR CRIMINALS

I. INTRODUCTION.

An extensive complaint seeking federal prosecution of American officials who ordered, authorized, approved or committed war crimes is currently being prepared. While the complaint is in preparation, the Steering Committee of the Justice Robert H. Jackson Conference is issuing this preliminary memorandum setting forth several of the points to be presented more extensively in the complaint itself. Such points include the acts of torture and abuse which constitute war crimes, the high level individuals of the American Government who ordered, authorized, or approved these acts plus some of the lower level officials who committed them, and the warnings of illegality and immorality given to the culpable American officials — as news of their secret actions slowly began to percolate within the Executive branch — by persons ranging from FBI officials on the ground, to other executive investigative personnel on the ground, to military Judge Advocates General, to

general counsels of the armed services. These warnings of illegality and immorality given by knowledgeable and experienced persons were ignored by the small group of high Executive officers who were determined that America would torture and abuse its prisoners and who had the decisionmaking power to secretly require this to be done.

We note that the information in this preliminary memorandum on criminal acts, officials who authorized them or carried them out, and warnings of criminality and illegality which were ignored, has become available in the last four years in a host of investigatory books, investigatory articles, initially secret government memoranda which have now been publicly released, internal governmental investigations, statements of present and former governmental officials and generals (e.g., Dick Cheney and Antonio Taguba), investigatory television programs, legal complaints and other legal documents, transcripts of interviews, congressional hearings and congressional reports (such as the recent report of the Senate Armed services' Committees).

Among the books which extensively detail the matters written of here are Jane Mayer's The Dark Side, Philippe Sands' The Torture Team, Jack Goldsmith's The Terror Presidency (Goldsmith is a former head of the Office of Legal Counsel), and Steven Wax's Kafka Comes To America.

II. ACTS OF TORTURE AND ABUSE, AND THE LAWS THEY VIOLATED.

There are a large number of "standard" acts of torture and abuse that were committed on the order or authorization of this country's highest officials. What the public generally does not realize is that these acts were not committed in isolation, one from the other. Instead they were committed in combination, with up to ten or fifteen being perpetrated on a single detainee.

Nor were the acts isolated from each other in time. Rather, many detainees were subjected to combinations of tortures for weeks and months in a row. One detainee was tortured by combinations for 54 straight days without let up. Others were tortured by combinations for several weeks in a row. The torture of sensory deprivation by isolating a detainee in a single small room, sometimes with black-out goggles over his eyes and sound-stopping plugs for his ears, and sometimes with the prisoner being kept in a tiny slot the size of a coffin, was carried on for years with regard to some prisoners, with the prisoners also being subjected to other tortures during this period.

Though torture is illegal whether the victim is innocent or guilty, many of the prisoners upon whom torture was practiced proved to be innocent — estimates of the innocent run up to 50 percent and higher.

The acts of torture and abuse that were regularly practiced on order or authorization of this country's highest officials included:

· Savage Beatings. Prisoners were severely and regularly beaten with clubs, rifles and fists. They were beaten to the point that bones were broken, ribs were fractured, and prisoners sometimes were killed.

It is already known that at least two prisoners, one now known to be falsely accused, were beaten to death at Bagram Air Force Base in Afghanistan, that a third savagely beaten prisoner, Manadel al-Jamadi, died, within one hour of entering Abu Ghraib, because of

beatings that fractured six ribs and then being hung by the arms, with his arms secured behind him (not over his head) in the so-called “Palestinian hanging” position. It is Jamadi’s corpse, packed in ice, with a grinning female American soldier named Sabrina Harman giving the thumbs up sign, that is in the infamous photograph from Abu Ghraib.

· Peroneal Strikes. Peroneal strikes are a specific form of savage beating, consisting of blows to the soft tissue and nerves just above the knee. The falsely accused prisoner beaten to death at Bagram had been given so many peroneal strikes that a coroner testified that his leg tissue had ‘“basically been pulpified.’”

· Sleep Deprivation. Though the matter is not widely understood by the public, the effects of sleep deprivation are extremely serious. In addition to becoming weary, a person’s electrolyte balance changes, a mental haze forms, balance evaporates and the prisoner wants only one thing in the world: to be allowed to sleep. The person becomes delusional, and it has been known since the Middle Ages that sleep deprivation produces false confessions because the prisoner will say anything to be allowed to sleep. An American Bar Association Report has said that ‘“It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired.’” (Emphasis added.)

There reportedly were prisoners who were deprived of sleep for a dozen days, and other prisoners deprived of sleep for 96 hours in a row. Still other prisoners were intermittently deprived of sleep for three months. One prisoner, while being subjected to numerous other tortures as well, was allowed to sleep no more than a total of four hours a day for 54 straight days.

· Waterboarding. The water torture, now called waterboarding, has been a torture since the Spanish Inquisition. It was used by the Americans to torture Filipinos after the Spanish American War; it was used by the Nazi Gestapo; Japanese officers committed it upon Americans and were executed for their acts after World War II; it was used by the French in Algiers, by Pol Pot’s Khmer Rouge, and by Latin American dictatorships such as Chile and Argentina. It has been used on prisoners held by the Americans, sometimes at the apparently express command of George Bush. Some of the Americans’ prisoners have been waterboarded many times.

Waterboarding is not simulated drowning. It is actual slow drowning. It usually produces panic and hysteria. A number of Americans, including Americans who did waterboarding of prisoners, underwent waterboardings themselves to see what it was like: some lasted as few as five second before they broke and none lasted more than ten or fifteen seconds. When waterboarding prisoners, American torturers would sometimes deliberately bring them to the brink of death.

Waterboarding is so awful that, to avoid this unlawful act being seen, the CIA lied to the 9/11 Commission and to federal Judge Brinkema by falsely telling them it had no videotapes of the waterboarding of prisoners. The CIA then further obstructed justice by destroying the tapes rather than allowing them to be seen even by officials in the three branches of the federal government.

· Hanging By The Arms. A highly excruciating “stress position” torture used on many prisoners, sometimes every day for two to three months, is hanging them by their arms, often or usually on tiptoe, for up to eight hours at a stretch. The prisoners’ wrists and arms

are shackled while they hang. Excruciating pain arises because ankles double in size, blisters erupt, skin “tenses,” and shackles cut through the skin of the ankles and wrists.

In the version of hanging by the arms known as “Palestinian hangings,” the arms are not stretched directly above the head, but are instead stretched behind the body.

· Slamming A Prisoner’s Head Into Concrete Walls. In this torture a towel is wrapped around a prisoner’s neck and is then used to propel the prisoner head first into a concrete wall. Subsequently, instead of using a towel, the CIA used a plastic strip around the neck like a dog collar, with the strip being attached to a lead so that the torturer could have better leverage in propelling the prisoner head first into a concrete wall.

This torture was so fraught with risk of serious injury to or death of a prisoner that the CIA kept a doctor on hand at all times to guard against death or crippling injury. The physician was, of course, violating medical ethics by assisting in the perpetration of torture.

· Additional “Stress Positions” And Electric Shocks. Hanging prisoners by their arms with only their toes touching the ground, and “Palestinian hangings,” were only two of the “stress positions” used as tortures. Prisoners were also chained to walls in a way that forced them to maintain a painful crouch. They were chained to the floor in the same way or in a fetal position with hands and feet chained, and were kept naked and forced to defecate and urinate on themselves. They were hung by the arms with their feet on a drum through which electric shocks were applied to their feet; the shocks would cause the feet to “dance” so that the prisoners’ full weight was on their arms, excruciatingly. They were hung by their arms with their feet and legs in water.

· Extremes Of Hot And Cold. Prisoners were subjected to extremes of hot and cold. Cells would be kept at over 100 degrees, and then switched to freezing temperatures with air conditioners going full blast. Cold water would repeatedly be thrown on prisoners who were being kept in frigid temperatures for up to a month. At least one prisoner is known to have frozen to death after he was left in a freezing cell, wet and naked. (There has been no accounting of the number of prisoners who were killed by American torture, though estimates run to several dozen. Nor has the prisoner who froze to death ever been identified. He just “‘disappeared from the face of the earth,’” and the CIA supervisor of his torture was reportedly promoted.)

· Tiny Cages, Hoods And Duct Tape, Lack Of Medical Care And Food, Torture By Continuous Strobe Lights And Continuous Noise, And Other Tortures. Prisoners were kept in tiny slot-like cells and in small boxes that were like coffins. They were kept hooded and with duct tape over their mouths. Their wounds were left untreated, and they were denied medical care and pain killers. They were denied food. They were threatened by vicious dogs. They were threatened with death, with being buried alive, and their families were threatened. Their cells were flooded with continuous, never ending light, including strobe lights, and they were subjected to never-ceasing loud music. At other times they were kept in pitch dark.

· Ghost Detainees. Prisoners known as “ghost detainees” were kept “off the books,” so that nobody, including their families, would know they were in custody, to avoid any oversight by Congress, the courts, and the International Red Cross, and to avoid any knowledge on the part of the media or public. Keeping prisoners “off the books” in this way is in itself a war crime, and was done to facilitate torture of prisoners.

· Renditions For Torture. Infamously, prisoners were “rendered” to other countries for torture. Men were kidnapped off the street, hooded, shackled, sedated by anal suppositories or syringe injections, dressed in jump suits, and flown by private Gulfstream jets (registered to dummy corporations) to countries such as Egypt, Syria and Uzbekistan to be tortured at the behest of the CIA. These persons were “disappeared,” as had occurred in Chile under Pinochet. Torture practiced by one of the countries they were given to, Egypt, was long known to include beatings with metal rods and whips, being suspended from ceilings or door frames, electric shocks, and dousing with cold water. The CIA was able to give questions to Egyptian torturers in the morning and get answers by the evening. In Syria, it was known, torture included electric shocks, “pulling out fingernails, freezing cells, forcing objects into the rectum” and “hyper-extending the spine” to fracture or near fracture. Uzbekistan has long engaged in boiling people — they are placed in water which is raised to boiling temperature.

It is not yet known how many people were kidnapped and rendered to other countries for torture, but confirmed cases range from a low of 117 to at least 150. Every rendition to torture was approved by the CIA’s General Counsel, and rendition for torture excited and was personally encouraged by George W. Bush, who wanted to brag about it publicly but was unable to because some of the participating governments were fearful that their own populations might learn what they were doing.

Though the Executive has made every effort to keep renditions secret, information has leaked out. Thus it is already known, for example, that at least seven of the persons who were rendered and tortured were innocent. (Sometimes mistaken identity was involved, as when an innocent “rendee” had the same Arab name as a possible culprit (much like two Americans might both be named George Thomas.) Federal judges such as David Trager and T.S. Ellis, III refused to allow cases brought by innocent but tortured persons to proceed against the federal government, lest the government be forced to disclose information it desires to keep secret. Such torture-promoting decisions may constitute war crimes in themselves under principles applied against Nazi judges and lawyers at Nuremberg in the Alstotter case.

* * * * * *

The foregoing acts, singly and in combination, violate numerous international treaties and domestic statutes. In particular they violate Common Article 3 of the Geneva Conventions, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the federal War Crimes Act, and the federal Antitorture Statute. These laws outlaw torture, other war crimes, breaches of Common Article 3, cruelty, infliction of serious physical or mental pain, degrading or inhumane treatment, death threats against the prisoner or his relatives, violence against prisoners or abuse of prisoners, other similar conduct, or grave breaches of Geneva Conventions rules that bar such acts.

The punishments provided for violation of the federal laws range up to life imprisonment, and execution if the tortured prisoner was killed. These are serious penalties for serious acts, showing the seriousness with which this country has regarded torture and abuse of prisoners prior to the Bush administration. Nor can there be any legitimate dispute that laws against torture and abuse have been violated — wholesale.

III. THE OFFICIALS, POLITICIANS AND LAWYERS WHO ORDERED, AUTHORIZED, OR ATTEMPTED TO FALSELY JUSTIFY AMERICAN WAR CRIMES.

The persons already known to be responsible for ordering, authorizing or carrying out the torture and abuse which constitute war crimes include government officials and politicians who ordered these actions, CIA officials who committed the actions, and lawyers (who sometimes were also officials and/or politicians) who carried out the bidding of the politicians and CIA by creating false, professionally incompetent memoranda claiming that acts of torture were legal. The lawyers acted in the "tradition" of the lawyers and judges who were convicted at Nuremberg because they aided the commission of war crimes, or, as has been said, in the "tradition" of mob lawyers who invent justifications for the unlawful actions of the mob.

The government officials and politicians who are guilty of war crimes, and violations of both international law and domestic statutes, include George Bush, Dick Cheney, Alberto Gonzales, David Addington, Tim Flanigan, Lewis Libby, Condoleeza Rice, Donald Rumsfeld, Douglas Feith, Stephen Cambone, John Ashcroft, Michael Chertoff, Michael Dunlavey, Geoffrey Miller, and to a lesser extent, because he sometimes tried to stop the torture in which he was complicit, Colin Powell. Gonzales, Addington, Flanigan, Feith, Dunlavey, Libby, Ashcroft and Chertoff are lawyers as well as officials and/or politicians. The CIA officials who are guilty of war crimes include George Tenet, Cofer Black, James Pavitt, Scott Muller and John Rizzo (who are lawyers), David Becker, and a woman whose name is classified and who is therefore publicly identified only as a spiky-haired, red-headed person who, as head of the CIA's Al Qaeda unit, insisted on and for no apparent reason flew abroad to see the waterboarding of a prisoner. (She also was a CIA briefer of George Bush). The lawyers who are guilty of war crimes, as well as those named above, include Jay Bybee, John Yoo, Jim Haynes, Robert Delahunty, Patrick Philbin, Steven Bradbury, Diane Beaver, Mary Walker and to a somewhat lesser extent, because he at least withdrew the professionally incompetent memo of August 1, 2002 authorizing war crimes, Jack Goldsmith. (Goldsmith did not withdraw the torture memo because he was in disagreement with the kind of actions it approved, but because he was appalled by its professional incompetence. He did not disagree with the recommended actions, and did not withdraw the second memo of August 1, 2002, which listed specifically authorized techniques of torture. Rationalizing his action regarding the second memo, he claimed, among other things, that he did not know if the techniques — which included waterboarding — were torture. Also, he authored a memo unlawfully authorizing prisoners to be removed from Iraq for interrogation in other countries, where they were tortured, and he participated extensively in authorizing illegal wiretapping.)

IV. PROCESSES BY WHICH HIGH OFFICIALS ORDERED AND AUTHORIZED TORTURE, AND KEPT THEIR ACTIONS SECRET.

The ordering of torture and abuse of prisoners was part of a larger view of Executive prerogative held by several leading actors, especially Dick Cheney and David Addington. Both of them propounded their view since at least the 1980s. And, when Executive officials showed compunctions about continuing to carry out those views during the administration of G.W. Bush, the very powerful Cheney would vigorously oppose such "backsliding," while the large, physically imposing Addington, who was known to speak as the voice of the powerful Cheney (his boss), would aggressively browbeat those who had qualms about what was being done.

The view of Executive authority imposed by Cheney and Addington, carried out by a group of powerful acolytes who were officials and/or lawyers, and approved by George W. Bush, was that the Executive was all powerful. The Executive could break the laws of the United

States, as with the FISA law and laws against torture. The Executive could secretly and bindingly opine, through the Office of Legal Counsel (OLC) of the Department of Justice, that Congress and the laws of the United States could not stop the Executive from doing whatever it wished, as was exemplified in secret OLC memos, including memos falsely authorizing torture and abuse of prisoners. The Executive could even announce that parts of U.S. laws would be ignored, as with scores or hundreds of signing statements. The Executive could refuse to tell Congress what it was doing and could, indeed, even hide its actions from the leaders of Congressional committees with jurisdiction over those actions. The Executive was, in short, all powerful and Congress was merely a cipher.

As now widely recognized, this Cheney/Addington view — signed onto by their acolytes, by George Bush, and at least partly endorsed publicly by some individuals whom George Bush has appointed to the Supreme Court — was an attempted constitutional revolution. It was, moreover, an attempted constitutional revolution which succeeded for several years (at least partly because the so-called mass media went along with it).

With regard to torture and abuse, the unlawful ordering and authorization of war crimes proceeded on two parallel but intimately related tracks. One was the civilian track involving the Department of Justice, the CIA and the White House. The other was the Department of Defense track. John Yoo of the OLC was a major point of commonality for both tracks, because his memoranda authorizing torture formed the basis of the false, incompetent and identical legal positions of both tracks.

At all times the false legal memoranda by civilian lawyers such as Yoo and Steven Bradbury, and by military lawyers such as Diane Beaver, and Mary Walker, were kept as secret as possible. So too the actions of torture and abuse carried out both before and after the false memos were issued. The memos and actions were hidden not just from the public, but also from Congress and, startlingly, from many, perhaps even most, lawyers in the Executive branch who ordinarily would be expected to vet and opine on the memos and actions. (Thus, DOD kept only a single copy of a memo from John Yoo providing it with the same unlawful advice he previously gave the CIA — advice DOD then parroted in its own memo — and that single copy was kept locked in the safe of the General Counsel of the Air Force, Mary Walker.)

The memos and actions were kept as secret as possible because the Executive Branch actors knew that if word of their authorizing memos and their actions ever became public, there would be a vast outcry among the public, in Congress and in the media, and at least part if not all of the attempted constitutional revolution would be jeopardized. Such an outcry is, indeed, precisely what happened, with increasing vigor, after the secrecy began to fail and unlawful memoranda and actions began to become public.

To this day, however, it remains true that an unknown (perhaps large) number of the memos remain secret. (For instance, on a related subject, memos authorizing the NSA to violate the FISA laws enacted by Congress remain secret.) They were kept such a “close hold” (in the culprits’ own terminology) that Addington would not even allow the NSA’s own lawyers to see them when they asked to do so — that is to say, the lawyers for the agency being told to violate the law were not allowed to see — and comment on — the memos authorizing the illegality. But public pressure has caused some of the unlawful memoranda to be declassified and thereby become public, or has resulted in a significant amount becoming known about memos which remain classified. So a fair amount is now known about false, professionally incompetent memos by which the Executive Branch actors

sought to secretly work a constitutional revolution. (There are persons who consider their efforts to have been treason. The Jackson Committee presently takes no position one way or the other on this claim.)

The attempted constitutional revolution seems to have begun with a secret decision, shortly after 9/11, that was sought by the CIA. This decision, also sought by George Bush and signed by him on September 17, 2001, secretly gave the CIA power — contrary to Congressional prohibition — to murder or seize people all over the world.

Subsequently, in January 2002, Dick Cheney's office wrote a memorandum saying that the Geneva Conventions are "quaint" and are inapplicable to the war. This memo implemented views propounded by Douglas Feith, views Feith had been vigorously arguing since the 1980s. The January 2002 memo was signed by Alberto Gonzales, then the White House Counsel, but was actually written by Cheney's attorney, David Addington. On February 7, 2002 George Bush then stated that the United States was not bound by the Geneva Conventions.

At a point contemporaneous or near in time to these events, a so-called "War Council" of lawyers came into existence. This "War Council" consisted of David Addington, John Yoo, Jim Haynes, Alberto Gonzales, and Tim Flanigan. These five lawyers met in secret, with their views and resulting memos, written by Yoo, being kept from other lawyers and numerous officials in the Executive Branch.

An early problem arose because members of the CIA were very worried about actions they were taking against prisoners. From low levels to high, from on-the ground CIA perpetrators of torture to high CIA officials in Washington, there was knowledge that what the CIA was doing — the torture and abuse of prisoners — constituted war crimes for which CIA personnel could be prosecuted. CIA personnel wanted a "golden shield," a "get out of jail free card," that would protect them against prosecutions. It was hoped that an authorizing legal opinion from the Office of Legal Counsel of the Department of Justice would serve this purpose because the OLC opines on legal matters for the Executive Branch. Thus John Yoo of the War Council and the OLC wrote two opinions on August 1, 2002.

One of the opinions became known as "the torture memo." It was a long document purporting to legally justify torture. The other was a memo listing approved techniques of torture, such as the techniques listed above. The second memo remains classified to this day, but much about what it approved has become publicly known, including that it authorized waterboarding.

Yoo's work had input from and was signed by the head of OLC, Jay Bybee. For his actions as head of OLC, Bybee was rewarded with a federal appellate judgeship. He was nominated and confirmed before any information relating to torture became public.

The first memo — the "torture memo" — has become infamous, for three reasons in particular. One is its definition of torture as requiring the pain associated with organ failure or death, a definition that was preposterous and one that was taken, remarkably, from the entirely different context of a public health statute defining when a person must be treated.

The second particular reason for the torture memo's infamy was that Yoo falsely said there was no torture if the torturer's intent was to obtain information rather than inflict pain. Since torturers who seek to obtain intelligence always want to gather information, and the torture

is only a means to that end rather than an end in itself, no torturer could ever be guilty of torture under Yoo's "principle" because every torturer's primary goal is to obtain information. Presto: John Yoo, as if by magic, converted the worst tortures, e.g., waterboarding, into nontorture.

The final particular reason, and the one which fully carried out the attempted constitutional putsch, was that Yoo's torture memo said the President, as Commander-in-Chief, could do anything at all he wants with regard to so-called national security, and Congress can do absolutely nothing to stop him. All power is his (and, one day, hers). No power is Congress'. If the President wants to torture, murder, or start wars, as Commander-in-Chief he can do it, and Congress has no say about anything.

The barbaric view of torture, and the Executive hegemony, implemented in Yoo's memo were stated dramatically a few years later when Yoo said publicly that if the president wanted to try to force a prisoner to talk by crushing the testicles of the prisoner's child, no treaty could stop this and, depending on why the president wanted to do it, neither could any congressional law stop the president from crushing the child's testicles.

Yoo's memo was secret for years, and the administration, from the president on down to soldiers and CIA officers who tortured people at Guantanamo, Abu Ghraib, Bagram and in CIA "black holes" around the world, acted in accordance with Yoo's secret revolutionary principles. When the memo became public years after Yoo issued it, it became reviled by some of the nation's leading lawyers as professionally inept, even as the single most incompetent piece of legal analysis some had ever seen. It had, as a reporter said, the veneer of legal scholarship: long, densely written paragraphs, a plethora of citations. But the veneer was a fraud. It ignored the cases and points contrary to — devastating to — its revolutionary principles, including the leading case in the field, Youngstown Sheet & Tube v. Sawyer (the famous Steel Seizure Case), and could provide no true authority for its secretly adopted positions.

So professionally inept was Yoo's torture memo that it was later withdrawn by Bybee's replacement as head of OLC, Jack Goldsmith (even though Goldsmith hated to do this because, among other reasons, he was a good friend of Yoo's). But the second memo of August 1, 2001, the memo which listed the approved techniques of torture, was never withdrawn. That OLC memo remains on the books, remains operative, remains secret even though much of what it approved (including waterboarding) has nonetheless become known, and continues to unlawfully seek to justify war crimes.

One of the reasons it remains on the books is that Cheney, Addington, Gonzales and CIA officials have been very worried that their exposure to war crime prosecutions would increase if it were withdrawn by OLC, and extensive pressure was exerted to compel it not to be withdrawn. This is the same reason, we note, that Cheney and Addington have conspired with others to exert overwhelming pressure to compel Congressional enactment of laws putatively granting immunity to war criminals in American courts. Such laws are the self-protective product of a conspiracy to manipulate the law so as to try to immunize from federal prosecution those who organized and ran a conspiracy to commit war crimes.

While the civilian torture track was taking place, a parallel torture track likewise was proceeding in the Department of Defense.

In February of 2002, Army Reserve Major General Michael Dunlavey, an intelligence

specialist who was a judge in civilian life, was appointed to be the first head of interrogation at Guantanamo, where torture and abuse were in progress. Thereafter Dunlavey flew to Washington every week to brief Rumsfeld personally on intelligence being obtained at Guantanamo, and said in a sworn statement that '"I got my marching orders directly from the President of the United States."'

Dunlavey's comment about where he got his marching orders cannot be considered surprising. Although George Bush deliberately lied to the American people and media by claiming in public that the U.S. does not engage in torture, it has long been plain that he knew what was being done. The torture and abuse were discussed at meetings of the so-called Principals Committee, where George Tenet presented graphic details of interrogations to a Committee which included some of Bush's highest associates, including Condoleezza Rice, Colin Powell, Don Rumsfeld, John Ashcroft, and Dick Cheney. (At times John Yoo was also at Principals Committee meetings to brief members.) Bush knew of and approved these meetings, at which Tenet would brief the members of the Principals Committee on the specific details of the torture and abuse that were taking place. And in September 2006, after years of (then still continuing) torture, Bush publicly admitted that for years the US had been holding secret (off the books) prisoners at so-called "black sites" (in countries like Poland, Romania and Thailand), and had subjected these secret prisoners to "'an alternative set of procedures,'" that is, to torture and abuse.

There can thus be no doubt that George Bush knew what was occurring all the while nor can there be surprise that Dunlavey swore his marching orders, at Guantanamo, where torture was regularly practiced, came directly from Bush.

Lieutenant Colonel Diane Beaver, a lawyer, was also at Guantanamo. She was commissioned to write a memorandum justifying the torture techniques being practiced there, she willingly complied, and she later was promoted to the Pentagon's Office of General Counsel. (The techniques she approved at Guantanamo were part of a list drawn up there by Lt. Col. Jerald Phifer.) Beaver placed no limits on the use of techniques, and did not address the legality of using them in combination and over time, as was the actual practice. Her views were used as a legal basis for torturing and abusing prisoners, specifically including a prisoner who was tortured and abused for 54 straight days.

Beaver also discussed torture with several lawyers/executive officials who visited Guantanamo and personally observed tortured prisoners on September 26, 2002. Those lawyers/executive officials included several of the most culpable of the executive culprits; they included Addington, Haynes, Gonzales, Chertoff, Philbin, Rizzo, and Goldsmith, as well as a Chertoff aide named Alice Fisher. The lawyers knew about the prisoner who was undergoing 54 straight days of torture, and wanted to know what the military was doing with regard to "'managing'" him.

While Beaver was doing her work at Guantanamo, John Yoo wrote another torture memo, this one for DOD. The final version was dated March 14, 2003, but DOD had a draft at least as early as late January 2003. Yoo's memo for DOD largely parroted his torture memo of August 1, 2002. It rendered Guantanamo a law-free torture zone for military interrogators, and suggested that even acts such as gouging out a prisoner's eyes or "'dousing him with scalding water [or] corrosive acid'" could be lawful. Yoo's memo served as the template for a memo on permissible torture being drafted by a Pentagon working group chaired by Air Force General Counsel Mary Walker. As noted earlier, the Pentagon kept only one copy of Yoo's memo seeking to justify horrendous violations of law; the copy was kept locked in

Walker's safe.

Subsequent to Yoo's memos for the CIA and the DOD, torture and abuse of prisoners continued, with tortures being used in combinations and for extended periods of time on individual prisoners. People in the CIA who were perpetrating or authorizing the tortures remained worried despite the "golden shield," "get out of jail free cards" that had been issued by Yoo, however. They remained worried particularly because of the effects of the use of tortures in combination, which Yoo had not covered. They demanded new, broader attempted "golden shields," golden shields that would cover combinations of tortures.

In 2005 Stephen Bradbury was appointed head of OLC on a probationary basis. That is, he was made interim head, with promotion to the prestigious position of permanent head, a position he coveted, being dependent on performance that satisfied his political masters, Gonzales, Cheney and Addington. Bradbury thereupon wrote legal memoranda justifying and seeking to legalize torture, including tortures undertaken in wholesale combinations. His desire for appointment as permanent head of OLC was then realized.

V. WARNINGS GIVEN THE EXECUTIVE ACTORS THAT THEIR ACTIONS WERE ILLEGAL AND MUST STOP — WARNINGS THAT THEY DELIBERATELY ESCHEWED.

It is claimed by apologists that war criminal culprits should not be prosecuted because they thought what they were doing was lawful. That claim simply cannot be sustained. No person, at least no person of sufficient intelligence to have risen to a responsible level of American government, can reasonably fail to know that the imposition of torture is unlawful and that the imposition of horrible pain and fear by beatings, waterboarding, stringing people up by the arms for hours and days on end, etc., are torture.

Indeed, it was precisely the culprits' knowledge that what they were doing was illegal torture which caused CIA officers to demand "golden shields" in order to try to escape future prosecutions by pointing to memos authorizing them to commit crimes and giving the President unfettered power to authorize crimes.

Beyond this, with the existence of unlawful torture being obvious to any sensate person, the false legal memos cannot enable the culprits to escape prosecution. The Nuremberg principles set their face against any argument that one can be excused on the ground that he or she was merely following transparently illegal orders, as here.

There is also the important fact that, when they ultimately found out what was going on, a host of persons in the Executive Branch, including both knowledgeable and experienced lawyers as well as laymen, told the culpable actors that what they were writing or doing was illegal, could lead to prosecutions, and must stop. But wishing to continue the torture and abuse, the culpable Executive actors deliberately ignored these warnings, and even threatened and verbally abused those who issued them, in order to try to prevent the warnings from continuing.

It is often publicly pretended by the Executive culprits and their apologists, that all the advice they received was in favor of torture. To the contrary. We have here a situation in which they received extensive advice — which they deliberately chose to ignore — that what they were doing was illegal and could lead to prosecutions. Such advice came from knowledgeable and experienced persons including FBI agents, agents and officials of other investigative bodies, general counsels of the military services, the Judge Advocates General

of the armed services, and State Department officials and lawyers.

The following were among the verbal or written warnings, and facts constituting warnings, given to the Executive culprits:

· In an extensive 40-page memo of January 11, 2002, the Legal Adviser to the State Department, William Howard Taft IV, warned that the Geneva Conventions certainly did apply to the war and that Bush's claim that the enemy was not covered by the Conventions could subject him to prosecution for war crimes.

· Another State Department lawyer, David Bowker, warned that "'there is no such thing'" as a person who is not covered by the Geneva Conventions.

· FBI agents were interrogating a prisoner named Abu Zubayda in early 2002, were using traditional methods of questioning, not torture, and were getting excellent information. But because George Bush wanted the "tough guy CIA" to take the lead, the FBI agents were replaced by a CIA team headed by a CIA contract officer named James Mitchell. The CIA team engaged in torture, the FBI unsuccessfully tried to persuade the CIA not to do so, and Zubayda stopped talking.

Appalled by what they were seeing, and fearful that they would be implicated, the FBI agents left Guantanamo. FBI Director Mueller then barred FBI agents from participating in coercive CIA interrogations, a warning-fact well known to many in the Executive.

· The Counterterrorist Center (CTC) of the CIA was headed by Cofer Black and was the terrorist-fighting operation of the CIA. R. Scott Shumate was its chief operational psychologist from 2001-2003. He reported directly to Black. He spoke out against the CIA's use of torture and abuse, and left the CIA because of this disagreement with the use of torture.

· Reserve Air Force Colonel Steve Kleinman, who had had years of experience with interrogations, was posted to Iraq in the fall of 2003 to help advise on interrogations there. He objected to the torture and cruelty he saw there, and pointed out that interrogators were obliged to follow the Geneva Conventions. His views were rejected by the commanding officer of his special unit and by other officers. Torture was instead specifically approved, Kleinman was shunned, and he was physically threatened.

· In approximately October/November 2002 an FBI agent named Jim Clemente (who had a law degree and had been a prosecutor), and other FBI agents, observed horrendous torture and abuse of a prisoner at Guantanamo. One of the agents accused the military of criminal behavior. Clemente and colleagues urged Lt. Col. Phifer to stop the torture, but Phifer (who had created the Guantanamo list of torture techniques) was "'enraged'" by this advice and told the FBI personnel to "'Lead, follow, or get the fuck out of the way.'"

Clemente then contacted the head of the FBI's national security law section in Washington, Marion Bowman, warning that actions in violation of antitorture law were being taken and could lead to prosecutions and convictions. Bowman in turn called lawyers in Jim Haynes' office in DOD and expressed concern. He never heard back from the DOD lawyers or from their boss, Haynes.

· In the late summer of 2002, the CIA sent a senior intelligence analyst to Guantanamo to observe and report on what was going on. (Now retired, he "declined to be identified.") In a

top secret, detailed report, he estimated that one-third of the detainees had no connection to terrorism and said the United States was committing war crimes at Guantanamo.

His report, "written by a tough and highly experienced CIA analyst whose career had been spent fighting terrorists," alarmed Condoleezza Rice's lawyer, John Bellinger, and retired four star General John Gordon, a terrorism expert on the National Security Council who was also a former Deputy Director of the CIA. But their concern, stoked by the experienced CIA analyst's report, was flatly rejected and ignored by Addington, Flanigan and Gonzales. Nor was there subsequently an interest in their concern in Rumsfeld's office, which likewise ignored the concern and the report underlying it.

· The Criminal Investigative Task Force (CITF) of DOD, headed by Col. Brittain Mallow, investigated what was going on at Guantanamo, and became alarmed in approximately the summer of 2002. It raised questions about potentially criminal mistreatment of prisoners. In a meeting, Mallow told Haynes that interrogation tactics being used at Guantanamo could be illegal. Haynes and DOD ignored CITF's concerns, telling CITF that it (CITF) had no say in the matter. Haynes' willingness to ignore CITF was stoked by statements of John Yoo and Michael Chertoff.

· David Brant was the head of the Naval Criminal Investigative Service (NCIS). He learned from NCIS personnel on the ground at Guantanamo, especially an NCIS psychologist named Michael Gelles, and from Brittain Mallow, that torture and abuse were taking place at Guantanamo. Brant knew such actions were unlawful regardless of contrary legal advice from Jim Haynes' Office of General Counsel in the Pentagon, and he would not permit NCIS personnel to participate in the torture and abuse. His bottom line was "'it just ain't right.'" "'It was pretty basic, black and white to me,'" he said. "'I didn't know or care what the rules were that had been set by the Department of Defense at that point. We were going to do what was morally, ethically and legally permissible.'"

Brant conveyed his concern to Army leaders, who had command authority over the military interrogators at Guantanamo, but they did not care. He also conveyed his concern to the Air Force. But it too did not care. He found nobody who cared until he spoke to the General Counsel of the Navy, Alberto Mora, on December 17, 2002 and told him what had been going on. (Mora was deeply upset by what he was told. His subsequent actions are discussed below.)

· Steven Morello, the General Counsel of the Army, was long aware of and deeply concerned about what had been going on. He had in his office a DOD collection of pertinent documents, including, among other items in the DOD paper trail, Diane Beaver's memo, a document by which Rumsfeld, upon Haynes' recommendation, gave the green light to torture and abuse, and a memo from Jim Clemente of the FBI warning that the renditions could be considered a criminal conspiracy in violation of American law. When Mora came to him after learning what was taking place from Brant, Morello informed Mora that "'We tried to stop it,'" but couldn't. His concerns had been ignored. He had been "told to shut up."

When Mora went to speak to Morello about what he had learned from Brant, Morello showed Mora the DOD paper trail that was in his possession. But he was so nervous that he made Mora promise not to tell where he had seen the documents. The documents had, of course, been "closely held," with numerous DOD personnel and lawyers being kept out of the process lest they learn about and object to what was being done. Such close holding and efforts to limit paper trails were a modus operandi of Haynes.

· Mora was horrified by what he read in the paper trail in Morello's office. He took his concerns to Gordon England, then Secretary of the Navy and later Deputy Secretary of Defense. Then, with England's approval, he met with Haynes on December 20th, three days after Brant had come to him.

Mora warned Haynes that the DOD paper trail permitted torture. In the next three weeks, Mora's warnings against torture and abuse were also put before several of the Pentagon's top officials, including Deputy Secretary of Defense Wolfowitz, Jane Dalton, who was the legal advisor to the Joint Chiefs, and Secretary Rumsfeld. Mora's warnings were unheeded, and torture and abuse continued at Guantanamo.

Three weeks after first meeting with Haynes on December 20, 2002, Mora met with him again on January 9, 2003, to once again warn against the torture and abuse, which were continuing. Mora warned Haynes that criminal charges could be filed against administration officials. Haynes rejected Mora's views. When he later mentioned Mora's views to Rumsfeld, Rumsfeld too rejected them.

Mora warned Haynes yet again on January 15, 2003. Acting contrary to Haynes' aversion to paper trails, on January 15th Mora gave him an unsigned draft memorandum saying that what was occurring at Guantanamo was "'at a minimum cruel and unusual treatment, and, at worst, torture.'" Mora said he would sign the memo that afternoon — thereby making it an official document for and permanently available in the DOD's historical files — unless the unlawful interrogation techniques were suspended.

Haynes called Mora by the end of the day on January 15, 2003 to tell him that the illegal techniques had been suspended. One week later, however, Mora was shown a draft of an 81-page memo from John Yoo, which was subsequently finalized in March 2003. Mora was shown the draft by Mary Walker, head of the Pentagon working group that was drafting a DOD memo, based on Yoo's work, that authorized torture. Appalled by the barbarism and professional incompetence of Yoo's draft, a few days after reading the draft Mora sent an email to Mary Walker warning that Yoo's memo was erroneous and dangerous.

Walker wrote back that she disagreed with Mora's warning and she believed Haynes did too. Subsequently, Mora again confronted Haynes, telling him that the draft report being prepared by Walker's working group was "'deeply flawed'" and should be locked up and "'never let out to see the light of day again.'"

Mora's warnings were all ignored. The torture and abuse continued.

· The Judge Advocates General of the Army, Navy, Air Force and Marines are the country's top uniformed legal officers. They were appointed to be part of Mary Walker's working group. All four of them were appalled at what they were seeing, and each wrote a memo of dissent to torture and abuse. Their memos warned not just that what was being approved was contrary to the legal and moral training American servicemen have always received, and not just that there would be international criticism, but also that interrogators and the chain of command were being put at risk of criminal prosecutions abroad.

The views and warnings of America's top uniformed legal officers were ignored.

In sum, far from American officials and lawyers authorizing or engaging in torture because it was lawful, they authorized and engaged in it because they wanted to, they kept their

actions secret from interested officials for as long as they could lest there be strong opposition to the torture and abuse they were perpetrating, they deliberately ignored repeated warnings that the torture and abuse were illegal and could lead to prosecutions, and they ignored these warnings even when they came from high level civilian and military officers.
