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November 20, 2009

Office of Bar Counsel

Board on Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

Re: Complaint against William James Haynes II

Dear Sir or Madam:

NOTICE OF COMPLAINT

Velvet Revolution (“VR”), a Washington, D.C. based non-profit with a network of more than 150 organizations representing over a million members nationwide, including in Washington, D.C., is filing this complaint against former General Counsel of the United States Department of Defense, William James Haynes II. Mr. Haynes is currently employed by Chevron Corporation, located at 6001 Bollinger Canyon Road, San Ramon, CA, 94583-2324. VR requests the *Board on Professional Responsibility, District of Columbia Court of Appeals* take immediate disciplinary action against Mr. Haynes for violations of the *D.C. Rules of Professional Conduct*.

Jurisdiction for this filing is based on the McDade Amendment, 28 U.S.C. § 530B, which states in relevant part, (a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State. ... (c) As used in this section, the term “attorney for the Government” includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40. Mr. Haynes engaged in his conduct while working at the Department of Justice in Washington, D.C.

Exhibits referred to in this document by letters A-O have been previously submitted in the case of Jay Bybee. All new exhibits are attached by numbers 1-3.

SUMMARY OF COMPLAINT

While General Counsel for the United States Department of Defense (“DoD”) between 2001 and 2008, Mr. Haynes breached his duty as a lawyer by advocating for brutal interrogation amounting to torture in violation of U.S. and international law. Mr. Haynes’ improper advocacy directly led to detainee abuses and even death at the Guantanamo Bay and Abu Ghraib detention facilities.

Specific violations of professional and ethical conduct:

1) Failure to advise client of complete body of laws, legal precedents and other guidelines against torture.

Despite concerns and objections expressed by JAG officers from each branch of the Military, Mr. Haynes advised approval of the interrogation “techniques” without telling top DoD brass of the objections raised by JAG officials. Exhibit I.

Mr. Haynes negligently or recklessly ignored serious legal and policy concerns expressed by the military, and inappropriately “cut short the legal and policy review” of the proposed techniques, “undermining the military’s review process.”

“It seems that Jim Haynes short-circuited the approval process. Alberto Mora, the general counsel of the Navy, says he remembers Dalton telling him, ‘Jim pulled this away. We never had a chance to complete the assessment.’ Phillippe Sands, “Vanity Fair”, May 2008 (pg 13).

Former State Department counsel testified before a Senate hearing on May 13, 2009, that “the lawyers involved in [the torture memos] did not welcome peer review and indeed would shut down challenges even inside the government.”

In so doing, Mr. Haynes failed in his duty as a lawyer to inform his client of all relevant legal and factual issues.

Further, Mr. Haynes did not mention Common Article 3 of the Geneva Conventions, which expressly prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment”, regardless of circumstance. Exhibit H. [See, *Hamdan v. Rumsfeld*, holding that the Geneva Conventions are applicable to al-Qaeda.]

In addition, the Haynes Memo ignored the US Army Field Manual and long-standing legal precedents. Exhibit B.

Based on Mr. Haynes’s recommendation, Secretary Rumsfeld approved certain harsh interrogation techniques on Dec. 2, 2002.

2) Actively and aggressively advocated for torturous detainee treatment even after Sec. Rumsfeld rescinded the authorization and later ordered a review demonstrating a clear pattern of activity:

Forty-nine days later after objections to torture were raised by Navy General Counsel Alberto Mora, Defense Secretary Rumsfeld rescinded the authorization of the interrogation techniques. [Exhibit K-SASCI, pg. xxi, ¶1]. In a review process, Mora reported that Haynes' analysis contained "profound mistakes of legal analysis."

Later, however, after Sec. Rumsfeld has established a Working Group to review the interrogation program:

Mr. Haynes interfered with his client's request for review. Mr. Haynes again put forward as law his extreme view of torture by ordering the Working Group to "consider a legal memo dated March 14, 2003, from John Yoo of the Department of Justice's OLC as authoritative." The March 2003 memo was so legally inadequate that it was later "formally withdrawn" by the OLC. Such a withdrawal is unprecedented. Thus, Mr. Haynes prevented an impartial analysis of the law of by requiring compliance with an extreme view of torture as the foundation for the review.

"Secretary Rumsfeld's December 2, 2002 approval of Mr. Haynes's recommendation that most of the techniques contained in GTMO's October 11, 2002 request be authorized, influenced and contributed to the use of abusive techniques, including military using dogs, forced nudity, and stress positions, in Afghanistan and Iraq." SASCI, Conclusion 13, pg xxviii

Twenty-one retired military leaders described Haynes's role in the torture policies of the U.S. as a "disdainful approach toward the Geneva Conventions and binding international law ..."

[July 2006 letter from retired military officers to Senate Judiciary Committee]

3) Exercised direct hand in acknowledged torture of at least one detainee, al-Kahtani.

Mr. Haynes sought approval for the aggressive interrogation techniques to be applied to a detainee named al-Kahtani. These practices were deemed "torture" according to the convening authority for military commissions at Guantanamo (GTMO). Because of the torture, all charges against al-Kahtani were dismissed.

Susan J. Crawford, convening authority for military commissions at GTMO stated: "We tortured Kathani. His treatment met the legal definition of torture." Washington Post, Jan 14, 2009, pg. A1, interviewed by Bob Woodward.

Incredibly, Mr. Haynes was directly connected to the torture of detainees at the same time

he pushed the prosecution of low-level service members for using interrogation techniques he himself approved.

Mr. Haynes Violated Disciplinary Rules

Mr. Haynes breached his legal duty and violated the *D.C. Rules of Professional Conduct* by conspiring and advocating for immoral and unethical “extended” or “enhanced” interrogation techniques (amounting to torture), and other policies that resulted in clear violations of U.S. and international law. As counsel to the Department of Defense, Mr. Haynes

- Failed to show “respect for and obedience to the law, and respect for the rights of others” as required by the Rules.
- Intentionally or recklessly failed to act competently in violation of Rule 3.1B.
 - Mr. Haynes failed to adequately supervise the work of subordinate attorneys and forwarded shoddy legal memoranda regarding the definition of torture for his client, Secretary Rumsfeld.
 - Mr. Haynes acted incompetently by advising Secretary Rumsfeld to approve interrogation techniques that were in violation of U.S. and international law, and without even mentioning strong objections by the military.
- Advised the violation of the law, in violation of Rule 1.2(e)
 - Mr. Haynes recommended approval of aggressive interrogation techniques that military lawyers stated violated the law.
 - He forced subordinate attorneys to rely on memoranda prepared by the Office of Legal Counsel that were based on unsound reasoning and which have since been rescinded in an unprecedented manner.
 - His advice was so incompetent that Secretary Rumsfeld was later forced to rescind the Haynes Memo.
 - He never attempted to present an impartial, unbiased review of the law. All of the evidence shows that Mr. Haynes improperly advised the allowance of illegal and inhumane interrogation techniques.
- Failed to support or uphold the U.S. Constitution, and the laws of the United States, or to maintain the respect due to the courts of justice and judicial officers in violation of his legal oath.

It is not a defense that Mr. Haynes was acting within the scope of Executive authority. It is precisely because of the power of the Executive Branch that attorneys for the Executive Branch have a responsibility to provide competent legal advice.

Specifically, Mr. Haynes ignored over two centuries of historical and legal precedents, fell short of the “good faith” imperative, and advanced suspect legal analysis and prescriptions for detainee interrogation well outside of accepted and legal norms, thereby providing the false cover of claimed legality for those who then engaged in acts and policies that, in fact, violated the following laws, both in letter and spirit:

- 1) The United Nations Convention Against Torture (UNCAT), Articles 1, 2, 3 and 16 (ratified in October 1994)
- 2) The Geneva Conventions, Article 3, (ratified in August 1955)
- 3) The Eighth Amendment against “cruel and unusual punishment”
- 4) The “Separation of Powers” constructs and imperatives of the U.S. Constitution
- 5) The United States Criminal Code, Title 18, Prohibitions Against Torture (18 USC 2340A) and War Crimes (18 USC 2441)

As the “law of the land,” these legal protections and dictates are clear. Rather than offering a “good faith” analysis of the applicable law, Mr. Haynes supported memoranda ^[1] (since repudiated ^[2]) from the Office of Legal Counsel, and colluded with a small cadre of Administration lawyers ^[3] to advance legal arguments that led directly to detainee abuses, and, evidence suggests, deaths at overseas U.S. military facilities ^[4]. In so doing Mr. Haynes impeded the administration of justice and violated the U.S. Constitution, the Geneva Convention, the Convention against Torture, the U.S. Criminal Code, and several *Rules of Professional Conduct*. Mr. Haynes did not act in “good faith” but rather in a manner that was illegal, extremely prejudicial, grossly incompetent and clearly immoral.

Therefore, VR calls for the California bar to act immediately to disbar Mr. Haynes for conduct that is a travesty of justice and an affront to the rule of law and the standards of professional legal and ethical conduct.

Further, because the evidence points to numerous violations of the law, VR believes that disbarment will complement steps toward open hearings in Congress and a criminal investigations by an independent counsel appointed by the Department of Justice.

APPLICABLE LAW PROHIBITING TORTURE

The U.S. Constitution -- The Supreme Law of the Land

As the initial U.S. report to the *UN Convention against Torture* wrote:

“...the protections of the right to life and liberty, personal freedom and physical integrity found in the Fourth, Fifth and Eighth Amendments to the United States Constitution provide a nationwide standard of treatment beneath which no governmental entity may fall.” [49., p. 13, Initial Report submitted by the United States to the *Convention against Torture* in 1999 (CAT/C/28/Add.5)]

U.S. citizens are guaranteed these protections. Jose Padilla is one example of a U.S. citizen who was held without charge for several years, and subject to the extreme interrogation techniques advocated by Mr. Haynes. Citizens of other countries are similarly protected when in United States custody. The Eighth Amendment specifically prohibits cruel and unusual punishment.

The Geneva Convention (1949)

Common Article 3 of the *Geneva Conventions* broadly prohibits "violence to life and person," and specifically prohibits "mutilation, cruel treatment and torture" including "outrages upon personal dignity, in particular humiliating and degrading treatment". These terms include "other forms of cruel, inhuman and degrading treatment or punishment." Exhibit H

The drafters of common Article 3 avoided a detailed list of prohibited acts in order to ensure that it had the broadest possible reach, leaving no loophole.

[<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>]

The **Army Field Manual** on detainee treatment and interrogation is predicated on the Geneva Convention and specifically requires humane treatment of prisoners and detainees. Exhibit B

UN Convention Against Torture (1994)

Adopted by the United Nations in 1984, the Convention requires states to take effective measures to prevent torture within their borders. The United States ratified the Convention against Torture in October 1994 and it entered into force for the United States on November 20, 1994. To date, there are over 146 nations that are party to the convention. Exhibit L

Article 2(2) of the Convention states that:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked

as a justification of torture."

***Hamdan v. Rumsfeld* (2002) -- Due Process and Legal Protections**

The Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), held that the Geneva Conventions are applicable to accused members of al-Qaeda. Thus, due process protections apply to all detainees in U.S. custody, including those in military prisons (Guantanamo, Abu Grahیب, Bagram), as well as so-called "black sites" in Poland, Diego Garcia and elsewhere.

US Criminal Code

TITLE 18 § 2340A. Torture

(a) Offense.— Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) Jurisdiction.— There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) Conspiracy.— A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

Exhibit M

TITLE 18 § 2441. War crimes

(a) Offense.— Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances.— The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition.— As used in this section the term "war crime" means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not

of an international character; Exhibit M

CASE FOR DISBARMENT

D.C. Rules of Professional Conduct

The case for Mr. Haynes' disbarment is simple and clear. Above all, a lawyer must demonstrate respect for the rule of law, the legal system and over two centuries of legal precedent. However, in his work at the Department of Defense and in his testimony Mr. Haynes did not.

Mr. Haynes' legal advocacy denied due process rights for detainees, and countenanced gross, violent and degrading treatment amounting to torture and was in no way moral or ethical, by any objective measure. This alone is ground for disbarment.

Rule 3.1B calls for lawyers to act competently and to inform themselves about the facts of their clients' cases and the applicable law. Further it clarifies that legal claims are frivolous if the lawyer is "unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification, or reversal of existing law." The OLC memos Mr. Haynes advanced did not directly grapple with the question of minimal due process for the detainees, nor did they fairly present relevant case law, including previous U.S. prosecutions of those who employed waterboarding. Accordingly, Mr. Haynes' advocacy was not made in "good faith" and was thus "frivolous" and incompetent. There is no precedent in case law for the claims of executive power made by the OLC, and embraced by Mr. Haynes.

Rule 1.2(e) states that "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law."

Memos reviewed and advanced by Mr. Haynes extensively detailed the parameters of a number of extreme torture techniques that most legal scholars and experts deem to be torture. Therefore, Mr. Haynes violated this rule by advocating torture, and revealed himself to be deeply engaged in the actual application of the torture rather than providing a "**good faith**" analysis of applicable U.S. and international law bearing on questions of interrogation and torture.

Rather than accept the definition of torture^[5] as clearly defined in international law, Mr. Haynes, by his cooperation with in the five-member "War Council," consented to re-define it altogether on the basis of the August 1, 2002 Office of Legal Counsel memorandum:

"The victim must experience intense pain or suffering of the kind that is equivalent

to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in a loss of significant body functions will likely result.”

The memo also asserts that the criminal law prohibiting torture "may be unconstitutional if applied to interrogations undertaken of enemy combatants pursuant to the President's Commander-in-Chief powers." In other words, as former White House Counsel John Dean states: “when acting as commander-in-chief, the president can go beyond the law.”^[6] Of course, there is no constitutional or legal basis for such a conclusion.

By advancing his view of the law, Mr. Haynes confirmed his agreement with the legal advocacy advanced by the Bush Administration’s “War Council.” Early leaks of the upcoming report from the DoJ’s Office of Professional Responsibility, point to evidence that the legal analysis formulated by John Yoo (and advanced by the larger “War Council”) was fixed around administration policy that the Executive is not bound by the Constitution and other applicable and accepted law.

In light of the above, it is clear that Mr. Haynes repeatedly demonstrated extreme disregard for well-established rule of law, violating both the letter and spirit of the U.S. Constitution, U.S. Criminal Code and the treaties that the U.S. had signed and ratified. Mr. Haynes’ advocacy of so-called “enhanced interrogation techniques”, military tribunals, and other policies was not presented in “good faith” and was grossly unethical and immoral. Further his participation in War Council meetings and deliberations strongly suggest that he directly participated, and sought to advance an unlawful conspiracy, that subverted U.S. and international law.

Therefore, VR calls for the disbarment of Mr. Haynes.

KEY DOCUMENTS IN EVIDENCE

In order to build the case for disciplinary action against Michael Haynes, Jay Bybee, John Yoo, and other lawyers advocating for, and defining so-called “enhanced interrogation,” and to examine the origins of the legal advocacy, it is necessary to review an extensive body of evidence and investigative reporting and analysis, including the following documents/articles:

Memoranda prepared by lawyers in the Bush Justice Department's Office of Legal Counsel (OLC). [http://www.aclu.org/safefree/general/olc_memos.html] Exhibits C, D, E, F, G, N and O. Action Memo by William J. Haynes, General Counsel, for Secretary of Defense, Dated November 27, 2002 (Haynes Memo). http://en.wikisource.org/wiki/Haynes_Memo_of_Nov_27,_2002 Exhibit I

2) The Senate Armed Services Committee Investigation (SASCI) described the Haynes Memo as “grossly inadequate”. *See*, Attachment B, Senate Armed Services Inquiry Into the Treatment of Detainees in U.S. Custody, released December 2008 (SASCI), pg.

xxviii. Exhibit K

<http://levin.senate.gov/newsroom/release.cfm?id=305735>

<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>

- 3) *Hamdan v. Rumsfeld*, holding that the Geneva Conventions are applicable to al-Qaeda. [www.supremecourt.us/opinions/05pdf/05-184.pdf]
- 4) July 7, 2006 letter to Senate Judiciary Committee from retired military officers, stating “uniformed JAGs of each of the services clearly and repeatedly expressed their concerns about the impact of these policies [to Mr. Haynes].”
- 5) “This letter will confirm that this office has formally withdrawn the March 2003 Memorandum.” Letter dated Feb. 4, 2005 from Daniel Levin, Acting Assistant Attorney General at the U.S. Department of Justice, Office of Legal Counsel to Mr. Haynes.
- 6) CID Documents, documenting deaths of detainees in Iraq and Afghanistan following application of extreme interrogation tactics.
(released by the Government in November 2008, released by the ACLU 2/11/09
<http://www.aclu.org/torturefoia/released/021109.html>
 - a) CID Report of Investigation, Incident date: 11/30/02-12/10/02
<http://www.aclu.org/projects/foiasearch/pdf/DODDOACID011770.pdf>
 - b) CID Report dated Nov 27, 2006; incident date: 6/13/200
<http://www.aclu.org/projects/foiasearch/pdf/DODDOACID013419.pdf>
 - c) CID Report of Investigation, incident date: 5/12/04 - 6/8/04
<http://www.aclu.org/projects/foiasearch/pdf/DODDOACID013960.pdf>
 - d) Case Disposition on Case Number 0003-04-CID 149-83130, incident date: 11/10/03-2/16/05
<http://www.aclu.org/projects/foiasearch/pdf/DODDOACID013419.pdf>
 - e) Case Disposition on Case Number 0003-04-CID 149-83130; incident report: 11/10/03-2/16/05,
<http://www.aclu.org/projects/foiasearch/pdf/DODDOACID017333.pdf>
- 7) The Red Cross Report on Detainee Treatment, Exhibit J.
- 8) Investigative Reporting:
 - a. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*
 - b. “Report: Abusive tactics used to seek Iraq-al Qaeda link”; Jonathan S. Landay, *McClatchy Newspapers* -- Tue, Apr. 21, 2009

On June 12, 2009, United States District Judge Jeffrey White issued a 42-page decision holding that torture victim Jose Padilla can sue John Yoo for damages because of Mr. Yoo’s authorship of the OLC torture documents we submitted to your office on May 18, 2009 in the case of Jay Bybee. The opinion provides a detailed analysis of the law as

well of the facts surrounding Mr. Yoo's conduct. The Court found that Mr. Padilla met his burden of alleging that Mr. Yoo violated Mr. Padilla's constitutional rights. We have attached a copy of that decision for your review as Exhibit 1 because the same legal analysis applies to the conduct of Mr. Haynes.

We also ask that you consider the following new pieces of supporting information:

1. On May 29, 2009, in an interview with Fox News, General David Petraeus, discussing torture of detainees, said, "When we have taken steps that have violated the Geneva Conventions, we rightly have been criticized, so as we move forward I think it's important to again live our values, to live the agreements that we have made in the international justice arena and to practice those."
<http://www.harpers.org/archive/2009/06/hbc-90005079> (Article and Video)
2. On May 31, 2009, General Ricardo Sanchez, in an interview with MSNBC, stated that the use of torture on detainees, constituted a "war crime," and that a "truth commission" is necessary to address the "institutional failure" of those charged with decision making and accountability. http://www.huffingtonpost.com/jack-hidary/general-rick-sanchez-call_b_209573.html (Article and Video)
3. On June 8, 2009, emails relating to the OLC torture memos were released and reported on. We have attached three relevant emails as Exhibit 2. In those, discussed in detail here <http://www.truthout.org/060809J>, there are numerous references to Alberto Gonzales being "weak" and succumbing to politicized pressure from the White House to approve the torture memos in order to provide cover for the use of torture. In fact, Deputy Attorney General James Comey told AG Gonzales that the torture opinion "would come back to haunt [him] and DOJ and urged him not to allow it."
4. In addition to the above new information, we also bring to your attention the resolution adopted by the American Bar Association condemning "any use of torture ... *and any endorsement or authorization of such measures by government lawyers, officials and agents;*" Exhibit 3.

1) The **OLC memoranda** offered the patina of legal sanction to the use of techniques such as waterboarding, hypothermia, stress positions, extensive sleep deprivation and confinement with stinging insects to exploit prisoner phobias.

The memos, by carefully defining parameters, clearly demonstrate that the authors of the memos were deeply engaged in the application of torture techniques, not merely giving abstract legal counsel.

2) The **Senate Armed Services Committee report** provided a detailed chronology of the process of formulation of policy respecting the treatment of prisoners, with a special focus on the introduction of torture techniques. Exhibit K

Senior officials in the U.S. government decided to use some of these harsh techniques against detainees based on deeply flawed interpretations of U.S. and international law.

[Levin, McCain Release Executive Summary and Conclusions of Report on Treatment of Detainees in U.S. Custody, December 11, 2008]

3) The **Senate Intelligence Committee memo** details the steps leading to issuance of the OLC memos and identified the Justice Department lawyers and others involved in the process. The memo details a systematic authorized program for the mistreatment and torture of persons denied rights of due process. [Letter from Attorney General Eric Holder, Jr. to Senator John. D. Rockefeller IV of the SSCI forwarding declassified narrative, (April 17, 2009).]

4) The **Red Cross Report On Detainee Treatment** was prepared from interviews with a number of detainees and others. In short, it confirms that the types of torture techniques advocated by Mr. Hayes were in fact used against many detainees. These techniques included suffocation by water, prolonged stress standing, beatings by use of a collar, beating and kicking, confinement in a box, prolonged nudity, sleep deprivation, continuous loud noises, exposure to cold temperature and cold water, threats, forced shaving, and deprivation of food. Exhibit J

5) In **testimony at a Senate hearing** on May 13, 2009, Former State Department counselor Philip Zelikow told a committee panel that Bush administration officials engaged in a 'collective failure' with regard to the detention and interrogation of suspected terrorists. He asserted that the torture memos were unsound because "the lawyers involved ... did not welcome peer review and indeed would shut down challenges even inside the government." Georgetown University law professor David Luban testified that the Justice Department torture memos constituted "an ethical train wreck" because they violated constitutional, statutory and international law.

<http://www.washingtonpost.com/wp-dyn/content/article/2009/05/13/AR2009051301281.html>

6) **Investigation Reporting/Biographies:** Select reporting from credible sources further suggests that following the attacks of 9/11/01, a host of controversial and illegal policies were advanced persistently and systematically by a small group of lawyers to serve narrow policy goals and political ambitions, with a primary aim of vastly amplifying the power of the Presidency, in direct threat to the system of checks and balances elucidated in the U.S. Constitution.

a) **Jane Mayer, The Dark Side:** In her award-winning book, Harpers author Jane Mayer writes that John Yoo was a prominent member of the "War Council" and advanced a concerted campaign to establish an entirely new post-

9/11 legal regime already well developed prior to the attacks. Any objective analysis of this body of work leads to the obvious conclusion that these lawyers methodically advanced an agenda entirely antithetical to the U.S. Constitution and a host of historical and legal precedents, with legal opinion and advocacy that effectively buried American ideals and the rule of law.

b) **Jonathan Landey of McClatchy in his article *Report: Abusive tactics used to seek Iraq-al Qaida link*** reported on the intense pressure put on the CIA and military interrogators to use of extreme interrogation tactics including the use of waterboarding, on scores of occasions, in an effort to produce intelligence from detainee confessions that al-Qaeda was linked to the regime of Iraqi President Hussein. Pressure came from the Vice-President's office. The head of the 'War Council' was David Addington, the Vice-President's Chief of Staff.

ENDNOTES

[1] See *ProPublica's* comprehensive list of legal memoranda on controversial Bush policies regarding detentions, interrogations and warrantless wiretapping. <http://www.propublica.org/special/missing-memos>.

A detailed listing of torture related legal memoranda is available here: <http://www.aclu.org/safefree/torture/torturefoia.html> See also Exhibit A

The most recently declassified memos from Yoo's *Office of Legal Counsel* can be found here: http://www.aclu.org/safefree/general/olc_memos.html

[2] See April 15, 2009, *Memorandum to the Attorney General Re. The Withdrawal of Office of Legal Counsel Opinions* mentioning the legal opinions expressed in dated memoranda written by Jay S. Bybee, Assistant Attorney General and Steven G. Bradbury, Principal Deputy Assistant Attorney General. [http://media.mcclatchydc.com/smedia/2009/04/16/16/Taylor-OLCops_withdrawal.source.prod_affiliate.91.pdf]

The TIMES Online reported:

"Jack Goldsmith, who succeeded Jay Bybee - the author of many of these memos - at the Office of Legal Counsel, has since declared that they had 'no foundation' in any source of law and rested on 'one-sided legal arguments'. **Their purpose, he said, was to provide the CIA with a 'golden shield' against criminal prosecution of agents.** After all, the US prosecuted waterboarding as torture when the Japanese used it against American troops during Second World War." [http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6116281.ec]

John Yoo, who worked under Jay Bybee, was the principal author of the most important of the memos now under scrutiny.

[3] Mayer, Jane; *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, Doubleday, 2008.

Yoo, John C.; *War by Other Means: An Insider's Account of the War on Terror*, Atlantic Monthly Press, 2006.

Mayer sources "hard-line law-and-order stalwarts in the criminal justice system" to describe how beginning on 9/11/01 a group who called themselves the "War Council" worked to upend the American system of law and checks and balances in order to exercise a new legal paradigm for Executive Power. They worked methodically to vastly expand presidential authority ("not limited by any laws") in which the president "had the power to override existing laws that Congress had specifically designed to curb him." The 'War Council' was led by David Addington, Chief of Staff of Vice President Cheney and included John Yoo of the OLC, William James Haynes from the Department of Defense and Timothy E. Flanigan and Alberto Gonzales, from the White House.

Mayer's account was in part based on John Yoo's 2006 book, *War by Other Means*, which revealed a larger circle of lawyers who met regularly in order to advance an entirely unprecedented new legal regime.

[4] Unredacted Church Report Documents (Previously Classified) (2/11/2009)

<http://www.aclu.org/safefree/torture/38710lgl20090211.html>

<http://www.aclu.org/torturefoia/released/021109.html>

These reports from the Criminal Investigation Division of the Department of Justice detail the deaths of a number of detainees at Bagram Air Force Base in Afghanistan and at prisons in Iraq. Thus far, 21 homicides have been confirmed, eight of which resulted from abusive interrogation techniques.

[5] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly in 1984 and entered into force on June 26, 1987.

It 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":

- a) obtaining from him/her or a third person information or a confession
- b) punishing him/her for an act s/he or a third person has committed or is suspected of having committed
- c) intimidating or coercing him/her or a third person,
- d) or for any reason based on discrimination of any kind;

When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>

The Convention Against Torture is implemented by Sections 2340-2340A of title 18 of the United States Code.

[6] “The Torture Memo By Judge Jay S. Bybee That Haunted Alberto Gonzales's Confirmation Hearings,” by John W. Dean, Friday, Jan. 14, 2005;
<http://writ.news.findlaw.com/dean/20050114.html>

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Zeese', with a long horizontal flourish extending to the right.

Kevin Zeese
Attorney at Law
301-996-6582