

ACTING COUNSELS AND TORTURE

Marty Lederman links to the finally declassified March 2003 memo authorizing torture in the military (Part One, Part Two). He reminds us the significance of the memo:

As I've discussed previously – see for instance [here](#) and [here](#), and as Jane Mayer has reported in great detail, the March 14th Yoo memorandum, and the April 2, 2003 DOD Working Group Report that incorporated its outrageous arguments about justifications for ignoring statutory limits on interrogation, was secretly briefed to Geoffrey Miller before he was assigned to Iraq, and became the source of all the abuse that occurred there in 2003 and early 2004. (In late 2004, new OLC head Jack Goldsmith reviewed the March 2003 memo, was stunned by what he later called the "unusual lack of care and sobriety in [its] legal analysis" – it "seemed more an exercise of sheer power than reasoned analysis" – and immediately called the Pentagon to implore them not to rely upon it. Later, the next head of OLC, Dan Levin, wrote the Pentagon to confirm that they rescind any policies that had been based on the Yoo memo. See the whole story [here](#).)

But I'm even more interested in this part of Marty's post:

On Friday, March 13, 2003, Jay Bybee left his office as the Assistant Attorney General for the Office of Legal Counsel. The very next day – a Saturday – John Yoo, merely a Deputy AAG in the Office, issued his notorious memo to the Pentagon, on behalf of OLC, which effectively gave the Pentagon the green

light to disregard statutory limits on torture, cruelty and maltreatment in the treatment of detainees.

It describes how, as soon as the established top lawyer for one part of the executive branch left, his replacement took responsibility for a significant legal act. I find it ironic, particularly given the stamp that appears on the first page of the first part of the memo:

Declassify under authority of Executive Order 1958
By Acting General Counsel, Department of Defense,
By Daniel J. Dell'Orto
31 March 2008

Dell'Orto, you'll remember, replaced William Haynes at some point last month. I'm not precisely sure when Haynes' last day was—but within weeks of taking over as Acting General Counsel at DOD, Dell'Orto declassified an opinion we've been trying to declassify for years. Perhaps not surprisingly, the opinion, which has been treated as the family jewels by the Bush Administration. And just a few weeks ago Attorney General Mukasey was pretending he had barely reviewed it. The opinion was only ever classified as "Secret/NoFORN."

In any case, what Yoo did, as soon as Bybee left the OLC, Dell'Orto has finally exposed, as soon as Haynes left DOD.

Update: Corrected claim that Yoo was "acting head" of OLC per Mary.