A DICK CHENEY TORTURE TRIFECTA!

First we have Judy "re-connected at the roots" Miller claiming Nancy Pelosi's in trouble because Dick Cheney tortured.

Then we got Stephen "Hagiographer" Hayes, claiming Nancy Pelosi's in trouble because Dick Cheney tortured.

And now we've got Victoria Toensing, claiming we shouldn't prosecute John Yoo and Jay Bybee because they told Dick Cheney he could torture. This article is notably bad, even for Toensing. She invokes her Reagan-era legal experience as her basis of authority—but ignores the Reagan-era case which declared waterboarding to be torture.

> In the mid-1980s, when I supervised the legality of apprehending terrorists to stand trial, I relied on a decades-old Supreme Court standard:

She claims the lawyers (she conveniently mentions just Yoo and Bybee, for obvious reasons) only had to determine whether waterboarding constitued a specific intent to torture, and not whether it shocked the conscience.

> Our capture and treatment could not "shock the conscience" of the court. The OLC lawyers, however, were not asked what treatment was legal to preserve a prosecution. They were asked what treatment was legal for a detainee who they were told had knowledge of future attacks on Americans.
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> The 1994 law was passed pursuant to an international treaty, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment. The law's definition of torture is

> circular. Torture under that law means "severe physical or mental pain or suffering," which in turn means "prolonged mental harm," which must be caused by one of four prohibited acts. The only relevant one to the CIA inquiry was threatening or inflicting "severe physical pain or suffering." What is "prolonged mental suffering"? The term appears nowhere else in the U.S. Code.
>
> Congress required, in order for there to be a violation of the law, that an interrogator specifically intend that the detainee suffer prolonged physical or mental suffering as a result of the prohibited conduct. Just knowing a person could be injured from the interrogation method is not a violation under Supreme Court rulings interpreting "specific intent" in other criminal statutes.

Bradbury, of course, spent a good part of his May 30, 2005 memo addressing the "shock the consicence" standard, because the program had been deemed illegal by the CIA's own IG under that standard.

Then Toensing claims Republican efforts to limit restrictions on the waterboarding that was—going back to Saint Ronnie and earlier—already illegal (neglecting to mention recent attempts thwarted by Bush's veto) somehow made waterboarding legal.

> Does he know the Senate rejected a bill in 2006 to make waterboarding illegal? That fact alone negates criminalization of the act.

The neatest, though, is where she demands the critics read just the two memos that fit her strained argument (but not the three that blow hers out of the water) and the underlying documents (which remain classified) before they

be allowed to speak on the matter.

> There should be a rule that all persons proposing investigation, prosecution or disbarment must read the two memos and all underlying documents and then draft a dissenting analysis.

I assume, though, she's leaving out the FBI reports that prove Abu Zubaydah was cooperating, which undermine the first premise of the Bybee Memo.

Good to see Dick Cheney's favorite hack lawyer hasn't lost her touch for making thorougly disingenuous arguments that don't even hold up to her own standards.

That said, is anyone having a Libby trial deja vu? Because I do believe Cheney has finally gotten out all the old hacks, in addition to BabyDick, to defend his torture regime.