

REMINDER: BYBEE WAS TOO BUSY PROTECTING BIG OIL TO OVERSEE TORTURE

Jay Bybee just gave a speech at University of Utah on the Constitution at which he tried to claim the torture memos that bear his name included constraints that no one else has been able to find.

One middle-aged man stood to the side of the classroom with a sign reading "Torture Is a War Crime." A woman of a similar age next to him tried to ask Bybee about executive branch power and "the secret torture of Muslims." The moderator from the Federalist Society cut her off before she finished the question.

"That question is way beyond my ability to predict," Bybee then replied.

[snip]

After the question-and-answer period, Irvine approached Bybee and tried to ask more about the memos.

Bybee pointed to a section in one memo telling the CIA that if the facts change, to notify the Justice Department for an updated opinion. Bybee also invited Irvine to his offices in Las Vegas to discuss the issue further.

Irvine said he would visit Bybee the next time he is in Las Vegas.

Irvine said moments later that the speech didn't make him feel better about the memos, though he found it interesting when Bybee described the constrictions on presidential power.

"That is not what I read in that [2002] memo," Irvine said.

It's worth remembering, however, that Bybee claims – and the record supports his claim – that he wasn't all that involved in writing the torture memos that bear his name. According to his own attorney, Maureen Mahoney, he swooped into the memo-writing process just weeks before they were finalized.

The reason she gave for why Bybee was so uninvolved in the nitty gritty of rubber stamping torture is worth noting. Jay Bybee was too busy protecting the secrecy of Cheney's sweetheart Energy Task Force to oversee his nominal subordinate John Yoo on torture.

I wanted to draw attention to a footnote she includes to–apparently–explain that Jay Bybee was a very busy man at the time when he was supposed to be overseeing John Yoo's attempts to legalize torture in the summer of 2002. (This is on PDF page 19)

Judge Bybee's role in reviewing the memo began in earnest around mid-July, roughly two weeks before he signed them.⁵

⁵ During the summer of 2002, in addition to his work on national security issues, Judge Bybee, as head of OLC, was also heavily involved in a number of other difficult and pressing legal matters. Of particular note, Judge Bybee was engaged in the district court litigation in *Walker v. Cheney*, No. 02-340 (D.D.C.). The attorneys in that case were working closely with the Department's Civil Division and the Solicitor General's Office. The legal issues involved in the case were

peculiarly within Judge Bybee's expertise because his scholarly research had been cited as authority by both sides. See Jay S. Bybee, *Advising the President: Separation of Powers and the Federal Advisory Committee Act*, 104 *Yale L.J.* 51 (1994).

Walker v. Cheney, of course, is the suit the GAO took against Cheney's office to try to force it to turn over documents relating to his Energy Task Force. After District Court Judge John Bates **ruled against GAO** in December 2002, it ended one of the more important efforts to subject Cheney's office to Congressional oversight. Furthermore, this effort must be regarded as Cheney's first attempt to assert that his was a Fourth Branch, exempt from oversight but also executive regulation.

How interesting, then, that Mahoney highlighted Bybee's role in helping Cheney succeed in winning this suit to argue that Jay Bybee was doing what he should have been doing in summer 2002.

All one OLC office's work of expanding Executive Authority to coddle corporations and torture prisoners.