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April 20, 2009

President Barack Obama
The White House
Washington, DC 20500

Dear Mr. President:

The Society of American Law Teachers—SALT-- applauds the long awaited release of four additional operational memos on interrogation methods, issued by the Office of Legal Counsel (OLC) during the prior administration. The release of these documents demonstrates a courage and fortitude that honors the United States and the restoration of the rule of law. But acknowledging the actions taken is not enough.

We urge you to permit continued investigation of the actions of CIA officials and others who engaged in methods that you and your administration have now condemned, and to retain the possibility of indictment and prosecution of those who engaged in criminal behavior. This course of action is particularly important to avoid interfering with the investigation of the destruction of the Al Qahtani torture tapes, already under way in the Eastern District of Virginia under the direction of United States Attorney John Durham. We learned of this investigation through an exchange of correspondence with the prior Attorney General Michael Mukasey. In a August 5, 2008 SALT statement sent to Attorney General Mukasey, we urged investigation and where appropriate, indictments for those U.S. officials responsible for authorizing the use of torture on "war on terror" detainees. On January 14, 2009, SALT received a response from Jennifer Korn, Director of the U.S. Department of Justice Office of Intergovernmental and Public Liaison, advising SALT of the on-going investigation headed by U.S. Attorney John Durham of Connecticut to the Eastern District of Virginia, relating to the destruction of the Al Qahtani torture tapes.

To disavow prosecution of those who engaged in interrogation methods you now condemn is to taint the honor of our uniformed military and civilian professionals who – in the darkest days of the "war on terror" – resisted such instructions and the mounting pressure to comply that pervaded certain US-controlled prisons and interrogation centers. These brave men and women refused to engage in inhuman and degrading treatment and torture despite the purported guidance offered in these newly released memos.

These memos appear to be offering legal guidance, but they do not. As professionals whose task it is to teach and evaluate legal analysis, we believe it is painfully obvious that these memos are not dispassionate advice of the kind on which one could rely reasonably, but instead distort the very nature of legal analysis, creating a mockery of the rule of law.

According to published reports, the factual circumstances described in the August 1, 2002 memo by Jay Bybee to John Rizzo were known to be false at the time the memo was written. Abu Zubaydah was not "one of the highest ranking members of al Qaeda." He was not uncooperative. The government must determine who is responsible for creating these false narratives, who had access to the truth, and how the OLC was manipulated from its traditional role as legal advisor to the Executive branch. We must stand behind the principle that legal advice based on falsely constructed narratives is not reasonable and cannot shelter either the proponents of the disingenuous legal advice or the actors who were complicit in creating it.

This pattern of dubious facts and shoddy legal analysis is consistent with the pattern in the other 2002, 2003, 2004, and 2005 memos (together "the torture memos") that have been released over the past years. The memos purport to provide a legal "cover" for reprehensible treatment of prisoners while encouraging our soldiers and intelligence persons to betray their oaths and conduct activities that place them at risk of criminal prosecution in the United States and in foreign venues.

As law professors, we consider these memos a disservice to the United States government, a disservice to law students who aspire to serve in the government and military, a disservice to the professors and law schools that trained the authors of these memos, a disservice to the legal profession that should be sanctioned appropriately after full investigation, and most fundamentally, a disservice to the American people.

These memos resulted from enormous pressure to use torture. From the Senate Armed Services Committee report of December 2008, the recent report of the House Committee on the Judiciary, and other sources, we know that this pressure came from the highest levels of civilian and military authority. We also know that CIA employees and private contractors worked alongside our uniformed military in battlefield interrogation settings and engaged in practices that were developed under the misguidance of these memos.

As you know, United States soldiers have been subject to court-martial, have served or are serving sentences, and have been dishonorably discharged for doing the kinds of things that these memos sanctioned. In their efforts to defend themselves, they sought but were not provided access to these memos, or their authors, as exculpatory evidence.

To now dismiss the possibility of investigation and prosecution of crimes in the name of morale is to destroy the morale of those in our government and country who resisted this descent into unlawful and inhuman behaviors.

It is time for criminal prosecutions to move further forward, not backward. As noted above, John Durham, appointed by former Attorney General Michael Mukasey, is investigating CIA wrongdoing in the Eastern District of Virginia. We urge you today to expand his authority to investigate and prosecute all aspects of crimes committed in the "war on terror." To avoid any possible conflicts of interest, we urge you to appoint Mr. Durham as a special prosecutor in the spirit of bipartisan support.

In sum, we urge you to stay your hand in blocking Mr. Durham's ongoing and future work so that he may proceed wherever the facts lead.

Mr. President, it is time for accountability and criminal prosecution so that we can close the door on this era and ensure that future presidents do not take us once again down this road.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MMB' followed by a long, sweeping horizontal stroke.

Margaret Martin Barry
Co-President

A handwritten signature in black ink, appearing to read 'Deborah W. Post' in a cursive style.

Deborah Waire Post
Co-President