

Society of American Law Teachers Statement on Investigation and Prosecution of Promoters of the Use of Torture

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Since 1973, SALT has been an independent organization of law teachers, deans, law librarians, and legal education professionals working to make the profession more inclusive, to enhance the quality of legal education, and to extend the power of legal representation to under-served individuals and communities.

As educators, we are responsible for training the next generation of lawyers, judges, and leaders. Essential to the tradition of American law, without regard to political affiliation, are these truths: the rule of law is paramount; no one is above the law; even the waging of war is subject to legal limits; and in times of war and great danger, the rule of law must be especially vigilantly defended.

The rule of law and legal analysis itself have been abused and distorted by the current administration in justifying its pervasive “war on terror.” It appears that National Security Principals and their advisors meeting in the White House Situation Room authorized and choreographed the torture of detainees.

Lawyers in the Office of Legal Counsel in the U.S. Department of Justice and other government agencies devised “legal cover” to attempt to justify, perhaps retroactively, the torture or cruel, inhuman, degrading, or humiliating treatment of detainees in a variety of venues. This fraudulent legal authority was set forth in several memoranda, only some of which have been identified and/or released: the January 9, 2002 memo written by John Yoo and Robert Delahunty of the Office of Legal Counsel; the November 2002 memo written by William J. Haynes, II, the general counsel of the U.S. Department of Defense; the August 1, 2002 intelligence services memo written by Jay Bybee and John Yoo, aided by David Addington, who worked in the Office of the Vice President; and the March 14, 2003 memorandum also written by John Yoo. There appear to be additional legal opinions that have not yet been released to the public.

Enabling torture is a violation of domestic law, international law, and treaties to which the United States is a signatory. As a beacon of democracy, the United States has a heightened obligation to respect and preserve the values of dignity and human life, especially at a time of war. The United States has historically been a pivotal actor in

defining the very legal norms that the current administration has sought to disregard and distort. The world looks to us to hold firm to fundamental principles of democracy, decency, and fairness.

The legal memoranda devised for the administration methodically seek to create untenable exemptions from the provisions of the Geneva Conventions, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), and other treaty-based and customary international law. They also seek to unilaterally redefine the meaning of torture as understood by the states who have signed the Geneva Conventions and the CAT. The prohibition against torture is a *jus cogens* norm, as are the prohibitions against slavery, genocide, and wars of aggression. *Jus cogens* is Latin for “higher law” or “compelling law.” That means it must be followed by all countries without exception. No executive or legislative act can ever legitimate the violation of a *jus cogens* norm. It is no defense that the United States believed that the purpose of the torture was to prevent a threatened terrorist attack. The intent or purpose of those who torture or use cruel, inhuman, degrading, or humiliating treatment is irrelevant, because each is proscribed absolutely and “in all circumstances” under several forms of customary and treaty-based international law. This understanding is a fundamental protection for our own citizens as well as persons from other countries whom we may detain or imprison. *There can be no justification for torture.*

The list of state, federal, and military justice crimes that have been committed in this administration’s conduct of the “war on terror” includes horrendous acts considered war crimes: murder, assault, kidnapping, sexual molestation and humiliation, torture and maiming, conspiracy as well as purposeful attempts to cover-up these crimes.

SALT calls for thorough and immediate investigations by the Congress and the Department of Justice of the circumstances under which torture was authorized, rationalized, and implemented. Those directly responsible for approving and executing the practice of torture, including the President, Vice President, Secretary of Defense, Secretary of State, Attorney General, Counsel to the President, and National Security Advisor, should be investigated and held accountable. These investigations should also include the lawyers who devised and extended legal arguments to justify or vindicate state acts of torture in clear violation of existing law: Judge Jay Bybee of the United States Court of Appeals for the Ninth Circuit, Professor John Yoo of the University of California at Berkeley School of Law, and David Addington, of the Office of the Vice President. Their work as legal counsel cannot be justified as zealous advocacy; it is unethical to advise any client to violate the law. Their misconduct, if proven, makes them as culpable as those who planned and those who conducted the acts of torture.

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