

The Washington Post

No sanctions for Bush lawyers who approved waterboarding, report will say

Advertisement

By Carrie Johnson
Washington Post Staff Writer
Sunday, January 31, 2010; A06

Bush administration lawyers who paved the way for sleep deprivation and waterboarding of terrorism suspects exercised poor judgment but will not be referred to authorities for possible sanctions, according to a forthcoming ethics report, a legal source confirmed.

The work of John C. Yoo and [Jay S. Bybee](#), officials in the Bush Justice Department's Office of Legal Counsel, provided the basis for controversial interrogation strategies that critics likened to torture in the years after al-Qaeda's 2001 terrorist strikes on American soil. The men and their OLC colleague, Steven G. Bradbury, became focal points of anger from Senate Democrats and civil liberties groups because their memos essentially insulated CIA interrogators and contractors from legal consequences for their roles in harsh questioning.

The reasoning, set out in a series of secret memos only months after Sept. 11, 2001, prompted a multi-year investigation by the department's Office of Professional Responsibility, which reviews the ethics of Justice lawyers. The legal source was not authorized to discuss the report's conclusions and described them on the condition of anonymity.

A draft report prepared at the end of the Bush years recommended that Yoo, [now a law professor](#) at the University of California at Berkeley, and Bybee, [now a federal appeals court judge](#) in Nevada, be referred to state disciplinary authorities for sanctions that could have included the revocation of their licenses to practice.

But then-Attorney General Michael B. Mukasey and Deputy Attorney General Mark R. Filip blasted the analysis in the draft and sent it back to the ethics office for more work. Meanwhile, the five-year [statute](#) of limitations on Yoo's alleged conduct expired, raising doubts about whether a disciplinary referral would have had any bite. The draft report [did not recommend](#) Bradbury face sanctions, three sources told The Washington Post last year.

Upon taking office in 2009, Obama's Attorney General Eric H. Holder Jr. assigned the hot-potato project to his new leader of the professional responsibility office, veteran D.C. prosecutor [Mary Patrice Brown](#). Brown took months to carefully review and revise the lengthy report, and her conclusions eventually went to a senior career lawyer in the department, according to a source with knowledge of the process.

The source said the decision to stop short of disciplinary recommendations for Yoo and Bybee fell to David Margolis, who has spent more than three decades at the center of some of the most sensitive issues at the Justice Department. Margolis's decision [was first reported](#) by Newsweek's Web site.

Representatives for Bybee and Bradbury declined to comment Saturday, as did a Justice Department spokeswoman. Miguel Estrada, an attorney for Yoo, said he had not seen the findings and thus could not remark on them.

The conclusion is likely to unsettle interest groups that have sought a reckoning for lawyers who made possible brutal interrogation, warrantless wiretapping and other Bush counterterrorism strategies. It could have the strongest effect on Bybee, a sitting judge whose allies had established a legal defense fund in the event that he had to fend off a lengthy state discipline and impeachment fight.

[View all comments](#) that have been posted about this article.

Post a Comment

[View all comments](#) that have been posted about this article.

Add a comment (max 5000 characters)

Submit

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

© 2010 The Washington Post Company