

Authors of waterboarding memos won't be disciplined

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Bush administration lawyers who wrote memos that paved the way for waterboarding of terrorism suspects and other harsh interrogation tactics “exercised poor judgment” but will not face discipline for their actions, according to long-awaited Justice Department documents released Friday.

The decision represents the end of a five-year internal battle and flatly rejects recommendations by the department’s ethics investigators. They had twice urged that allegations against John C. Yoo and Jay S. Bybee be sent to state disciplinary authorities for further action, including the possible revocation of their licenses to practice law.

Throughout the hundreds of pages released late Friday, the thorniest of national security issues again became the subject of an ongoing and ultimately inconclusive debate. The release comes as the Obama administration faces a fierce Republican assault on its counterterrorism strategy from critics including former vice president Richard B. Cheney.

A separate criminal inquiry continues into whether CIA contractors stepped outside legal boundaries in a small number of interrogations in which detainees **ETHICS** CONTINUED ON **A8** died or suffered severe injuries.

The documents issued Friday included the reports by investigators in the department’s Office of Professional Responsibility. The reports offered evidence suggesting that the Bush lawyers allegedly worked with officials in the White House and at the CIA to structure their controversial legal analysis, giving rise to questions within the Justice Department about the lawyers’ independence.

The investigators said Yoo “violated his duty to exercise independent legal judgment and ren-

der thorough, objective and candid legal advice” in connection with five documents. The OPR also found that Bybee “acted in reckless disregard” of ethical obligations by agreeing to sign and issue two of the memos.

A critical 2002 memo, for example, included key sections that adopted an expansive view of presidential authority, added only after the CIA unsuccessfully pressed others in the Justice Department for clear signals that contractors would not be prosecuted for their role in interrogations of al-Qaeda suspects within months of the Sept. 11, 2001, attacks.

But the evidence gathered by the investigators, who spent five years on the issues, did not persuade Associate Deputy Attorney General David Margolis, a senior career attorney who acknowledged that the allegations at times presented a “close question.” He described the episode as “an unfortunate chapter in the history” of the Justice Department’s Office of Legal Counsel, where Yoo and Bybee had worked.

“I fear that John Yoo’s loyalty to his own ideology and convictions clouded his view of his obligation to his client and led him to author opinions that reflected his own extreme, albeit sincerely held, views of executive power,” Margolis wrote.

But Margolis concluded that despite significant flaws in the documents, the memo authors did not intentionally violate ethics rules. Instead, he said, they were struggling to prevent another terrorist

strike on U.S. soil. Margolis also pointed out that the legal issues were far from a close call: OPR investigators repeatedly shifted their own views and analysis in the course of multiple drafts.

The Democratic chairmen of the



House and Senate Judiciary committees immediately scheduled hearings on the investigative report.

They vowed to demand answers from Yoo, now a law professor at the University of California, and Bybee, a federal appeals court judge based in Nevada.

The left-leaning Center for Constitutional Rights issued a statement saying the Bush lawyers "have caused incalculable damage to our country and to thousands of victims as a result of the twisted legal advice they provided while at the Office of Legal Counsel." The American Civil Liberties Union called on Attorney General Eric H. Holder Jr. to expand a criminal probe of CIA interrogations.

"Those memos were legally flawed and fundamentally unsound, and may have been improperly influenced by a desire to tell the Bush White House and the CIA what it wanted to hear," said Rep. John M. Conyers Jr. (D-Mich.), chairman of the House Judiciary Committee.

Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Judiciary Committee, urged Bybee to resign from his lifetime appointment to the bench, which appeared unlikely.

Maureen E. Mahoney, an attorney for Bybee, called the Justice Department action a "vindication."

"No public servant should have to endure the type of relentless, misinformed attacks that have been directed at Judge Bybee," Mahoney said. "We can only hope that the department's decision will establish once and for all that dedicated public officials may have honest disagreements on difficult matters of legal judgment without violating ethical standards."

Miguel Estrada, an attorney for Yoo, said shifting versions of the ethics report by OPR investigators

"reflected shockingly substandard legal work and a deep partisan bias."

"Professor Yoo served our nation well and honorably in times of great peril," Estrada said. "The only thing that warrants an ethical investigation out of this entire sorry business is the number of malicious allegations against Professor Yoo and Judge Bybee that leaked out of the department during the last year."

The Justice Department memos, which date to 2002, gave legal blessing to slapping, cramped confinement, sleep deprivation and simulated drowning of terrorism suspects.

John Rizzo, the general counsel of the CIA when the legal advice was provided, said in written comments included in the documents released Friday that the ethics investigators had mistakenly concluded that "the CIA's interest in providing maximum legal protection meant that the CIA did not want objective, thorough analysis of the torture statute. Nothing could be further from the truth. . . . If the CIA had asked the department to provide anything other than objective analysis of the law and the techniques we would have undercut the very protections we sought for our officers."

In its final report, the OPR said it had tried unsuccessfully to access Yoo's e-mail messages during his time at the Justice Department, and was told that "most of Yoo's e-mail records had been deleted and were not recoverable."

The e-mail messages of a colleague in the office "had also been deleted and were reportedly not recoverable" for the period between July 2002 and Aug. 5, 2002, when the most important memo was completed.

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Jay S. Bybee



John C. Yoo