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The Sacrificial Yoo: Accounting for Torture in the OPR Report

David D. Cole*

Whatever else you might say about John Yoo, the former Justice Department lawyer who drafted several memos in 2002 authorizing the CIA to commit torture, you have to admit that he's not in the least embarrassed by the condemnation of his peers. The Justice Department on February 19, 2010, released a set of previously confidential reports by its Office of Professional Responsibility (OPR) excoriating Yoo's legal work – but stopped short of referring him for professional discipline. Immediately thereafter, Yoo wrote op-eds for *The Wall Street Journal* and *The Philadelphia Inquirer* trumpeting his “victory.” In *The Wall Street Journal* piece, titled “My Gift to the Obama Presidency,” Yoo argued that President Obama owes him a debt of gratitude for “winning a drawn-out fight to protect his powers as commander in chief to wage war and keep Americans safe.”¹ Four days later, in *The Philadelphia Inquirer*, Yoo called the decision not to refer him for bar discipline “a victory for the people fighting the war on terror.”²

This is a bit like a child coming home with an F on his report card and telling his parents that they should congratulate him for not getting suspended, or President Bill Clinton proclaiming to Hillary that Congress's failure to impeach him was a vindication of his affair with Monica Lewinsky. The one thing practically everyone interviewed by the OPR agreed about was that Yoo's legal work on the torture memos was atrocious. Bush's Attorney General Michael Mukasey called it a “slovenly mistake.”³ Jack Goldsmith, another Republican who headed the Office of Legal Counsel (OLC) from 2003 to 2004, said that Yoo's August 2002 memo justifying torture by the CIA was “riddled with error” and a “one-sided effort to eliminate any hurdles posed by the torture law.”⁴ Daniel Levin, who headed the Office of Legal Counsel after Goldsmith left and who, like Yoo, was a former clerk to Justice Clarence Thomas, described

* John Carroll Research Professor of Law, Georgetown University Law Center. This essay is adapted from David Cole, *They Did Authorize Torture, But . . .*, N.Y. REV. OF BOOKS, Apr. 8, 2010.

1. John Yoo, *My Gift to the Obama Presidency*, WALL ST. J., Feb. 24, 2010, at A17.

2. John Yoo, *Closing Arguments: Finally, an End to Justice Dept. Investigations*, PHILADELPHIA INQUIRER, Feb. 28, 2010, at C1.

3. U.S. DEP'T OF JUSTICE, OFFICE OF PROF'L RESPONSIBILITY, INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL'S MEMORANDA CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY'S USE OF “ENHANCED INTERROGATION TECHNIQUES” ON SUSPECTED TERRORISTS 9 (2009) [hereinafter OPR INVESTIGATION].

4. *Id.* at 160.

his reaction upon reading Yoo's memo as "this is insane, who wrote this?"⁵ Steven Bradbury, acting head of the OLC after Levin's departure, also under President Bush, and who wrote several memos authorizing torture himself, said of Yoo's arguments about presidential power, "Somebody should have exercised some adult leadership" and deleted his arguments altogether. These are the assessments not of human rights advocates or left-wing critics but of Yoo's own Republican colleagues at the Justice Department.

The OPR itself, which is comprised of career civil servants charged with monitoring ethics violations by Department lawyers and is not known for being eager to discipline its own, decided before President Obama took office that Yoo and Jay Bybee, Yoo's superior, had violated their ethical duties as attorneys. After considering responses from Yoo and Bybee, the OPR reaffirmed that Yoo had "put his desire to accommodate the client above his obligation to provide thorough, objective, and candid legal advice, and . . . therefore committed intentional professional misconduct."⁶ It found that Bybee, who signed the 2002 torture memos and is now a judge on the U.S. Court of Appeals for the Ninth Circuit, had acted in "reckless disregard" of the same professional obligation.⁷ It recommended that both lawyers be referred to their respective state bar associations for discipline.⁸ This is about as far from vindication as one can imagine.

So how could Yoo portray this process as a victory? Only because one Justice Department official, Associate Deputy Attorney General David Margolis, overruled the OPR's considered opinion. Margolis also criticized Yoo and Bybee, finding that they exercised "poor judgment," but he concluded that the Justice Department should not refer them for discipline because in his view they did not knowingly provide false advice, and therefore were not guilty of professional misconduct. But Margolis's assessment was in no way an endorsement of Yoo's theories or practices. He described the issue of whether Yoo engaged in misconduct as a "close question," called the memos "an unfortunate chapter in the history of the Office of Legal Counsel," and said he feared 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."⁹ In short, *no one* who reviewed Yoo's work gave it a passing grade. And he narrowly escaped a referral to

5. *Id.* at 124.

6. *Id.* at 254.

7. *Id.* at 11.

8. *Id.* at 11 n.10.

9. DAVID MARGOLIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, MEMORANDUM OF DECISION REGARDING THE OBJECTIONS TO THE FINDINGS OF PROFESSIONAL MISCONDUCT IN THE OFFICE OF PROFESSIONAL RESPONSIBILITY'S REPORT OF INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL'S MEMORANDA CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY'S USE OF "ENHANCED INTERROGATION TECHNIQUES" ON SUSPECTED TERRORISTS 67 (2010).

his bar association for disciplinary action only because of the decision of a single lawyer in the Justice Department.

Serious questions remain. The OPR was unable to obtain the testimony of many high-level officials, including Attorney General John Ashcroft and White House lawyers David Addington and Timothy Flanigan, all of whom played critical roles in authorizing torture but refused to participate in the inquiry. A full-scale investigation, preferably by an independent commission, not part of the very department implicated in the wrongdoing, is still necessary, although the chances of such a commission being formed seem slim.

Yet the unanimous condemnation of Yoo's work by his peers does not merely reflect the reality that the August 2002 memo he drafted was, ultimately, indefensible. The chorus of criticism is also highly opportunistic. Yoo's peers protest too much. By focusing attention on his flaws, they seek to divert attention from their own subsequent approval of the same criminal conduct. In short, Yoo's peers seek to sacrifice him in order to save their own skins. The OPR itself fell for this stratagem, focusing nearly all of its attention on Yoo's misdeeds and largely disregarding the equally disturbing conduct of his successors at the OLC. And by focusing on Yoo's methods, rather than his result, the OLC failed to confront the real failing. It was not only in Yoo's work, but also in that of those who, following him, authorized the CIA to engage in torture and cruel, inhuman, and degrading treatment.

The OPR and Margolis largely agreed that Yoo's memos contained many serious flaws. Yoo interpreted the ban on torture to require the intentional infliction of severe pain of the level associated with death and organ failure, a standard he imported from a health benefits statute having no relevance to the issue at hand. The standard is literally meaningless, as neither death nor organ failure is associated with any particular level of pain. Some people die painlessly; others suffer extreme pain. The same holds true for organ failure. Yoo appears to have adopted this gloss not to clarify what is prohibited, but to send the message that only an extraordinarily high degree of pain amounts to torture.

Yoo also wrote that an interrogator could inflict even that level of severe pain as long as he did not "specifically intend" to do so. He advised that the President could order outright torture, and that a criminal statute to the contrary could not constrain the President as commander in chief. (Indeed, he later told the OPR that the president could not even be prohibited from ordering the extermination of an entire village of civilians.¹⁰) And he reasoned that an interrogator who engages in torture could defend his behavior by claiming that it was done because of "necessity" or because it was required for self-defense – of the nation, not

10. OPR INVESTIGATION, *supra* note 3, at 64.

of the interrogator himself – even where no imminent threat is posed. Yoo employed unprecedented and virtually unrecognizable versions of these defenses. (The OPR report discloses that even the lawyer who worked under Yoo on the memos initially found his argument about self-defense “wholly implausible,” because self-defense requires an imminent threat to the person invoking it, and interrogators faced no such threat.¹¹)

Where the OPR viewed these errors cumulatively as evidence of an extraordinary and ultimately bad-faith effort to contort the law to reach a predetermined result, Margolis principally treated the errors one by one, and concluded that no single error “of itself” warranted a finding of professional misconduct.¹² Margolis, in short, missed the forest for the trees.

In a more fundamental sense, however, both the OPR and Margolis failed to confront the real wrong at issue. They focused exclusively on the *manner* by which Yoo and Bybee arrived at their result, rather than the result itself. What is most disturbing about the torture memos is not that they employ strained reasoning or fail to cite this or that authority or counter-argument, but that they do so *in the name of authorizing torture and cruel, inhuman, and degrading treatment of human beings*. Remarkably, neither the OPR nor Margolis directly considered the illegality of the conduct that was authorized by the memos. The OPR stated that it “did not attempt to determine and did not base our findings on whether . . . [the] Memos arrived at a correct result.”¹³ Margolis also did not address whether the conduct authorized was illegal. But surely that is the central issue.

Why, then, did the OPR and Margolis fail to consider the legality of the brutality itself? Almost certainly because doing so would have implicated not only John Yoo and Jay Bybee, but *all* of the lawyers who approved these methods over the five-year course of their implementation, including, within the Justice Department, Jack Goldsmith, Daniel Levin, and Steven Bradbury, Bybee’s successors as head of the OLC, and two Attorneys General, John Ashcroft and Alberto Gonzales. When one considers that they authorized the same illegal conduct, the criticisms offered by OLC heads Goldsmith, Levin, and Bradbury seem designed to distance themselves from Yoo, even as they concurred with the bottom line of the Yoo and Bybee memos that the tactics being used by the CIA were legitimate.

Goldsmith, for example, rescinded only one of Yoo and Bybee’s two August 1, 2002, memos – the one that was leaked – and left in place a still-classified memo that authorized all of the specific procedures employed by the CIA. Goldsmith did temporarily suspend authorization of waterboarding, but not because it was torture. He did so, he said, because

11. *Id.* at 64 n.53.

12. *See, e.g.*, MARGOLIS, *supra* note 9, at 43.

13. OPR INVESTIGATION, *supra* note 3, at 160.

he believed that the CIA may have used it in ways that diverged from its authorized form.¹⁴

Goldsmith and Levin drafted a replacement memo for the original torture memo. But that memo, issued in December 2004 under Levin's signature shortly after Goldsmith's departure from OLC, pointedly did not alter any of the office's bottom-line conclusions that the CIA's tactics were legitimate. It used more politic rhetoric (no doubt because it was drafted for public release, unlike Yoo's memo), but it permitted the CIA to continue to subject suspects to forced nudity, extended sleep deprivation, slaps to the face and stomach, painful and extended stress positions, being slammed into walls, and waterboarding – the very tactics Yoo and Bybee had approved.

For his part, Bradbury wrote three memos in 2005 and one in 2007, all of which concluded that the CIA could continue to engage in whatever coercive tactics it requested. These memos are in some sense even more disingenuous than the initial memos authored by Yoo and Bybee. Each of these memos concluded, in secret, that the CIA did not need to change its practices, despite the fact that the law, at least for public consumption, had grown increasingly restrictive with respect to interrogation tactics. Thus, when Congress, under Senator John McCain's leadership and over strong objections from President Bush and Vice-President Cheney, made clear that it would reject the Bush administration's view that the ban on cruel, inhuman, and degrading treatment did not apply to foreigners held outside our borders,¹⁵ Bradbury wrote two memos concluding that none of the CIA's tactics were cruel, inhuman, or degrading anyway – even when inflicted in combination. This is a truly remarkable conclusion – namely, that the CIA could deprive a suspect of sleep for days on end, repeatedly slap him in the stomach and face, force him into painful stress positions for hours at a time, and waterboard him, without inflicting cruel, inhuman, or degrading treatment. John Bellinger, who served as legal adviser to the National Security Council and the Department of State under President Bush, and who himself signed off on the CIA's torture tactics in 2003, told the OPR that this memo's conclusion was “so contrary to the commonly held understanding of the [anti-torture] treaty that he considered that the memorandum was ‘written backwards’ to accommodate a desired result.”

Bradbury reached this conclusion by aggressively misreading constitutional precedent.¹⁶ He reasoned that the relevant standard under U.S. law for what constitutes “cruel, inhuman, or degrading” is whether government conduct “shocks the conscience,” a due process test, because the Senate had said as much in approving the treaty. But he then

14. *Id.* at 115.

15. 42 U.S.C. §2000dd (2006).

16. For a more detailed analysis of the torture memos' strained reasoning, see DAVID COLE, *THE TORTURE MEMOS: RATIONALIZING THE UNTHINKABLE* (2009).

concluded – entirely unreasonably – that the CIA tactics would not shock the conscience for two reasons. First, CIA interrogators inflicted pain not arbitrarily, but for a good end – to gather intelligence about terrorism. Citing Supreme Court language stating that “the official conduct ‘most likely to rise to the conscience-shocking level,’ is the ‘conduct intended to injure in some way unjustifiable by any government interest,’”¹⁷ Bradbury then treated that standard as if it were the *only* standard for conscience-shocking behavior. Second, he reasoned that the techniques were not arbitrary because the government sought to “minimize the risk of injury or any suffering that does not further the Government’s interest in obtaining actionable intelligence.”¹⁸ Significantly, however, the memo did not claim that the CIA’s techniques sought to minimize the risk of *all* injury or suffering, but only of injury or suffering “*that does not further the Government’s interest.*”

The case law is clear, however, that *any* intentional infliction of pain for interrogation purposes violates due process. And the Court has recognized no sliding scale that would permit the infliction of pain if the government’s reason is good enough. Injurious conduct that is “unjustifiable by any government interest” is the easiest case, to be sure, but the Court has repeatedly found its conscience shocked where the government acted with wholly legitimate interests.

The Court ruled, for example, that pumping a man’s stomach in a hospital after seeing him swallow what appeared to be drugs shocked the conscience, even though the procedure was carried out in a hospital pursuant to safe procedures, and for a wholly legitimate purpose – to gather evidence of crime.¹⁹ The Court has repeatedly held that *any* use or threat of force to coerce a confession violates due process – even where employed to solve a murder.²⁰ And it has stated that government conduct that contravenes the “decencies of civilized conduct”²¹ or that is “so ‘brutal’ and ‘offensive’ that it [does] not comport with traditional ideas of fair play and decency” would violate due process.²² All of these decisions point to the same conclusion – that the deliberate infliction of pain to compel a suspect to talk against his will shocks the conscience

In *Chavez v. Martinez*, the Supreme Court, in 2002, addressed whether the interrogation of a man while he was hospitalized and suffering substantial pain from a police shooting violated the Constitution – even

17. *Chavez v. Martinez*, 538 U.S. 760, 775 (1994) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)) (emphasis added).

18. U.S. DEP’T OF JUSTICE, OFFICE OF LEGAL COUNSEL, MEMORANDUM FOR JOHN A. RIZZO RE: APPLICATION OF 18 U.S.C. §§2340-2340A TO CERTAIN TECHNIQUES THAT MAY BE USED IN THE INTERROGATION OF A HIGH VALUE AL QAEDA DETAINEE 31 (2005).

19. *Rochin v. California*, 342 U.S. 165, 172 (1952).

20. *See, e.g., Rogers v. Richmond*, 365 U.S. 534 (1961); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944).

21. *Rochin*, *supra* note 19, at 172-173.

22. *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957).

though the statements were never used in a prosecution. Significantly, the interrogating officers did not inflict any pain for the purpose of questioning, although they did continue the interrogation despite the man's cries of pain. The officers maintained that the man's testimony was critical to investigating the encounter, and they feared that he might die, so that this may have been their only opportunity to obtain his version of events. The Court remanded the case to the court of appeals to consider whether the questioning violated substantive due process. While the justices disagreed about the specific conclusions to be drawn from the facts at hand, both Justice Anthony Kennedy, who concluded that due process had been violated, and Justice Clarence Thomas, who concluded that it had not, agreed that the *deliberate* infliction of pain on an individual to compel him to talk *would* shock the conscience. Justice Kennedy reasoned that police "may not prolong or increase a suspect's suffering against the suspect's will," or even give him "the impression that severe pain will be alleviated only if [he] cooperates."²³ Under this standard, likely to be the majority view given Justice Kennedy's central role on the Court, any use of pain to compel a suspect to talk violates due process. Justice Thomas found that due process had not been violated, but only because he found "no evidence that Chavez acted with a purpose to harm Martinez," or that "Chavez's conduct exacerbated Martinez's injuries."²⁴ Under either approach, then, a purpose to harm violates due process. The court of appeals on remand in *Chavez* unanimously held that the alleged conduct indeed shocked the conscience, a fact not even acknowledged by the OLC memo.²⁵

The OLC memo cites *Chavez*, but concludes, incredibly, that "the CIA program is considerably less invasive or extreme than much of the conduct at issue in" *Chavez*.²⁶ In fact, just the opposite is true. The officers in *Chavez* inflicted no pain for purposes of interrogation – yet three members of the Supreme Court found their conduct conscience-shocking nonetheless, as did the unanimous court of appeals on remand. The CIA's entire program, by contrast, was based on the deliberate infliction of pain and humiliation to compel recalcitrant suspects to talk against their will.

When the Supreme Court in 2006 rejected the Bush administration's position that the Geneva Conventions did not protect al Qaeda and Taliban detainees,²⁷ Bradbury wrote yet another secret memo in 2007, this time concluding that the CIA's tactics did not violate the Geneva Conventions'

23. *Chavez*, 538 U.S. at 797 (Kennedy, J., dissenting, joined by Justices Ginsburg and Stevens).

24. *Id.* at 775 (Thomas, J., joined by Chief Justice Rehnquist and Justice Scalia).

25. *Martinez v. City of Oxnard*, 337 F.3d 1091 (9th Cir. 2003).

26. U.S. DEP'T OF JUSTICE, OFFICE OF LEGAL COUNSEL, MEMORANDUM FOR JOHN A. RIZZO RE: APPLICATION OF UNITED STATES OBLIGATIONS UNDER ARTICLE 16 OF THE CONVENTION AGAINST TORTURE TO CERTAIN TECHNIQUES THAT MAY BE USED IN THE INTERROGATION OF HIGH VALUE AL QAEDA DETAINEES 35 (2005).

27. *Hamdan v. Rumsfeld*, 548 U.S. 557, 631 (2006).

requirement that all detainees must be treated humanely.²⁸ One can be sure that if another nation sought to deploy the CIA's "enhanced interrogation techniques" on U.S. prisoners of war, the United States would consider such treatment a blatant violation of the Geneva Conventions' guarantee of "humane treatment." Yet the OLC concluded otherwise, driven, it seems, more by a desire not to undercut prior authorizations than by a desire to arrive at the legal truth.

Margolis sought to excuse Yoo and Bybee in part on the basis of the extraordinary circumstances in which they wrote their initial memos, within one year after September 11. It's not clear why this consideration should excuse approval of torture or cruel or inhuman treatment. But that excuse is not even conceivably available for Yoo and Bybee's successors in the Justice Department. They wrote their memos not in the heat of the moment, but after the program had been in place for years, and had been the subject of substantial criticism by the CIA's own inspector general. The inspector general found, among other things, no evidence that the practices in fact obtained useful information that lawful, noncoercive tactics would not have obtained.²⁹ Yet OLC lawyers continued to approve of the practices.

Yoo and Bybee are in some sense easy targets. Their memos were the first to be written, and they employed less polished rhetoric and less nuanced argument than the memos that followed years later, written by authors who had the benefit of hindsight and were aware of the public condemnation that the initial memo had occasioned. But surely what was wrong with all the memos, at bottom, was the legal approval of conduct that, under any reasonable understanding of the terms, amounted to torture or cruel, inhuman, and degrading treatment, all of which the United States has solemnly committed to abjure. That conclusion was apparently too dangerous for either Margolis or the OPR, since it would have implicated everyone who had approved the CIA interrogation program, not just Yoo and Bybee.

In fairness, responsibility for the illegal brutality inflicted on CIA and Guantánamo detainees cannot be restricted to Yoo and Bybee. It extends to all those who approved the tactics – even those, like Goldsmith, Levin, and Bradbury, who were so eager to condemn Yoo's reasoning later. As we recently learned from an admission in former President George W. Bush's memoir, *Decision Points*, responsibility extends even to the President

28. U.S. DEP'T OF JUSTICE, OFFICE OF LEGAL COUNSEL, MEMORANDUM FOR JOHN A. RIZZO RE: APPLICATION OF THE WAR CRIMES ACT, THE DETAINEE TREATMENT ACT, AND COMMON ARTICLE 3 OF THE GENEVA CONVENTIONS TO CERTAIN TECHNIQUES THAT MAY BE USED BY THE CIA IN THE INTERROGATION OF HIGH VALUE AL QAEDA DETAINEES (2007).

29. See CENT. INTELLIGENCE AGENCY, SPECIAL REVIEW: COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES 100 (2004).

himself.³⁰ And unless we as citizens demand some form of accountability for the wrongs done in our name, responsibility extends to all of us as well.

Margolis concluded his memo with an important caveat: “OPR’s findings and my decision are less important than the public’s ability to make its own judgments about these documents and to learn lessons for the future.” In this, at least, he was exactly right. The most important question going forward is whether the Bush administration’s decision to authorize and practice torture and cruelty will be viewed as a necessary adjustment in a time of severe crisis or as a morally, constitutionally, and ethically culpable descent into illegality. The former conclusion would leave these tactics lying around “like a loaded gun,” ready to be deployed again in some future crisis. The latter assessment might, by contrast, provide a check on such tactics being repeated. The failure of the OPR and Margolis to confront the illegality of the CIA’s approved techniques constitutes a fundamental flaw in their approach, but it does not excuse others from doing so.

For his part, President Obama has insisted that we must look forward, not back, and has opposed efforts to create a bipartisan commission to investigate torture. His Justice Department has also successfully opposed all civil lawsuits seeking compensation for those victimized by torture. And the only criminal investigation of torture underway as of September 2009 focuses solely on the isolated acts of a few CIA interrogators who went beyond the brutality authorized by the Justice Department’s OLC and Bush’s Cabinet-level officials, but does not encompass those who authorized brutality in the first place.

Without the President’s support, it is hard to see how any official mechanism for accountability can proceed. The President’s supporters argue that a commission would be extremely divisive, and would take time and attention away from all the other problems that the nation faces. Even more fundamentally, the Democrats seem to be afraid of appearing soft on terrorism, of being labeled as caring more about the rights of suspected terrorists than about the security of Americans.

But here, President Obama might look to the example of David Cameron, Britain’s new Conservative Prime Minister. Cameron took office in 2010 without garnering a majority vote, and had to forge a political alliance with the Liberal Democrats even to assume the post of prime minister. His political position could hardly be more tenuous. And the United Kingdom, in the midst of a severe economic crisis, faces at least as many grave problems as does the United States. Yet shortly after he took office, Cameron announced an official public inquiry into allegations of high-level British complicity in the torture of terrorism suspects, saying, “the longer these questions remain unanswered, the bigger the stain on our

30. GEORGE W. BUSH, *DECISION POINTS* 169-170 (2010) (admitting that he personally authorized the waterboarding of CIA detainee Khaled Sheikh Mohammed).

reputation as a country that believes in freedom, fairness and human rights grows.”³¹

Why was Cameron able to do what Obama was not? In some measure, it is because Britain has learned from its past. In early skirmishes with the Irish Republican Army in the 1970s, the British responded much as the Bush administration did after 9/11. They interned hundreds of suspects without charges, and used torture and brutality to interrogate them – including sleep deprivation, shackling and painful stress positions. The tactics backfired. They created a public relations disaster for the nation and gave the IRA its most potent recruiting tool.

But Britain’s leaders did not insist that they must look forward, not back. Instead, in 1971 Prime Minister Edward Heath appointed a commission of inquiry, headed by Lord Parker, the Lord Chief Justice of England, to look into the practice. A year later, the Parker commission issued a report finding that the tactics violated domestic law.³² In the United Kingdom today, there is widespread public agreement that such tactics are never permissible. In the United States, by contrast, polls consistently show division over whether torture may sometimes be justified.

It was only by looking backward that Britain moved forward. The United States must do the same. Fears of political division, or of being called “soft on terror,” cannot excuse us from acknowledging our legal and moral wrongs. We must continue to insist on accountability, whether in congressional hearings, citizens’ commissions, civil lawsuits, or the marketplace of ideas. The essential lesson must be that torture and cruel treatment are not policy options, even when a lawyers are willing to write “slovenly”³³ opinions blessing illegality.

31. Rebecca Omonira-Oyekanmi, *Cameron Launches Probe into Alleged Torture of Terror Suspects*, WASH. POST, July 7, 2010, at A7 (quoting Cameron).

32. Report of the Committee of Privy Counsellors Appointed To Consider Authorised Procedures for the Interrogation of Persons Suspected of Terrorism (1972), available at <http://cain.ulst.ac.uk/hmso/parker.htm>.

33. OPR INVESTIGATION, *supra* note 3, at 9.