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BOFAXE



U.S. Justice Department Drops Charges Against Interrogation Advisers Yoo and Bybee will not face disciplinary action for their actions during the Bush-Administration

Autor / Nachfragen

Dipl. iur. Lars Kramm
Research Associate
Department of Constitutional
and Administrative Law,
Environmental Law and
Public Economic Law
(Prof. Dr. Detlef Czybulka)
University of Rostock

Nachfragen:
Lars.Kramm@uni-rostock.de

Webseite

<http://www.ifhv.de>

Fokus

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

Washington Post,
20 February 2010

http://judiciary.house.gov/issues/issues_OPRRReport.html

People in question now have highly respected positions in society, John C. Yoo is now a law professor at the University of California and Jay S. Bybee a federal appeals court judge based in Nevada. But some years ago during the years of the presidency of George W. Bush they were working at the U.S. Justice Department's Office of Legal Counsel and were responsible for legally legitimising torture and harsh interrogation for the Bush White House and the CIA.

After more than a year's delay, the Department of Justice released the Office of Professional Responsibility's report on whether the two lawyers violated professional ethics. The Office of Professional Responsibility is the Justice Department's internal supervisory body, and it has the authority to recommend referring errant Department of Justice lawyers for professional discipline or even criminal prosecution.

The 260-page report of the Office of Professional Responsibility, plus two earlier drafts released at the same time, harshly condemns the torture memos written by the lawyers and recommends that they should face discipline. Released along with the documents was a 69-page memo by David Margolis, the senior Justice Department attorney and responsible for resolving negative findings of the Office of Professional Responsibility. Margolis challenged the findings and concluded that, although Yoo and Bybee committed significant errors, their opinions didn't amount to misconduct, and therefore he rejected the ethics office's recommendations that Bybee and Yoo should be referred to their state bars for discipline. Margolis' decision means that Judge Bybee and Professor Yoo will be spared further ethical investigations.

Documents that were subjected to the investigation, included a memorandum dated 1 August 2002, from Bybee to White House Counsel Alberto R. Gonzales that has become known as the "torture memo." Drafted by Yoo, it defined the "severe" pain prohibited by an anti-torture law as that associated with "death, organ failure or serious impairment of body functions" – meaning anything short of that was permitted. Furthermore the memo suggested that even if water-boarding and other "enhanced interrogation" techniques were considered torture, interrogators would be violating the law only if inflicting pain was their "precise objective" and even in this case they might claim self-defence. Last but not least the memo suggested that the law's ban on torture might be unconstitutional if it interfered with the President's powers as commander-in-chief. A second memo approves 10 techniques for tormenting Abu Zubaydah in a secret CIA prison. Bybee, as head of the Office of Legal Counsel, signed off on the memos.

The question for the Office of Professional Responsibility was whether Bybee and Yoo had violated ethics rules by twisting the law. Last year the investigators concluded that Yoo, "knowingly failed to provide a thorough, objective and candid interpretation of the law" and that Bybee, "acted in reckless disregard of his professional obligations."

Even if the report of Associate Deputy Atty. Gen. David Margolis is far from a vindication of Yoo's and Bybee's narrow interpretations of laws against torture and extravagant views about presidential power, the sign that the dropping of the charges gives to the world is in no way the symbol that the Obama-Administration wants; that is to show that the U.S.-American policy concerning human rights has changed. It is a setback in regaining the country's moral authority.

All together, the result isn't completely content for Bybee and Yoo, whose work the Office of Professional Responsibility excoriates and even Margolis discards. For the last year, the media reported that U.S. Justice Department was withholding the report so it could be weakened and watered down. Finally, Attorney General Eric Holder released all three versions of the report along with Margolis' memo. Even if Margolis gets a lot wrong in his report, he found the right quintessence: "the Office of Professional Responsibility'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."

Verantwortung

Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, NA 02/33, Ruhr-Universität Bochum, 44780 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208. Die BOFAXE werden vom Deutschen Roten Kreuz unterstützt.

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