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Bush Aide Says Some C.I.A. Methods Unauthorized

By **CHARLIE SAVAGE** and **SCOTT SHANE**

WASHINGTON — A former Bush Justice Department official who approved brutal [interrogation methods](#) by the C.I.A. has told Congress that he never authorized several other rough tactics reportedly inflicted on terrorism suspects — including prolonged shackling to a ceiling and repeated beatings.

In closed-door testimony before the House Judiciary Committee on May 26, the former official, Judge [Jay S. Bybee](#), said the Central Intelligence Agency never sought approval for some practices detainees later said had been used on them, including dousing them with cold water to keep them awake and forcing them to wear diapers or soil themselves.

“Those techniques were not authorized,” he said, according to a transcript released Thursday by the committee.

But Judge Bybee strongly defended the legal advice he did provide to the C.I.A. in 2002 that [waterboarding](#), wall slamming and other methods used by C.I.A. were lawful.

“We took a muscular view of presidential authority,” Judge Bybee said, “We were offering a bottom line to a client who wanted to know what he could do and what he couldn’t do. I wasn’t running a debating society, and I wasn’t running a law school.”

Judge Bybee’s views, described in a daylong sworn interview, represented his most expansive public comments to date about his role in one of the most controversial episodes of the Bush administration.

In his newly disclosed testimony, Judge Bybee made clear that he had no first-hand knowledge of what actually had occurred in interrogations. But he was asked about treatment of detainees described in a 2004 C.I.A. inspector general report and accounts that several prisoners provided to the International Committee for the Red Cross.

The question of which interrogation techniques were approved by the Justice Department and which were not is at the core of a criminal investigation of the C.I.A.'s interrogation program.

In August 2009, when Attorney General [Eric H. Holder Jr.](#) announced the inquiry, he said the Justice Department would not prosecute anyone for following the legal guidance given by the department's Office of Legal Counsel, as a C.I.A. spokesman, George Little, pointed out.

Mr. Holder assigned the investigation to [John H. Durham](#), a veteran federal prosecutor in Connecticut who since 2008 [had been reviewing](#) the destruction by the C.I.A. of [interrogation videotapes](#) to see if any laws were broken. Mr. Durham has yet to produce any conclusions about either matter and his spokesman declined to comment on Thursday.

Judge Bybee ran the Office of Legal Counsel from late 2001 to 2003 — a time when it provided crucial advice about the treatment of detainees taken in the war against [Al Qaeda](#) and the [Taliban](#). Much of that advice was written by a deputy, [John Yoo](#), but Judge Bybee signed off on it.

Their legal memorandums were still secret when President [George W. Bush](#) appointed Judge Bybee to the federal appeals court in San Francisco. But in 2004, after the Abu Ghraib torture scandal, several of the memorandums were leaked to the news media.

The memorandums sparked intense controversy, and Judge Bybee's successors in the Bush administration withdrew several of them. They were also heavily criticized by legal scholars, and some critics have called for Mr. Yoo to be fired from the [University of California, Berkeley](#), where he is a tenured law professor, and for Judge Bybee to be impeached.

A five-year investigation by the Justice Department's ethics office sharply criticized the memorandums and found, in a report disclosed this year, that the two men had committed "professional misconduct." But that finding was rejected by David Margolis, a career lawyer at

the Justice Department who made a final ruling on the ethics review. Mr. Margolis said the work of Judge Bybee and Mr. Yoo had “significant flaws,” but said that any assessment should consider the climate of fear and urgency after the Sept. 11, 2001, attacks.

Judge Bybee provided few new details about the construction of those memorandums in his testimony, and frequently said he could not recall conversations and meetings about them. He did say that when he briefed Attorney General [John Ashcroft](#) about the memorandums, “the attorney general said something to the effect that he was sorry that this was necessary.”

Much of the day consisted of Judge Bybee defending his legal conclusions.

Read quotations criticizing the memorandums from his successor at the Office of Legal Counsel — [Jack Goldsmith](#), a Bush appointee who is now a [Harvard](#) law professor — Judge Bybee said that Mr. Goldsmith and other such critics had “misinterpreted and misread” the documents and noted that lawyers frequently disagreed.

He emphasized that his Republican successors did not reject the specific list of interrogation techniques — including waterboarding — that he had concluded could be lawfully inflicted on prisoners. In retrospect, Judge Bybee said he wished that a section in one memorandum — concluding that the president, as commander in chief, had the constitutional authority to override statutes regulating interrogations — had been written in a more “complete” manner, but he did not think it was wrong.

Judge Bybee also challenged [news accounts](#) of a dinner in May 2007 with former clerks at which he said he was proud of his work as a judge but then added, according to several witnesses, “I wish I could say that of the prior job I had.”

In his testimony, Judge Bybee said that remark was meant as “a jocular comment.” He said he was “proud of our opinions” at the Office of Legal Counsel, too, calling them “well researched” and “very carefully written.”

Still, he said the controversy surrounding his tenure there had been difficult.

“I have regrets because of the notoriety that this has brought me,” he said. “It has imposed enormous pressures on me both professionally and personally. It has had an impact on my

family. And I regret that, as a result of my government service, that that kind of attention has been visited on me and on my family.”