

INTRODUCTORY STATEMENT of

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US HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

**SUB-COMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL
LIBERTIES**

*Hearing on: From the Department of Justice to Guantanamo Bay: Administration
Lawyers and Administration Interrogation Rules, Part I*

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[CHECK AGAINST DELIVERY]

Mr Chairman, Honourable Members of the Committee, it is my privilege and honour to appear before this Committee to address your questions on the subject of Administration Lawyers and Administration Interrogation Rules. As Professor of Law at the University of London, and as a practising member of the English Bar, it may be said that I appear before you as an outsider. I hope you will bear in mind that I am from a country that is friend and ally, one that shares this country's abiding respect for the rule of law. I have come to know America well over more than two decades, since I was a visiting scholar at Harvard Law School in the early 1980's, and then teaching at Boston College Law School and New York University Law School. I am married to an American. I am proud of the fact that my three children share American and British nationality.

Last month I published an article in Vanity Fair, *The Green Light*, a copy of which is attached. It contains material drawn from my new book – *Torture Team* – that is published this month by Palgrave Macmillan. The article and – in more detail - the book tell an unhappy story: the circumstances in which the United States military was allowed, by the hand of Secretary of Defense Donald Rumsfeld, to abandon President Lincoln's famous disposition of 1863, that "military necessity does not admit of cruelty". On December 2nd, 2002, Secretary Rumsfeld authorised the use of new and aggressive techniques of interrogation on Detainee 063. It is by now a famous memo, the one in which he wrote: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?" Approval was recommended by his General Counsel, William J Haynes II. The memo became public in June 2004, as the Administration argued that the horrible pictures of abuse at Abu Ghraib were unconnected to Administration policy.

My book tells the story of that memo. The circumstances in which it came to be written, and then rescinded. To write the book I journeyed around America, meeting with as many of the people who were directly involved as possible. I met with a great number, and was treated with a respect and hospitality for which I remain very grateful. Over hundreds of

hours I conversed or debated with many of those most deeply involved. They included: the combatant commander and his lawyer at Guantanamo (Major General Dunlavey and Lieutenant Colonel Beaver); the Commander of US Southern Command (General Hill); the Chairman of the Joint Chiefs of Staff (General Myers); the Undersecretary of Defense (Mr Feith); the General Counsel of the Navy (Mr Mora); and the Deputy Assistant Attorney General at DoJ (Mr Yoo). I met twice with Mr Rumsfeld's General Counsel at DoD (Mr Haynes), who along with Mr Addington took a central role on the key decisions. From these and many other exchanges I pieced together what I believe to be a truer account than that which has been presented by the Administration. I met men and women of integrity and decency and professionalism, obviously doing the best they could in difficult circumstances. Not everyone, however, fell into that category.

From these conversations it became clear to me that the Administration has spun a narrative that is false, claiming that the impetus for the new interrogation techniques came from the bottom-up. That is not true: the abuse was a result of pressures and actions driven from the highest levels of government. The Administration claims that it simply followed the law. My investigation indicated that – driven by ideology – the Administration consciously sought legal advice to set aside international constraints on detainee interrogations. The Administration relied on a small number of political appointees, lawyers with no real background in military law, with extreme views on executive power, and with an abiding contempt for international rules like the Geneva Conventions. These are rules that the United States has done more to promote and put in place than maybe any other country. As result, under international law war crimes were committed: I have no doubt that Common Article 3 of the Geneva Conventions was violated, alongside provisions of the 1984 Convention prohibiting Torture. The spectre of war crimes was raised by US Supreme Court Justice Anthony Kennedy, in the 2006 judgment in *Hamdan v Rumsfeld*. That judgment corrected the illegality of President Bush's determination that none of the detainees at Guantanamo had any rights under Geneva.

Mr Chairman, Honourable Members of the Committee, the story I uncovered is an unhappy one. It points to the early and direct involvement of those at the highest levels of government, often through their lawyers, the individuals on whom I largely focused. In June 2004, after the scandal of Abu Ghraib broke, and the August 1, 2002 Bybee Torture Memo became public, Mr Gonzalez and Mr Haynes appeared before the media to claim that the Bush Administration had not authorized such abuse. Contrary to the impression given by the Administration, repeated by Mr Haynes when he appeared before the Senate Judiciary Committee in July 2006, his involvement (and that of Secretary Rumsfeld) began well before that stated in the official version. Mr. Haynes had visited Guantanamo, together with Mr Gonzales and Mr Addington, discussed interrogations, and then recommended that the U.S. military abandon its tradition of restraint. My conclusion, on the basis of interviews and documents, is that this is a story not only of crime but also of cover-up, to protect the most senior members of the Administration from the consequences of the illegality that has stained America's reputation.

Mr Chairman, no country has done more to promote the international rule of law than the United States. Uncovering the truth is a first step in restoring this country's necessary, leadership role; in undoing the damage caused; and providing a secure and effective basis for responding to the very real threat of terrorism. I can put it no better than George Kennan, the great American diplomat. In 1947 he wrote a telex that issued this warning in relation to a perceived Soviet threat: "[W]e must have courage and self-confidence to cling to our own methods and conceptions of human society. [T]he greatest danger that can befall us ... is that we shall allow ourselves to become like those with whom we are coping."

I thank you for allowing me the opportunity to make this brief introductory statement.

ATTACHMENT

THE GREEN LIGHT, by Philippe Sands

VANITY FAIR, MAY 2008