Statement by
David B. Rivkin, Jr.
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Before the

House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties

"Administration Lawyers and Administration Interrogation Rules"

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Lynching lawyers, as Shakespeare once suggested, has never appealed much to the legal profession itself – literally or figuratively. But an exception apparently will be made for a group of attorneys who advised President Bush and his national security staff in the aftermath of 9/11. They've been subject to an increasingly determined campaign of public obloquy by law professors, activist lawyers and pundits.

Their legal competence and ethics have been questioned. Suggestions have even been made that they can and should be held criminally responsible for "war crimes," because their legal advice supposedly led to detainee abuses at Abu Ghraib and elsewhere.

The targets of this witch hunt include some of the country's finest legal minds – such as law Prof. John Yoo of the University of California at Berkeley, Judge Jay Bybee of the Ninth Circuit Court of Appeals, and

Most controversial, of course, was the Bush administration's insistence that the Geneva Conventions have limited, if any, application to al Qaeda and its allies (who themselves reject the "Western" concepts behind those treaties); and the administration's authorization of aggressive interrogation methods, including, in at least three cases, waterboarding or simulated drowning.

Several legal memoranda, particularly 2002 and 2003 opinions written by Mr. Yoo as deputy assistant attorney general for the Office of Legal Counsel, considered whether such methods can lawfully be used. These memoranda, some of which remain classified, explore the limits imposed on the United States by statute, treaties, and customary international law. The goal clearly was to find a legal means to give U.S. interrogators the maximum flexibility, while defining the point at which lawful interrogation ended and unlawful torture began.

I realize that a number of the Administration's legal positions, as they become publicly known, whether as a result of leaks to the media or the declassification of the relevant legal documents, have attracted considerable criticism. The questions that the Administration's lawyers have sought to address, particularly those dealing with the interrogation of captured enemy combatants, are uncomfortable ones that do not sit

indisputable right to that protection.

Lawyers can and do disagree over the administration's conclusions. However, it's now being claimed that the administration's legal advisers can be held responsible for detainee abuses.

This is madness. The lawyers were not in any chain of command, and had no theoretical or practical authority to direct the actions of anyone who engaged in abusive conduct. Those who mouth this argument are engaged in a kind of free association which, if applied across the board, would make legal counsel infinitely culpable.

In truth, the critics' fundamental complaint is that the Bush administration's lawyers measured international law against the U.S. Constitution and domestic statutes. They interpreted the Geneva Conventions, the U.N. Convention forbidding torture, and customary international law, in ways that were often at odds with the prevailing view of international law professors and various activist groups. In doing so, however, they did no more than assert the right of this nation – as is the right of

any sovereign nation – to interpret its own international obligations. But that right is

forgiven. To the extent they can be punished – or at least harassed – perhaps their successors in government office will be deterred from again challenging the prevailing view, even at the cost of the national interest.

That is why these administration attorneys have become the particular subjects of attack.

I look forward to your questions.