

From: David_G_Leitch@who.eop.gov
Sent: Thursday, July 08, 2004 2:01 PM
o: Goldsmith, Jack
Subject: RE: Jack Goldsmith--A Terribly Bad Decision

Attachments: tmp.htm



tmp.htm (8 KB)

This doesn't even stand on its own terms. See below.

>To: ekagen@law.harvard.edu, alford@law.harvard.edu,
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>Subject: Jack Goldsmith--A Terribly Bad Decision
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>Date: Tue, 6 Jul 2004 12:28:56 -0400 (EDT)

>July 6, 2004

>Dear Deans Kagan and Alford, international faculty, and others:

>Tell us, please, that it is not true, or somehow will be stopped now
>that the facts are coming out. There are reports that Harvard Law
>School has offered Jack Goldsmith a tenured teaching position.
>[Haven't you
accepted? Doesn't Harvard teach contract law anymore?]

>
>I and others who have worked with him recently in the U.S. government
>are appalled by this. Goldsmith is very smart and has an engaging
>style.

But
>doesn't it matter that he is an ideologue rather than a scholar, and he
>reportedly lies to conceal his extensive involvement with the torture
memos?

>
>During 2002 through early 2003 when the Department of Justice's Office
>of Legal Counsel was busy producing memos [The nerve!] (mainly by the
Deputy John Yoo
>since Assistant AG Bybee was hardly a draftsman), Jack Goldsmith was
the
>Pentagon's chief international lawyer on the Geneva Conventions,
torture,
>and the power of the President. He had just written an article about
the
>Geneva Conventions, he knew John Yoo well [imagine that!] (as anyone
who saw them together
>would realize [geez I hope no one saw the three of us having lunch in
the mess one day]), and he was a well-known international law professor.
[finally, a valid criticism].

Several of us saw and heard Goldsmith in meetings when the OLC memos
ere
>discussed and issues about the Geneva Conventions and torture came up.

>More specifically, Goldsmith actively participated in the Working Group,
>chaired by the Air Force GC, which produced the March 2003 report. hat
>report explicitly adopted, without any careful discussion, the OLC
>position that ?any effort by Congress? to regulate the interrogation of
the detainees would violate the President?s Commander in Chief
authority.
>There was no discussion of Congress?s powers. This conclusion was also
>based upon the Curtiss-Wright decision from 1936 and ignored entirely
the
>leading cases of Youngstown Sheet & Tube, and Dames & Moore. Dean
Harold
>Koh at Yale and other scholars have called the analysis in the OLC and
>Pentagon memos ?abominable? and worse. The Pentagon report also adopted
>whole cloth, without discussion, the Goldsmith-Bradley and OLC thesis
that
>customary international law was not part of federal law, a view that
only
>Justices Thomas and Scalia accepted recently in the Supreme Court?s
>Alvarez-Machain decision. [Clearly anyone who holds views of two
members of the Supreme Court of the United States is unqualified for the Harvard
faculty]/SPAN>
>
>Like the OLC memos, the Pentagon Working Group report was not
>scholarship, nor careful analysis. It was ideology that had a real and
>tragic impact
on
>individual rights and human lives. Goldsmith was involved in meetings
on
>these issues [You went to MEETINGS?!!!!] and he was supportive of OLC?s
views. Indeed, it was his
>views on these matters that helped make him the choice of White House
>Counsel Alberto Gonzales (who also accepted the OLC views over State?s
>objections). Gonzales and AG Ashcroft agreed that Goldsmith would
become
the next Assistant AG in OLC when Bybee went on the 9th Circuit bench.
>
>Just as disturbing as Goldsmith?s ideologically flawed lawyering is his
>outright willingness to lie, assuming the Legal Times quoted him
directly.
>Goldsmith?s sudden resignation as head of OLC after just eight months
>there came as a surprise. An article in the Legal Times of June 21, at
>page 4, reports that Goldsmith ?says he played no role in drafting the
>controversial memos on torture He says his July 30 departure is
>motivated primarily by a desire to spend more time with his two sons?
and
>his wife. Bull?. [Geez. Didnt anyone warn you that your stated reasons
for leaving would be misinterpreted? I wish I'd done so; next time, it's dinner at Les
Halles and a good honest conversation!]
>
>First, there are plenty of witnesses who saw and heard Goldsmith in the
>thick of the discussions over the Geneva Conventions, interrogations
>generally, and the torture memos (including the Pentagon Working Group
>Report). [Well, anyone who participates in discussions can't qualify
for the academy. You must KNOW you're right and not entertain the
notion that there's anything to discuss.] I felt strong ties to Harvard Law and am
obviously very upset by
>the possibility that Harvard might make the mistake of honoring and
>rewarding Goldsmith with a tenured position. Because I am a career
lawyer,
>however, I feel the need to remain anonymous since this Bush
>administration is vindictive as can be. However, in the Washington Post
on
June 24 at page A7, Post reporter R. Jeffrey Smith identified several
lawyers who disputed the detainee memos. Having been identified, I
expect
>that they can confirm what I had said above. These lawyers includin the

>State Department Legal Adviser (William H. Taft IV), the top Navy
>civilian
>lawyer (Alberto Mora), plus AF Maj. Gen. Jack Rives, Marine Brig. Gen.
>Kevin Sandkuhler, and Army Maj. Gen. Thomas Romig. In truth, the
>Pentagon's career and military lawyers and the moderate State Legal
>Adviser conducted a revolt against the Bush legal ideologues
>presented
>by John Yoo and Jack Goldsmith. If Goldsmith continues to claim clean
>hands, I urge you to contact some of the people who have already been
>identified as standing up in opposition to him.
>
>The widely-shared view around here is that the Attorney General and the
>White House were trying to clear their ranks of the key people involved
>in
>the OLC and Pentagon memos. Bybee was on the bench and Yoo had returned
>to
>teaching, which left Goldsmith as the principal remaining participant.
>He
>was encouraged to leave.
>
>Please don't honor and reward Jack Goldsmith, who has shown himself to
>be ideologically flawed [off the the re-education camps for you],
>unprofessional, and duplicitious. People suffered
>physically and psychologically because of him and his ideological
>colleagues.
>
> From Fighting Back in the Pentagon
>
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