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From MinnPost.com | Original Article

Should Robert Delahunty, an author of memos leading up to the Bush administration's fateful decision to abandon the Geneva Conventions with regard to war-on-terror prisoners, hold the position of associate professor of law at the University of St. Thomas School of Law ?

Robert Delahunty's [résumé](#) is unimpeachable. He attended a Jesuit high school. He has three bachelor's degrees (summa cum laude, Columbia University, 1968; Oxford, classics in 1970; Oxford, philosophy, 1972). In 1983, he received a JD cum laude from Harvard and promptly passed the New York Bar. He began a government career. From 1992 to 2002, he served as special counsel to the Office of Legal Counsel at the Department of Justice. He concluded his public service with a brief stint at the Office of Homeland Security. He now teaches international law at the University of St. Thomas.

The controversy is about three memos and a calendar.

Jan. 9, 2002: Memorandum to William J. Haynes (General Counsel, Department of Defense), ["Application of Treaties and Laws to al Qaeda and Taliban Detainees."](#) (PDF)

This legal opinion for the Defense Department, by Deputy Assistant Attorney General John Yoo and Special Counsel Delahunty, concludes that al-Qaeda and Taliban members are "not governed by the bulk of the Geneva Conventions, specifically those provisions concerning POWs." Ten days later, Secretary of Defense Rumsfeld wrote to the Joint Chiefs of Staff [a directive](#)

(PDF) stating: "The United States has determined that al Qaeda and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949."

Jan. 11, 2002: In a memorandum for Alberto Gonzales (counsel to the president) entitled "Geneva Conventions," Yoo and Delahunty repeated the position of their Jan. 9 memo. This provoked a sharp dissent from William Taft IV, the State Department legal adviser, who argued that the analysis was "seriously flawed," "untenable," "incorrect" and "confused." Taft copied his memo to Gonzales.

Jan. 14, 2002: Yoo and Delahunty sent a rebuttal to Taft that is entitled "Prosecution for Conduct Against al Qaeda and Taliban Members under the War Crimes Act." (This correspondence is not currently posted online but has been widely discussed, including by Jane

Mayer in "Outsourcing Torture," The New Yorker, Feb. 14, 2005.)

Delahunty also coauthored with Yoo [a memo](#) (PDF) on Oct. 23, 2001. This went to Gonzales and William Haynes and is entitled "Authority for use of Military Force to Combat Terrorist Activities within the United States" [note: underline in original].

This memo argues that Defense Department could conduct military operations against terrorists inside the United States.

Delahunty will not publicly debate his critics. His supporters say that Delahunty does not support torture. Some supporters argued that he was simply laying out options, although the memos clearly express a legal conclusion.

Some have said that Delahunty's memos are not central to the torture scandal. It is clear however, that the policy decision to set aside the Geneva Conventions cleared the way for creating abusive interrogation policies. The timing and content of the Yoo/Delahunty memos show that they were pivotal in the process of abandoning the Geneva Conventions. The Jan. 9 memo was written as a legal opinion to the Defense Department. It was understood as such by the secretary of Defense, who communicated it as such to Joint Chiefs of Staff in a policy directive only 10 days after it was written. The two memos on Jan. 11 and 14 backing up the opinion that the Geneva Conventions did not apply to the Taliban and Al-Qaeda were directed to the White House. Three weeks later, President Bush issued [his finding](#) (PDF):

"I accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, ... Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees do not qualify as prisoners of war under Article 4 of Geneva. ... Al Qaeda detainees also do not qualify as prisoners of war."

Delahunty was a mature lawyer who had a position as a senior public servant when he wrote his opinions. He did not have to sign those documents. His peers, including William Taft IV, in the administration dissented. Delahunty has a right of free speech — but the debate is not about free speech. It is about the quality of Delahunty's work, the sycophancy of his service, and the destructive impact of his work on the edifice of law itself. For these, he does not merit the honor of being a professor of law.

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