

Calling out torturers

Former Bush officials now have new roles in society: professor, lawyer, corporate manager, etc., etc. Some have moved on into the Obama administration where current officials pursue many of the same “war on terror” policies. It is our responsibility to call them out and to demand that these criminal activities cease and that legal proceedings take place and in a timely fashion.

Key officials must be held accountable and prosecuted for the crimes they stand accused, in world public opinion, of having committed. Editorialists may demand action. Even some politicians may call for it. But only an energized and politically active public can make those prosecutions happen. War criminals must be publicly shamed and prevented from occupying powerful or influential positions within our society. As in other cases where authorities have gone beyond US and international law as well as the laws of decency, only a public accounting will restore lawful conduct.

¹ http://www.aclu.org/pdfs/safefree/yoo_army_torture_memo.pdf

² Jeffrey Kluger: “Peace in Space,” March 12, 2012
<http://ideas.time.com/2012/03/12/peace-in-space-why-obama-is-right/>

³ Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, (New York: Doubleday, 2008). Pg 9

⁴ Mayer, Pg 151

⁵ See “Al Qaeda’s decentralized form demanded the reinterpretation of the rules of war, including the legitimate grounds for war, surveillance, targeting, detention, interrogation and trial.” John Yoo, *Crisis and Command*, (New York: Kaplan Publishing, 2009). Pg vii

⁶ See David A. Sylvester, “A Response to John Yoo and his Dictatorship Theory,” April 11, 2006.

⁷ “Torture and the Future,” <http://www.complit.ucsb.edu/projects/tortureandthefuture/description.html>

⁸ Sylvester, “A Response to John Yoo and his Dictatorship Theory”

⁹ Max Weinreich, “Hitler’s Professors: The Part of Scholarship in Germany’s Crimes against the Jewish People,” (New York: Yiddish Scientific Institute – YIVO, 1946). Pg 6-7

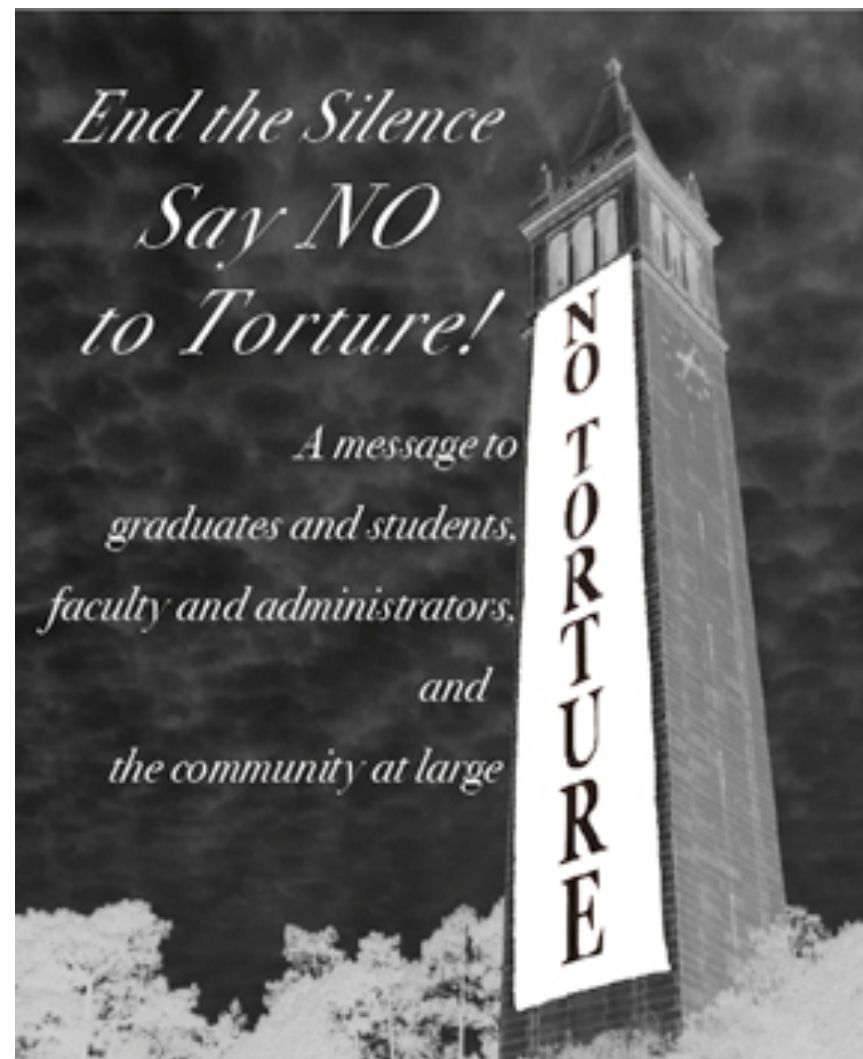
¹⁰ Weinreich, Pgs 7, 242

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Fire, Disbar And Prosecute John Yoo and All the Torture Lawyers!

Over the next few months we can expect to see a resurgence of argument by Bush administration pundits that torture “works” to keep American safe. To attempt to justify use of this universally prohibited practice in the interest of national security is a legal and moral travesty, as unconscionable as the brutality inflicted upon those captured.

Torture is inhumane and immoral...period. Why is one of the central perpetrators of a systematic torture program (still) teaching at UC Berkeley Law School? And why does his colleague Jesse Choper defend him?

Many know the name of John Yoo, but most do not know his full role in the criminal enterprise known as the Bush Regime

Yoo is infamous for his 81-page “torture memo”¹ written while he was a Department of Justice lawyer, on a two-year leave from the UC Berkeley Law faculty. He is one of the many Bush administration attorneys who provided legal justification and cover for the illegal actions of the Bush administration during its eight years in power, including the lies prefacing the immoral and illegitimate war on Iraq.

Today, John Yoo continues to promote the ultimate war crime: the invasion of another country posing no imminent threat to the security of the U.S. He is calling on Republican presidential candidates to prepare the case for a military strike to destroy Iran’s nuclear program. And now, not content with U.S. global supremacy, Yoo has raised his sights to the heavens, advocating for U.S. militarization of space.²

Why Yoo’s theories are an attack on the rule of law

Lawyers take an oath to support the Constitution as the fundamental rule of law in the United States. During his years in the OLC for the Bush administration, Yoo violated this oath with his torture memos. Yoo helped overturn decades of American legal tradition manifested in the Geneva Conventions that set standards for humane treatment of prisoners. He helped the United States become “the first nation ever to authorize violations of the Geneva Convention.”³ He corrupted the law into “tricky legalisms,”⁴ redefining the crime of torture to make it all but impossible to commit.

How Yoo inverts basic legal principles to justify torture

The Berkeley Law faculty has remained shamefully silent, failing to challenge Yoo as a shoddy thinker and bad lawyer. You don’t need a law school degree to see that his torture memos, his books, his latest statements share one common theme: The outcome justifies the law. It is a rule of expediency, the rule of might. He does not apply fundamental principles to circumstances, but applies circumstances to change principles.⁵ None of Yoo’s arguments are focused on the traditional goals of law, protecting liberty, expanding democracy, ensuring the rights of the vulnerable and endangered, restraining the abuse of the powerful. Instead, he argues to expand the power of the powerful President, to curtail restraints preventing abuse, to increase the role of power politics and to erode the constraints of the judiciary. There is no underlying legal principle at work beyond the need for security.⁶

Yoo’s attack on the rule of law is an attack on every lawyer

Professor Christopher Edley, Jr, dean of Berkeley Law, and the rest of the law faculty at Boalt Hall have failed to adequately respond to a national emergency. That emergency is that their profession – the academic legal profession and the universities that have trained them – has produced an ideology that claims to justify what used to be considered crimes of totalitarian governments, namely arbitrary detention, torture, trials before military commissions without any civil due process, not just as emergency measures required during a state of war but as legally based

on the United States Constitution. Any lawyer or law professor who does not answer this challenge and remains silent is, in fact, complicit in allowing this environment to flourish.

Allowing Yoo to teach law is an attack on scholarship and education

This whole structure - the lies, the disregard of facts, the phony reasoning, the inverted principles - is an attack on the basics of academic scholarship. “It is necessary to question the consequences of the use of torture on the principles and practices of scholarship and education. By either openly or passively condoning torture, for example through our silence, we send a devastating message not only to our students, but also to the community at large: that the prohibition against torture is negotiable or even dispensable. Especially in the humanities, where cutting edge thinking explores concepts and experiences such as ‘responsibility’, ‘otherness’, ‘difference’, ‘memory’, ‘trauma’, our work and research become entirely irrelevant if, today, we ignore the implications of a re-legitimization of torture.”⁷

Every regime that tortures has its lawyers to justify its crimes

It is a huge mistake to think Yoo is alone in his arguments. As the introduction to *Powers of War and Peace* makes clear, Yoo is only one in a constellation of professors, colleagues, students and active court justices who think as he does. He is not some lone wolf with wacky ideas but is influenced by and representative of a school of thinking that has come from the so-called “best law schools” of this country: Harvard, Yale, Berkeley. This is why the Boalt faculty has an obligation to examine both the ideas advanced by this school of legal thinking, especially by Yoo, as well as the university system that produces and rewards this kind of reasoning. To draw a parallel, the universities in Nazi Germany were culpable for allowing the Nazi ideology to spread without challenge, even though then, Hitler was a dictator who could order professors fired, arrested and imprisoned, unlike now when totalitarian ideas are advanced and fostered in spite of absolutely no external coercion. In this, a failure to speak up is even more shameful.⁸

Even Nazi Germany had its ‘lawyers’ and ‘scholars’

After the war, the study of thousands of German books and documents showed that “there was participation of German scholarship at every single phase of the crime.” These cooperative German professors were not “sham scholars, nobodies elevated in rank by their Nazi friends and protectors” but “people of long and high standing, university professors and academy members, some of them world famous, authors with familiar names and guest lecturers abroad...”⁹

These professors had the best German training – the only difference was that they would not defend basic human values in their work. Their research now sounds “unconvincing and hollow” not because they were highly trained but because it had “the mendacity inherent in any scholarship that overlooks or openly repudiates all moral and spiritual values and, by standing order, knows exactly its ultimate conclusions well in advance... With the political and military leaders, the intellectual leaders first declared Germany the final judge of her own acts and then renounced accepted morality.”¹⁰
