



Peace and Justice Commission

ACTION CALENDAR
December 8, 2008

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Eric Brenman, Secretary, Peace and Justice Commission
Subject: John Yoo: Bush Administration Torture Memos

RECOMMENDATION

Adopt the following recommendations approved by the Peace and Justice Commission at its July 7, 2008 meeting:

- 1) Contact Carlos Villareal, Executive Director of the San Francisco Chapter of the National Lawyers Guild at carlos@nlgsf.org and communicate that the City of Berkeley wishes to be listed amongst the signers of the Call to Investigate Professor John Yoo, which is a letter to University of California Chancellor, Robert Birgeneau (Attachment I); and
- 2) The City should state that no student of U.C. Berkeley should be required to choose between taking a course with Professor John Yoo or waiting another semester to take and complete a required course. If the Law School is to permit Professor Yoo to teach non-elective courses, the school should make available to students the opportunity to take these non-elective courses with another professor during the same semester so as to assure students are not sanctioned or delayed in their fulfillment of non-elective courses due to their distaste for taking a class with someone who wrote memoranda that authorized the use of pain, violence and degrading treatment as a method of treatment of persons held in U.S. custody; and
- 3) Ask the U.S. Attorney for Northern California to bring charges of war crimes against John Yoo, now teaching in the City of Berkeley at U.C. Berkeley School of Law; and
- 4) Send another letter in February, 2009 to the then-Attorney General of the United States asking him/her to bring charges of war crimes against John Yoo, if such charges have not yet been brought; and

- 5) That a letter be sent to the President of the University of California, the Chancellor of U.C. Berkeley and the Dean of U.C. Berkeley School of Law incorporating the language of the above recommendations and advising them of the City's position.

M/S/C: (Meola, Sorgen) That Council adopt the above recommendation regarding John Yoo:

Ayes: Diana Bohn, Elliot Cohen, Peter Kafin, Wendy Kenin, George Lippman, Jane Litman, Rita Maran, Bob Meola, Michael Sherman, Phoebe Anne Sorgen

Abstain: None.

Noes: None.

Absent: Donald Brody, Patti Campbell (excused), Megan Winkelman (excused), Jonathan Wornick

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

In June 2008 the National Lawyers Guild initiated a Call to Investigate Professor John Yoo. The Call states that "Professor Yoo was the principal author for several memoranda that provided legal cover for officials in the Bush Administration, CIA and Pentagon to ignore domestic and international laws in interrogating military detainees."

The criticism of Professor Yoo is not based on academic activity that is protected as academic freedom. "Rather," continues the Call, "it amounts to professional misconduct, providing not sound legal advice but the illusion of legality to patently immoral and actually illegal activities, i.e. the torture and murder of military detainees."

The Call requests the Chancellor of the University of California to investigate "whether Yoo violated the UC Faculty Code of Conduct" by authoring "legal memoranda justifying illegal torture techniques...that failed professional standards of lawyerly competence, as well as heightened ethical duties of certain government attorneys." The Call goes on to argue that "Whenever a faculty member engages in professional conduct that causes the kind of harm or attempts to shield the type of harm caused by the Yoo memos, it raises serious concerns that the University must address by formal investigation."

After researching academic policy it was determined that the General University Policy (APM - 015) Regarding Academic Appointees provides flexibility in its Faculty Code of Conduct. While the Code specifies conviction for a criminal act as a type of

unacceptable act in the sphere of the Community at large, it is clear that this is not an exhaustive criterion, and that "Faculty may be subjected to disciplinary action under [the] Code for any type of conduct which, although not specifically enumerated herein, meets the standards for unacceptable faculty behavior."

Under these circumstances asking for a University investigation is an appropriate step that will allow the University to determine whether or not Mr. Yoo should be sanctioned by the University.

Past Council Action

On March 13, 2007, the Berkeley City Council passed RESOLUTION NO. 63,613-N.S. entitled, SUPPORTING PROSECUTION OF SECRETARY OF DEFENSE DONALD RUMSFELD AND OTHER GOVERNMENT OFFICIALS. That resolution endorsed a lawsuit brought by the Center for Constitutional Rights and by the German Prosecutor in Germany under the laws of Universal Jurisdiction. That lawsuit named John Yoo amongst the others to be prosecuted for war crimes and torture. In that resolution, the city of Berkeley stated,

"NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley endorses the case of Rumsfeld *et al* and requests the City Manager to send a copy of this resolution to the Center for Constitutional Rights.

"BE IT FURTHER RESOLVED that the Council of the City of Berkeley supports efforts throughout the world to hold Donald Rumsfeld and other United States officials who have prosecuted the War on Terror in violation of any applicable law to be held both civilly and criminally accountable for their actions before any tribunal with jurisdiction over the matter, whether such legal proceedings are pursued in this country or abroad."

CITY MANAGER

The City Manager takes no position on the recommendations of the Commission.

CONTACT PERSON

Robert Meola, Chairperson, Peace and Justice Commission, (510) 644-1102

Eric Brenman, Secretary, Peace and Justice Commission, (510) 981-5114

Attachments

1. Letter to Chancellor Birgeneau

NLGSF Calls on UC Berkeley to Investigate Professor John Yoo

June 26, 2008

John Yoo, the key author of Justice Department memos authorizing and providing cover for the illegal torture of U.S. military detainees, is presently a law professor at the University of California, Berkeley, School of Law (Boalt Hall). Support our letter to UC Berkeley Chancellor Robert Birgeneau, urging him to investigate whether Yoo's conduct violated the Faculty Code of Conduct.

Contact Executive Director Carlos Villarreal at carlos@nlgsf.org if you would like to be listed as a supporting individual, organization or office. Let us know if you are a current UC Berkeley law student, alumnus or staff-member.

Text of letter:

Office of the Chancellor
200 California Hall # 1500
University of California
Berkeley, CA 94720-1500

Chancellor Robert Birgeneau,

As you know, John Choon Yoo is a professor of law at the University of California, Berkeley, School of Law (Boalt Hall). As an organization of attorneys, law students and other legal workers, we hereby urge you to initiate an investigation into whether Professor Yoo's "outside professional conduct," as an attorney of the U.S. Justice Department's Office of Legal Counsel, violated the Faculty Code of Conduct as set out in the University of California Academic Personnel Manual (Section 015).

Professor Yoo was the principal author for several memoranda that provided legal cover for officials in the Bush Administration, CIA and Pentagon to ignore domestic and international laws that prohibit torture in interrogating military detainees. This outside professional conduct does not involve academic freedom. Rather, it amounts to professional misconduct, providing not sound legal advice but the illusion of legality to patently immoral and actually illegal activities, i.e., the torture and murder of military detainees.

Yoo's memos narrowed the definition of torture, in contravention to the U.S. ratified Convention Against Torture, so that "a victim must experience intense pain or suffering equivalent to pain associated with serious physical injury so severe that death, organ failure or permanent damage resulting in loss of significant body functions will likely result." They further sought to justify torture based on the circumstances and the power of the executive branch in times of war. His action justified policies that violate the jus cogens norm prohibiting torture as detailed in an [NLG White Paper On The Law of Torture and Holding Accountable Those Who Are Complicit in Approving Torture of Persons in U.S. Custody](#):

The prohibition of torture is a jus cogens norm (these are principles of international law so fundamental that no nation may ignore them or attempt to contract out of them through treaties). The United States has consistently prohibited the use of torture through its Constitution, laws, executive statements and judicial decisions and by ratifying international treaties that prohibit it. The prohibition against torture applies to all persons in U.S. custody in times of peace, armed conflict, or state of emergency. In other words, the prohibition is absolute. However, the legal memoranda drafted by government lawyers purposely or recklessly misconstrued and/or ignored jus cogens, customary

international law, and various U.S. treaty obligations in order to justify the unjustifiable, claiming that clearly unlawful interrogation "techniques" were lawful.

Yoo wrote these memoranda, not as a law professor, but while a senior attorney in the Office of Legal Counsel from 2001 to 2003. Subsequently, the Justice Department has withdrawn these memoranda, acknowledging their poor reasoning and untenable legal conclusions. Before they were withdrawn, however, Yoo's written opinions were treated as having the force of law by the executive branch of the U.S. government.

While Boalt Hall Dean Christopher Edley has publicly stated that the University may not discipline Yoo until he has been convicted of illegal conduct, we urge against such a narrow interpretation of the UC Academic Personnel Manual's Faculty Code of Conduct, which specifically identifies outside professional conduct that can lead to formal investigation. While it includes violations of the law resulting in convictions, the list of unacceptable faculty conduct it enumerates is specifically noted as "not exhaustive."

Investigating whether Yoo violated the UC Faculty Code of Conduct is amply justified by the limited facts that are publicly available, i.e., that Yoo authored legal memoranda justifying illegal torture techniques and did so with such one-sided opinion that they failed professional standards of lawyerly competence, as well as the heightened ethical duties of certain government attorneys. He did not exercise academic freedom of speech but rather misstated the law in order to provide legal cover to immoral and abhorrent acts, i.e., the torture and murder of prisoners of war.

Moreover, Yoo's outside professional conduct should be of special concern to the University of California because his misconduct implicates the very subject he teaches as a professor at Boalt Hall. Whenever a faculty member engages in professional conduct that causes the kind of harm or attempts to shield the type of harm caused by the Yoo memos, it raises serious concerns that the University must address by formal investigation, particularly when that harm was clearly prohibited by law, regardless of whether a conviction has yet resulted. Indeed, until the current executive administration leaves office, no prosecution will likely occur, and even after a new administration takes office, prosecution and conviction will necessarily take many months, likely years, if it occurs at all.

Before that date, the University of California should step forward with strong moral leadership, granting Yoo the due process that his memos denied many others at Abu Ghraib, Guantanamo Bay and elsewhere, by instituting a formal investigation and implementing whatever discipline the investigation justifies.

Yoo's misconduct occurred from a position of power and encouraged harm to relatively powerless individuals who were detained and held in military custody. Moreover, more than 108 people have died in U.S. detention since 9/11, many from torture, and many are still detained today facing unknown abuse. While many will object to even an investigation of possible misconduct unbecoming a UC faculty member, these objections are spurious and wrongly based on a presumption of impunity for the Bush Administration. History, international human rights and domestic law militate otherwise. Investigating John Yoo is not about potentially chilling academic speech but is rather a necessary exercise for a university that truly respects the rule of law.

As the Bush administration faces its final days, now is the time to begin understanding the severity and scope of the government's misconduct. State and local government institutions, like the University of California, have an important role to play in this process of illumination. UC Berkeley has a particular tradition of bringing light to bear on the most difficult problems facing a truly free and democratic society.

We urge you to take action. Investigate John Yoo's outside professional conduct, and act on the investigation's findings to deliver the faculty discipline warranted by the investigation.

Sincerely,

Carlos Villarreal

Executive Director

Supporters

Sharon Adams

Adams Law Office

UC Davis-King Hall School of Law Alum

Katherine Barnes

Alumnus, College of Engineering BS in EECS received 1991

Judith Berlowitz

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Bay Area Women in Black

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NLGSF Student Vice President, Co-Chair Boalt NLG Chapter

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Anne Butterfield Weills

The World Can't Wait - Drive Out the Bush Regime!

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