

centerforconstitutionalrights
on the front lines for social justice

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The Center for Constitutional Rights writes this letter in support of the National Lawyers Guild's call for John Yoo's dismissal from the UC-Berkeley Boalt School of Law.

American torturers must not go unpunished. This mandate is central to much of the Center for Constitutional Rights' post-9/11 legal work, in which we attempt to hold the architects of the U.S. torture program accountable for their criminal acts.

The U.S. government – which created the torture program, lied about it, and then once the truth began to leak out, classified every document relating to it – will not prosecute itself. Thus we have filed legal challenges in Germany and France charging Donald Rumsfeld, Alberto Gonzales, John Yoo, Jay Bybee, and other high-ranking officials with war crimes as well as aiding and abetting torture at Guantánamo, Abu Ghraib, and other U.S. detention centers around the globe.

But despite the Bush administration's desperate efforts to conceal it, the truth continues to trickle out. Recently, a secret 81-page memo authored by then-Deputy Assistant Attorney General John Yoo in March 2003 that yet again attempted to provide a legal justification to state-sanctioned torture emerged. Just this week, *ABC News* reported that the most senior Bush administration officials held dozens of secret meetings to discuss and approve the use of torture techniques, including waterboarding, on detainees held in CIA custody. These revelations only serve to underscore what we have known for a long time: that Yoo, other former officials at the DOJ's Office of Legal Counsel, and senior Bush officials must be prosecuted and held accountable for having facilitated and approved the program that has led to the torture of hundreds of people around the globe.

The latest Yoo document to surface is but one in a remarkable series of secret memos which were issued by the Justice Department following 9/11. The January 9, 2002 memo sought to strip away the floor of fundamental rights that the Geneva Conventions provide to all those held in custody by U.S. officials in the so-called war on terror. By arguing that the Geneva Conventions, including Common Article 3, did not apply in *any* way to these detainees and by failing to articulate any kind of minimal standard for detainee treatment outside of Geneva, Yoo intended to provide a legal justification for interrogation methods that included torture and cruel, inhuman, or degrading treatment.

In Yoo's infamous "Torture Memo" of August 1, 2002, co-authored by Jay Bybee, he narrowed the legal definition of torture to the point that age-old torture techniques such as waterboarding could be authorized. According to the memo, if the victim was caused bodily pain, it would only

constitute torture if the pain was “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”

The “Torture Memo” was not an abstract, academic foray. Rather, it was crafted to sidestep U.S. and international laws that make coercive interrogation and torture a crime. It was written with the knowledge that its legal conclusions were to be applied to the interrogations of hundreds of individual detainees. It was designed to address Vice President Cheney’s concerns – as well as those of Condoleezza Rice and other top officials in the Bush administration – that the CIA was unwilling to interrogate alleged al Qaeda suspects, such as Abu Zubayadh, in a sufficiently harsh manner, and to overcome the CIA’s opposition to techniques that it believed violated the Convention Against Torture. And it worked.

It became the basis for the CIA’s use of extreme interrogation methods as well the basis for DOD interrogation policy. In fact, Rumsfeld’s list of approved interrogation techniques for the men at Guantánamo, which were recommended by former DOD General Counsel William Haynes and confirmed in Rumsfeld’s order of December 2, 2002, were precisely shaped by the “Torture Memo.”

But the effects of Yoo’s memos were not limited to torture at CIA blacksites. They also resulted in the “green light” being given to interrogators at Guantánamo who then put our client, Mohammed al Qahtani, through a brutal interrogation program that included 20-hour interrogations, sexual humiliation, severe sleep deprivation, and religious abuse, among other tactics.

In a statement made to his Administrative Review Board panel, al Qahtani made the following statement regarding his treatment while at Guantánamo: “A human being needs four things in life that were taken from me at Guantánamo. First, to honor his religion and freedom to practice religion and respect it. Two, honoring his personal dignity by refraining from humiliating a human being through beating or cursing him and bad treatment in general. Three, respect for his honor, which means not dishonoring him through sexual humiliation or abuse. Four, respect for human rights by allowing a human being to sleep and be comfortable where he is; to be in a warm shelter; to have security for his life; to have sufficient food and beverage; to have means to relieve himself and clean his body; to have humane medical treatment; and to know that his family is safe from threats or harm. Again, all of these rights were taken from me.”

Yoo’s legal opinions as well as the others issued by the Office of Legal Counsel were the keystone of the torture program, and were the necessary precondition for the torture program’s creation and implementation.

Despite his unquestionable and conscious complicity in the creation of the U.S. torture program post-9/11, no disciplinary or investigatory action has been taken against Yoo whatsoever.

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As CCR President Michael Ratner writes in our forthcoming book *The Trial of Donald Rumsfeld*, “Had these various opinions been written as a law school or academic exercise, they could be merely condemned and their authors would fail their class, but they would not be held criminally accountable. But they were not an academic exercise. They were written by high-level attorneys [such as John Yoo] in a context where the opinions represented the governing law and were to be employed by the President in setting detainee policy. This was more than bad lawyering; this was aiding and abetting their clients’ violation of the law by justifying the commission of a crime using false legal rhetoric.”

John Yoo, as well as all the other officials who aided, encouraged, and allowed the torture and abuse of detainees in U.S. custody around the globe, must be held accountable. American torturers must not go unpunished.

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