May 18, 2009

Disciplinary Board of the Supreme Court of Pennsylvania  
1st Floor  
Two Lemoyne Drive  
Lemoyne, PA 17043-1226

Re: Complaint against John Choon Yoo

Dear Sir or Madam:

NOTICE OF COMPLAINT

Velvet Revolution (“VR”), a Washington, D.C. based non-profit with a network of more than 150 organizations representing over a million members nationwide, including in Pennsylvania, herein lodges a complaint against John Choon Yoo, former Deputy Assistant Attorney General, Office of Legal Counsel (OLC) in the Department of Justice (2001-2003), currently teaching at the University of California, Boalt Hall School of Law, 890 Simon Hall, Berkeley, CA 94720; Phone: (510) 643-5089; Fax: (510) 642-3728. VR requests the Disciplinary Board of the Pennsylvania Supreme Court take immediate disciplinary action against Mr. Yoo for violations of the Pennsylvania Rules of Professional Conduct.

SUMMARY OF COMPLAINT

John Choon Yoo breached his legal duty and violated the Pennsylvania Rules of Professional Conduct by repeatedly advocating for “extended” or “enhanced” interrogation techniques (amounting to torture), and other policies that resulted in clear violations of U.S. and international law.

Specifically, Mr. Yoo, ignored over two centuries of historical and legal precedents, fell short of the bar of “good faith,” and advanced suspect legal analysis and prescriptions for detainee interrogation well outside of accepted and legal norms, thereby providing the false cover of claimed legality for those who then engaged in acts and policies that, in fact, violated the following laws, both in letter and spirit:

1) The United Nations Convention Against Torture (UNCAT), Articles 1, 2, 3 and 16, to which the U.S.A. is a signatory. (ratified October 1994)

2) The Geneva Conventions, Article 3, signed and ratified by the U.S. in 1955
3) The Eighth Amendment against “cruel and unusual punishment”

4) The “Separation of Powers” constructs and imperatives of the U.S. Constitution

5) The United States Criminal Code, Title 18, Prohibitions Against Torture (18 USC 2340A) and War Crimes (18 USC 2441)

As the “law of the land,” these legal protections and dictates are clear. Rather than offering a “good faith” analysis of the applicable law, Mr. Yoo authored and supported legal memoranda since repudiated from the Office of Legal Counsel. This legal analysis led directly to detainee abuses, and, evidence suggests, deaths at overseas U.S. military facilities. Mr. Yoo, in his active role in the so-called “War Council” of the Bush Administration, was engaged in unethical conduct that impeded the administration of justice and violated the Constitution, the Geneva Convention, the Convention against Torture, the U.S. Criminal Code and several Pennsylvania Rules of Professional Conduct. Mr. Yoo did not act in “good faith” but rather in a manner that was illegal, extremely prejudicial, grossly incompetent and clearly immoral.

Therefore, we call upon the Disciplinary Board of the Supreme Court of the State of Pennsylvania to act immediately to disbar Mr. Yoo for conduct that is a travesty of justice and an affront to the rule of law and the standards of professional legal conduct.

Further, because the evidence points to numerous violations of the law, VR believes that disbarment will complement steps toward open hearings in Congress and a criminal investigation by an independent counsel appointed by the Department of Justice.

APPLICABLE LAW

The U.S. Constitution -- The Supreme Law of the Land

As the initial U.S. report to the UN Convention against Torture wrote:

“…the protections of the right to life and liberty, personal freedom and physical integrity found in the Fourth, Fifth and Eighth Amendments to the United States Constitution provide a nationwide standard of treatment beneath which no governmental entity may fall.” [49., p. 13, Initial Report submitted by the United States to the Convention against Torture in 1999 (CAT/C/28/Add.5)]

U.S. Citizens are guaranteed these protections. Jose Padilla is one example of a U.S. citizen who was held without charge for several years, and subject to the extreme interrogation techniques advocated by John Yoo. Citizens of other countries are similarly protected when in the custody of the United States. The Eighth Amendment specifically prohibits cruel and unusual punishment.
**The Geneva Convention (1949)**

Common Article 3 of the Geneva Conventions broadly prohibits "violence to life and person," and specifically prohibits "mutilation, cruel treatment and torture" including "outrages upon personal dignity, in particular humiliating and degrading treatment". These terms include "other forms of cruel, inhuman and degrading treatment or punishment." Exhibit H

*Drafters of Common Article 3 avoided a detailed list of prohibited acts in order to ensure that it had the broadest possible reach, leaving no loophole.*


The Army Field Manual on detainee treatment and interrogation is predicated on the Geneva Convention and specifically requires humane treatment of prisoners and detainees. Exhibit B

**UN Convention Against Torture (1994)**

Adopted by the United Nations in 1984, the Convention requires states to take effective measures to prevent torture within their borders. The United States ratified the Convention against Torture in October 1994, and it entered into force for the United States on November 20, 1994. To date, there are over 146 nations that are party to the convention. Exhibit L

Article 2(2) of the Convention states that:

"*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*"

**Hamdan v. Rumsfeld (2002) -- Due Process and Legal Protections**

The Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), held that the Geneva Conventions are applicable to accused members of al-Qaeda. Thus, due process protections apply to all detainees in U.S. custody, including those in military prisons (Guantanamo, Abu Ghraib, Bagram), as well as so-called “black sites” in Poland, Diego Garcia and elsewhere.

**US Criminal Code**

**TITLE 18 § 2340A. Torture**

(a) Offense.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.
(b) Jurisdiction.— There is jurisdiction over the activity prohibited in subsection (a) if—
(1) the alleged offender is a national of the United States; or
(2) the alleged offender is present in the United States, irrespective of the nationality of
the victim or alleged offender.
(c) Conspiracy.— A person who conspires to commit an offense under this section shall
be subject to the same penalties (other than the penalty of death) as the penalties
 prescribed for the offense, the commission of which was the object of the conspiracy.

TITLE 18 § 2441. War crimes

(a) Offense.— Whoever, whether inside or outside the United States, commits a war
crime, in any of the circumstances described in subsection (b), shall be fined under this
title or imprisoned for life or any term of years, or both, and if death results to the victim,
shall also be subject to the penalty of death.
(b) Circumstances.— The circumstances referred to in subsection (a) are that the person
committing such war crime or the victim of such war crime is a member of the Armed
Forces of the United States or a national of the United States (as defined in section 101 of
the Immigration and Nationality Act).
(c) Definition.— As used in this section the term “war crime” means any conduct—
(1) defined as a grave breach in any of the international conventions signed at Geneva 12
August 1949, or any protocol to such convention to which the United States is a party;
(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV,
Respecting the Laws and Customs of War on Land, signed 18 October 1907;
(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d))
when committed in the context of and in association with an armed conflict not of an
international character; Exhibit M

CASE FOR DISBARMENT

Pennsylvania Rules of Professional Conduct
The case for Mr. Yoo’s disbarment is simple and clear. “A lawyer should demonstrate
respect for the legal system…” [Preamble, A Lawyer’s Responsibilities, Part 6; p.1].
Mr. Yoo has not.

Rule 1.2 (d) [p. 7] calls for “good faith effort to determine the validity, scope, meaning
or application of the law.” The OLC memos do not directly grapple with the question of
minimal process for the detainees, nor do they fairly present relevant case law, including
previous prosecutions of those who employed waterboarding. Accordingly, Mr. Yoo’s
advocacy was not made in “good faith” and was thus “frivolous” and incompetent. There
is no valid legal precedent that supports Mr. Yoo’s arguments advocating torture, and, in
fact, all well-established law holds to the contrary. This constitutes grounds for
Further, Comment 9, regarding Criminal, Fraudulent and Prohibited Transactions relative to Paragraph (d) of Rule 1.2(d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud...or recommending the means by which a crime or fraud might be committed with impunity. In memos authored by Yoo, he extensively detailed the parameters of a number of extreme torture techniques, which most legal scholars and experts deem to be torture. Therefore, Mr. Yoo violated Rule 1.2 (d) and revealed himself to be deeply engaged in the actual application of the torture rather than providing “good faith” analysis of the applicable law bearing on the practice.

Rather than accept the simple and clear definition of torture[5] as defined in international law, Mr. Yoo sought to re-define it altogether, writing:

“The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in a loss of significant body functions will likely result.”

Further, as revealed by reputable investigative reporting, Mr. Yoo participated in a “War Council” led by David Addington, the Vice-President’s Chief of Staff, during which Mr. Yoo help to methodically advance and install an entirely new legal regime intended to upend the constitutionally crafted checks and balances, by elevating the Office of the President and the Executive Branch, including the office of the Vice President, to a supreme position not subject to any constraints or oversight by other branches of government.

The evidence for this unprecedented power-play is overwhelming. VR calls for disciplinary action to be taken against Mr. Yoo for his part in activity that clearly demonstrated a lack of respect for the rule of law as defined by the Constitution.

John Choon Yoo repeatedly demonstrated extreme and dangerous disregard for well-established rule of law by violating both the letter and spirit of the U.S. Constitution.

KEY DOCUMENTS IN EVIDENCE:

In order to build the case for disciplinary action against John Yoo, Jay Bybee, and other lawyers advocating for, and defining so-called “enhanced interrogation,” and to examine the origins of the legal advocacy, it is necessary to review an extensive body of evidence and investigative reporting and analysis, including the following documents/articles:


3) Memo released by the Senate Intelligence Committee http://intelligence.senate.gov/pdfs/olcopinion.pdf

4) The Red Cross Report on Detainee Treatment, Exhibit J.

5) Investigative Reporting:
   a. The Dark Side: *The Inside Story of How the War on Terror Turned into a War on American Ideals*

1) The OLC memoranda offered the patina of legal sanction to the use of techniques such as waterboarding, hypothermia, stress positions, extensive sleep deprivation and confinement with stinging insects to exploit prisoner phobias.

The memos, by carefully defining parameters, clearly demonstrate that the authors of the memos, including Mr. Yoo, were deeply engaged in the application of torture techniques, not merely giving abstract legal counsel.

2) The Senate Armed Services Committee report provided a detailed chronology of the process of formulation of policy respecting the treatment of prisoners, with a special focus on the introduction of torture techniques. Exhibit K

   Senior officials in the U.S. government decided to use some of these harsh techniques against detainees based on deeply flawed interpretations of U.S. and international law.
   [Levin, McCain Release Executive Summary and Conclusions of Report on Treatment of Detainees in U.S. Custody, December 11, 2008]

3) The Senate Intelligence Committee memo details the steps leading to issuance of the OLC memos and identified the Justice Department lawyers and others involved in the process. The memo details a systematic authorized program for the mistreatment and torture of persons denied rights of due process. [Letter from Attorney General Eric

4) The Red Cross Report On Detainee Treatment was prepared from interviews with a number of detainees and others. In short, it confirms that the types of torture techniques advocated by the attorney we have complained about here were in fact used against many detainees. These techniques included suffocation by water, prolonged stress standing, beatings by use of a collar, beating and kicking, confinement in a box, prolonged nudity, sleep deprivation, continuous loud noises, exposure to cold temperature and cold water, threats, forced shaving, and deprivation of food. Exhibit J

5) In testimony at a Senate hearing on May 13, 2009, Former State Department counselor Philip Zelikow told a committee panel that Bush administration officials engaged in a ‘collective failure’ with regard to the detention and interrogation of suspected terrorists. He asserted that the torture memos were unsound because “the lawyers involved ... did not welcome peer review and indeed would shut down challenges even inside the government.” Georgetown University law professor David Luban testified that the Justice Department torture memos constituted “an ethical train wreck” because they violated constitutional, statutory and international law.

http://www.washingtonpost.com/wp-dyn/content/article/2009/05/13/AR2009051301281.html

5) Investigation Reporting: Select reporting from credible sources further suggests that following the attacks of 9/11/01 a host of controversial and illegal policies were advanced persistently and systematically by a small group of lawyers to serve narrow policy goals and political ambitions, with a primary aim of vastly amplifying the power of the Presidency, in direct threat to the system of checks and balances elucidated in the U.S. Constitution.

  a) Jane Mayer, The Dark Side: In her award-winning book, Harpers reporter Jane documented the inner workings of a group of lawyers who called themselves the “War Council”. John Yoo was a prominent member of that group who advanced a concerted campaign to establish an entirely new post-9/11 legal regime already well developed prior to the attacks. Any objective analysis of this body of work leads to the obvious conclusion these lawyers methodically advanced an agenda entirely antithetical to the U.S. Constitution and a host of historical and legal precedents, with legal opinion and advocacy that effectively buried American ideals and the rule of law.

  b) Jonathan Landey of McClatchy in his article Report: Abusive tactics used to seek Iraq-al Qaida link reported on the intense pressure put on the CIA and military interrogators to use of extreme interrogation tactics, including the use of waterboarding, on scores of occasions, in an effort to produce intelligence from detainee confessions that al-Qaeda was linked to the regime of Iraqi President
Hussein. Pressure came from the Vice-President’s office. The head of the ‘War Council’ was David Addington, the Vice-President’s Chief of Staff.

ENDNOTES


The most recently declassified memos from Yoo’s Office of Legal Counsel can be found here: http://www.aclu.org/safefree/general/olc_memos.html Exhibit A


The TIMES Online reported:

"Jack Goldsmith, who succeeded Jay Bybee - the author of many of these memos - at the Office of Legal Counsel, has since declared that they had 'no foundation' in any source of law and rested on 'one-sided legal arguments'. Their purpose, he said, was to provide the CIA with a 'golden shield' against criminal prosecution of agents. After all, the US prosecuted waterboarding as torture when the Japanese used it against American troops during Second World War.“ [http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6116281.ece]

John Yoo, who worked under Jay Bybee, was the principal author of the most important of the memos now under scrutiny.


These reports from the Criminal Investigation Division of the Dept. of Justice detail the deaths of a number of detainees at Bagram Air Force Base in Afghanistan and at prisons in Iraq. Thus far, 21 homocides have been confirmed, eight of which resulted from abusive interrogation techniques.

Mayer sources "hard-line law-and-order stalwarts in the criminal justice system" to describe how beginning on 9/11/01 a group who called themselves the “War Council” worked to upend the American system of law and checks and balances in order to exercise a new paradigm. They worked methodically to vastly expand presidential power (“not limited by any laws”) in which the president “had the power to override existing laws that Congress had specifically designed to curb him.” David Addington, chief of staff of Vice President Cheney, John Yoo, William James Haynes, Timothy E. Flanigan and Alberto Gonzales, led the ‘War Council’.


It defines torture as any act by which: “severe pain or suffering, whether physical or mental; is intentionally inflicted on a person; for such purposes as:”

a) obtaining from him/her or a third person information or a confession
b) punishing him/her for an act s/he or a third person has committed or is suspected of having committed
c) intimidating or coercing him/her or a third person,
d) or for any reason based on discrimination of any kind;

When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*


Sincerely,
Kevin Zeese
Attorney at Law
301-996-6582