

By Stephanie Tang

The finally-released report from the Department of Justice's Office of Professional Responsibility (OPR) delivers no surprises. Newsweek had already leaked its basic findings: during their Bush Torture Team tenure, attorneys John Yoo and Jay Bybee did nothing worse than exercise "poor judgment" and therefore should escape accountability for the crimes that directly resulted from their work.

No surprises but a big, huge, multi-layered outrage, nonetheless.

The following is an in-depth analysis of the outrages. Torture has been defined and accepted by the international community for decades. No one can "redefine" it as John Yoo attempted to do. Waterboarding is torture, period. The US prosecuted as war criminals Japanese military who waterboarded US military in WW2.

John Yoo is a war criminal and should be prosecuted!

**Outrage Level One:** How was the OPR report produced? By a Justice Department (first under Bush and now under President Look Forward Not Back Obama) investigating its own personnel and policies(!) During the 5+ years of the investigation, OPR repeatedly allowed the subjects of the investigation to review and edit its report. Yoo and Bybee were given drafts and their suggestions for revisions were invited!. The CIA and other investigation subjects were also allowed to help edit the report.

And when even so the OPR finally concluded that Yoo and Bybee were guilty of professional misconduct and should be referred to state bar associations for disciplinary action, presto! a senior Justice Department lawyer steps in to override the OPR, downgrading its findings to poor judgment, free of any political or professional

consequences.

**Outrage Level Two:** The immediate media spin is: the OPR report lets the torture lawyers off the hook because now they've been investigated and found not guilty of any crimes. The world is supposed to accept this verdict and watch silently as known war criminals walk off freely into their post-Abu Ghraib, post-waterboarding lives. See? There goes the law professor, there the federal judge, respected professionals, all.

This is supposed to be OK because Bush is gone and Obama says torture has ended. Yet the bald facts are bald facts: the work product of the torture lawyers lives on, is actively continuing; torture has become part of US standard operating procedure.

Yes the Bush Regime is gone. But Obama has reversed and repudiated NO major component of Bush/Cheney's ensemble of horrors, from torture and rendition to the shredding of habeas corpus as an inconvenient antique in the post-911 world.

Yes the Bush Regime is gone. But Guantanamo is still open and will close only when some new Guantanamo is ready to hold its last prisoners and many newly-captured ones joining them, for the rest of their lives, still not charged, not convicted, never to be released.

Yes the Bush Regime is gone. But John Yoo enjoys faculty perks at an elite law school and Yoo's superior, Jay Bybee, himself the author of key torture memos sickening in their bloodless sadism, enumerating 14 permissible torture techniques enjoys his lifetime appointment to the federal bench.

**Outrage Level Three:** How shocked and angry might people have been, the day Bush and Cheney left office, if they could have seen what exists today, 13 months into change we can believe. If BUSH

were president today, and his Justice Department exonerated itself with this eviscerated OPR report and was busily defending the torture lawyers against lawsuits of torture victims - and was refusing to prosecute any of the principals in the illegal, immoral torture state for which the US is now held responsible by the world and was expanding the bloody wars and illegal occupations we see from Iraq and Afghanistan to Pakistan and Yemen, with the Bush Doctrine and Bush torture policies controlling.

If this were all happening under Bush or McCain, what would many good people be saying, and doing?

And what are far too many people today NOT saying, and NOT doing?

There is nothing more important that people inside this country could do right now than to mobilize and organize ourselves to stand up to the crimes of our government, no matter who is in the White House. Right now, there are many people in many countries who shared an excitement during the Obama campaign because they saw a chance to end the Bush-Cheney nightmare. And just as we have, they have now watched for the last 13 months and seen what Obama has said and done. And maybe they are anxious and confused and angry, as many people here are.

It is crucial that there are people in this country and more of them, all the time - who continue, and persevere, and refuse to be set aside, in the fight to actually stop the torture, to stop the entire so-called War on Terror which requires torture as one of its weapons; to stop the war for empire which is really going on under this guise. But it is also important all along the way, even before we succeed in those goals that there is a message sent up from people in this country to people around the world. Sometimes there are not in our name moments, this is one of them. People around the world are watching the OPR report unfold a story: the US government commits great crimes and offenses; the US government tells lies to its people to make that appear necessary; the US people accept the lies and even support them.

But the lies can be revealed as lies if someone makes it so. And the lies have to be up-ended and replaced. People around the world need right now to be shown that there ARE people in the US who refuse to accept and tolerate the crimes of our government. Let it not be said that torture was first committed, and then excused; this will keep Americans safe! and that no one stood up to say NO.

**Outrage Level Four:** What are we to make of the Democrats' paltry response to the OPR report and its being hamstrung and why should anyone rely on them to do more? It barely qualifies as hand-wringing to call for next week's congressional hearings as any sort of real response to the OPR findings. Hearings on a Friday?? Without subpoenas?? And really: a single day of hearings?!?! Is anyone supposed to take this seriously (the OPR report was over 5 years in the making!)???

What's needed now is not another round of congressional committee hearings through which some political steam can be vented to little effect. Ample evidence is already in the public realm, thanks to the work of journalists, human rights and legal communities, and activists, that documents the torture story clearly and lays more than enough basis for prosecutions to be launched. There are many people in many walks of life who feel deeply offended and disgusted by what has gone down with this OPR report. They need to be called into motion to make their demands felt. And if their sentiments and energies are siphoned into expectations that more hearings or other activities high up in the halls of power will lead to real accountability, that will be a real waste.

Let's be clear: the fight to bring torture and torturers to justice still stretches ahead of us, and many levels and forms of action will be needed to take that fight forward. But what is needed now is a real leap, a fresh and refreshed wave, of making felt the demand that the torturers must be brought to justice, as a demand from below, from the people of this country, independent of the power structure that rules it. That is the only hope we have to effect real change. And that in turn is our responsibility to the people who have directly suffered the abuse of the American Torture State, and to the people

of the world more generally.

In that light, let's return to the OPR report. Let's be clear that the OPR report is far from the last word. The OPR report IS an insult to the torture victims and it is also an insult to everyone who has been in one way or another standing up to demand real accountability as the only way to set limits for the future saying we will not tolerate torture. But the OPR report needs to be seen as a challenge: it represents another move against us in the ongoing fight against the war crime of torture, and to bring to justice the war criminals from Bush and Cheney on down. For example, the Margolis cover memo says the OPR will not call on bar associations to dis-bar the criminals. But this doesn't at all mean that those bar associations can not take action motivated by many other sources.

And a final word about the Justice Department's guy, Margolis, parsing the crime of torture into a problem of poor judgment. John Yoo, Jay Bybee and the other Bush lawyers were hired gun lawyers whose work for their client, the Bush Regime, was notoriously unethical, flaunted professional standards, etc. But pull the lens back and what we actually see is this: these lawyers were functionaries in a criminal enterprise, no less than were the lawyers and judges of Germany's Third Reich whose legal memos and other work product enabled the Nazis to carry out their Holocaust. As history reminds us, this role was found during the Nuremberg trials to rise to the level of war crimes because without the lawyers providing legal cover for those great crimes, the regime would not have been able to commit them and call them legal.

That is the moment we are living in now. To the World Can't Wait movement, torture has never been separable from the so-called War On Terror which called it forward as a key weapon, with special urgency in the post-911 years. The US has wielded torture for centuries but it is this post-911 time that saw torture sanitized, dressed up and glamorized, and made into a normal, necessary fact of life (e.g., the trend in some mainstream poll trajectories which mark a growing public acceptance of torture).

Where somebody's judgment is in question, the torture memos show far less about what John Yoo may or may not have been thinking than what was going on above him, in the thinking of his superiors. Torture DID involve judgement but not that of Yoo, really.

It was at the top levels of the U.S. government at the time, the Bush-Cheney Regime, that the judgment was reached that torture was necessary, and that legal cover for the torture and the secret rendition, for what became Guantanamo and Abu Ghraib was needed in order to more effectively pursue the so-called War On Terror, (actually a war OF terror). John Yoo was called into willing service, he was a hired gun lawyer who helped to carefully craft the legal language that would allow these extraordinary, thoroughly illegal activities.

**POINT:**

Every person in this country has to ask him or herself: are you for torture, or against it? Is torture part of a world you want to live in, or isn't it? And if you think torture is wrong and it must stop and your government insists torture is necessary and therefore OK, then what will you do? We need a powerful resistance from the people. The world can't wait.