



JOHN YOO
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September 30, 2013

Kuk Cho, J.S.D.
Professor of Law
School of Law
Seoul National University
1 Gwanak-gu, Seoul 151-743 Korea

Dear Professor Cho:

You have requested a formal copy of the results of the law school's investigation into allegations of plagiarism in regard to your J.S.D. dissertation. Under the University's rules, the campus referred the complaint to the law school for review. As chair of the J.S.D. program, I became responsible for conducting the investigation. Professor Laurent Mayali, who supervised the program at the time of your graduation, joined me in reviewing the complaint.

Our investigation found the allegations of plagiarism to be groundless. Neither the school of law nor the university will take any further action. I include a scan of the signed memorandum from my committee to the dean of students at the law school, which records the results of our investigation.

Please feel free to contact me at 510-643-5089 (v), 510-642-3728 (f), or yoo@law.berkeley.edu if I can provide any further assistance.

Best wishes,

A handwritten signature in black ink that reads "John Yoo".

John Yoo
Emanuel S. Heller Professor of Law

September 19, 2013

MEMORANDUM

TO: Annik Hershen
Dean of Students
School of Law
University of California at Berkeley

FROM: Laurent Mayali
Lloyd M. Robbins Professor of Law
School of Law
University of California at Berkeley

John Yoo
Emanuel S. Heller Professor of Law
School of Law
University of California at Berkeley

RE: Complaint of Academic Misconduct Against Kuk Cho, JSD '97

This memorandum memorializes the conclusion of our investigation into a complaint of academic misconduct against Kuk Cho, who received his LLM and JSD degrees from Berkeley Law, the latter in 1997. Cho is a professor of law at Seoul National University and a prominent political figure with the opposition parties in South Korea.

On July 22, 2013, a person only identified as "David" filed a complaint through the university student conduct e-mail address alleging that Professor Cho committed plagiarism in his JSD dissertation. The complaint attached to the email several pages of the dissertation, accompanied by a selection of sources from which Professor Cho allegedly plagiarized. On August 1, 2013, a second e-mail was received, apparently from the same complainant, attaching a few more instances of alleged plagiarism in Professor Cho's JSD dissertation. The second e-mail identified the writer as acting on behalf of "the Center for Scientific Integrity" in Korea. It is not clear whether such a center actually exists – a search of the internet does not yield any institution located in Korea with such a name in English.

You routed the complaint to Professor John Yoo, who currently serves as director of the JSD program. He asked Professor Laurent Mayali, as head of the JSD program in 1997, to join him in the investigation. The chair of Professor Cho's dissertation committee, Professor Philip Johnson is emeritus and unavailable, but Professor Malcolm Feeley, a member of the committee, provided his views to us.

After a careful examination of the complaint, we conclude that there are no grounds for a claim of plagiarism against Professor Cho's 1997 JSD dissertation. This is not a close case. Professor Cho's dissertation fully meets our JSD program's high standards.

We begin with a description of Professor Cho's dissertation, "Exclusion of Illegally Obtained Evidence in Search-and-Seizure and Interrogation." It examines the well-known, controversial American rule in which federal courts will exclude from trial any evidence seized in violation of the Fourth Amendment. First introduced by the Warren Court in *Mapp v. Ohio*, the exclusionary rule survived the more conservative Burger and Rehnquist Courts and, in Professor Cho's view, became an "institutionalized" part of the U.S. criminal justice system. Professor Cho's dissertation expanded our knowledge of the exclusionary rule by examining how the judicial systems of the United Kingdom, Germany, and Japan addressed a similar problem. Despite their adoption of remedies that appear similar to the U.S. approach, these different systems put the exclusionary rule into practice in a weaker form. Criticizing the idea that modern legal systems were converging, Professor Cho attributes the differences in outcome to the differences between the civil law and common law and to each nation's unique balancing of the needs of the criminal justice system and notions of individual privacy.

In reviewing the dissertation, we are impressed even 16 years later at the breadth and depth of Professor Cho's dissertation. We found his discussion of the exclusionary rule in American law to be balanced, judicious, and insightful. This part of the dissertation represents a significant amount of research and analysis. Professor Cho's unique contribution, however, was his analysis of the emergence of functional equivalents to the exclusionary rule in the legal systems of the United Kingdom, Germany, and Japan. As of 1997, as far as we know, no other comparative analysis of the exclusionary rule had reached a similar level of comprehensiveness in both scope and depth. Professor Cho demonstrated full mastery of the criminal justice systems of four countries – a remarkable achievement. We have no reason to second-guess the high praise that Professor Cho's JSD committee awarded the dissertation.

Given the significant contributions to scholarship made by Professor Cho's dissertation, any claim of plagiarism would have to be clear. The complaint does not come close to meeting university standards. In Rule 102.01, the University of California Student Code of Conduct includes plagiarism as a form of academic misconduct that can provide grounds for discipline. In Appendix II, the Code defines plagiarism as including the "use of intellectual material produced by another person without acknowledging its source." On the Berkeley campus, the Center for Student Conduct, Division of Student Affairs, provides three illustrative examples of plagiarism:

- a) Wholesale copying of passages from works of others into your homework, essay, term paper, or dissertation without acknowledgment.
- b) Use of the views, opinions, or insights of another without acknowledgment.
- c) Paraphrasing of another person's characteristic or original phraseology, metaphor, or other literary device without acknowledgment.

<http://sa.berkeley.edu/conduct/integrity/definition>.

Both the July 22, 2013 and August 1, 2013 emails attempt to show plagiarism by using what appears to be a computer program to match similarities in language between Professor Cho's dissertation and other sources. The August 1, 2013 email just repeats several examples already identified in the July 22, 2013 email, and does not add anything new. No matter their number, however, these matches do not show plagiarism. In most of these cases, Professor Cho is paraphrasing or partially quoting the works of others – he is not attempting to pass off the ideas of others as his own. Indeed, Professor Cho's citation of authorities is scrupulous and the sources from which he allegedly plagiarized appear in his bibliography and footnotes.

The very first example provided in the July 22, 2013 email illustrates the failure to show plagiarism. The email shows similar language between pages 10-12 of the dissertation and D.J. Galligan, *More Scepticism About Scepticism*, 8 Oxford J. L. S. 249 (1988). Both Cho and Galligan, however, are simply describing Jeremy Bentham's well-known criticism of natural rights and his defense of utilitarianism. In the criticized passage, Cho quotes Bentham directly and paraphrases what he does not quote. It is in the quoting and paraphrasing of Bentham that similar language appears in Cho and Galligan. The July 22, 2013 email claims plagiarism even occurs when both Cho and Galligan quote the exact same passages from Bentham – of course, this would show up as identical language in a computer program because both authors are quoting from the same original text. Cho is not attempting to pass off Galligan's ideas as his own, because neither here is making any original points. Even if one thought otherwise, Cho actually cites Galligan on page 11, footnote 12, in the midst of the very discussion about which the July 22, 2013 email complains.

The rest of the passages identified by the July 22, 2013 email are of a similar nature. The email claims that Professor Cho plagiarized in 10 discrete passages from 5 other sources. All of these sources are cited in the dissertation. Moreover, in each of these 10 passages, Professor Cho has credited the source from which the plagiarism has allegedly occurred. Cho is making no attempt to pass off any of the ideas of these 5 sources as his own; in fact, his work directs the reader directly to those sources. To raise these passages as examples of plagiarism shows not just a misunderstanding of plagiarism and the scholarly enterprise, but a failure to even read and understand the dissertation in question.

In concluding, we wish to emphasize in the strongest possible terms that there are no grounds for any claim of plagiarism against Professor Cho's 1997 JSD dissertation. Professor Cho's dissertation fully meets the standard for proper academic conduct that we

expect at the law school. The flimsiness of the allegations shows no understanding of the standards for plagiarism or the proper practice for academic credit each other's work. We are concerned that the complaint may even be politically motivated to harass Professor Cho. Whatever its purpose, the complaint fails to identify any plagiarism in Professor Cho's 1997 JSD dissertation and we find no grounds for any further university proceedings in this matter.

**U.C. Berkeley School of Law ‘박사과정 프로그램’ 위원장
존 유 교수의 커버 레터(2013.9.30) 전문번역**

귀하는 귀하의 박사논문에 대한 표절 제소에 대한 로스쿨의 조사결과를 담은 공식 문서를 요청하였다. (U.C. 버클리) 대학교의 규칙에 따라 대학 본부는 이 제소에 대한 로스쿨에 위임했다. ‘박사과정 프로그램’(J.S.D. program)의 위원장인 나는 이 조사를 수행하는 책임을 맡게 되었다. 귀하의 졸업시기 등 프로그램을 책임지었던 로렌스 마얌리 교수도 이 제소에 대한 검토 작업에 참여했다.

우리의 조사는 표절 제소가 근거없음을 발견했다. 로스쿨이나 (U.C. 버클리) 대학교 어디에서도 더 이상의 조치를 취하지 않을 것이다. 나는 동 위원회가 로스쿨의 학생담당보에게 보낸 서명이 이루어진 결정문(memorandum)을 이하에 첨부한다. 이 결정문은 우리 조사의 결과를 기록하고 있다.

UC Berkeley School of Law 결정문(2013.9.19) 발췌 번역문

1. 2면 두 번째 문단:

제소에 대한 주의 깊은 검토 후 우리는 다음과 같이 결론 내린다. 조국 교수의 1997년 법학박사(JSD) 학위논문에 대한 표절 주장은 전혀 근거가 없다. 이번 건은 감도 안 되는 사안이다(This is not a close case). 조 교수의 논문은 JSD 프로그램의 높은 기준을 충분히 충족한다.

2. 2면 네 번째 문단에서 다섯 번째 문단

논문을 검토한 후 우리는 16년이 지난 이후에도 조 교수의 논문의 폭과 깊이에 감동 받는다. ... 우리가 아는 한, 1997년 시점을 기준으로 [미국, 영국, 독일, 일본] 네 나라의 위법수집증거배제법칙에 대한 비교법적 분석 중 범위와 깊이에 있어서 조 교수의 논문과 같은 수준의 포괄적 연구를 이룬 연구는 없다. 조 교수의 논문은 네 나라의 형사사법체제에 대하여 충분한 통달도(full mastery)를 보여주는 바, 이는 놀라운 성취(remarkable achievement)이다. 우리는 조 교수의 논문을 심사한 JSD 위원회가 이 논문에 대하여 보낸 높은 찬사를 재고할 이유를 전혀 가지고 있지 않다. ... 조 교수의 논문에 이룬 중대한 학문적 기여(significant contribution of scholarship)를 고려할 때 이 논문이 표절이라는 어떠한 주장도 해소되어야 한다. 이번 제소는 [U.C. 버클리] 대학교의 기준에 전혀 부합하지 않는다.

3. 3면 네 번째 문단 말미에서 4면 마지막 문단

[제소자가] 이 문장들을 거론하는 것은 제소자가 단지 표절과 학문적 업적을 이해하지 못하고 있음을 보여주는 것이 아니라, 문제가 된 논문을 제대로 읽거나 이해하는 것조차도 하지 못하고 있음을 보여준다. 결론적으로 우리는 조국 교수의 1997년 법학박사논문이 표절이라는 어떤 주장에도 근거가 없음을 가능한 가장 강력한 용어로(in the strongest possible term) 강조하고 싶다. 조 교수의 논문은 우리가 로스쿨에서 기대하는 적절한(proper) 학문적 행위 기준을 충분히 충족한다. 이번 표절 주장의 조잡함(flimsiness)은 표절의 기준에 대한 무이해 또는 각인의 작업을 학문적으로 존중하는 적절한 실무에 대한 무이해를 보여준다. 우리는 이번 주장에 조 교수를 괴롭히려는 정치적 동기가 있지 않음을 염려한다. 제소의 목적이 무엇이든 간에, 이번 제소는 조 교수의 1997년 논문에 표절이 있음을 밝히지 못하고 있으며, 우리는 이 문제에 대하여 [U.C. 버클리] 대학교 차원에서 더 이상의 절차를 밟을 근거가 전혀 없다고 결론내린다.