

Bush Seeks Retroactive Immunity From US War Crimes Prosecution

by **Patriot Daily News Clearinghouse**

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Now that the Bush team faces possible prosecution for war crimes under US law, the team is quietly changing the law to provide a "**legal escape hatch.**" The recent US Supreme Court decision in Hamdan removed a potential defense from war crimes prosecution that the Bush team had been relying upon. So now the Decider is quietly changing this US law to exempt himself and other officials from criminal prosecutions that may not occur until the next administration. One thing for sure -- Bush is not much of a planner for wars, natural disasters, and terror attacks -- but he sure does plan years in advance to save his own hide.

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Many Americans were captured during the Vietnam War and tortured for years, including retired Navy pilot Mike Cronin, who was shocked to learn when he returned to America that there was no US law providing US courts with jurisdiction to prosecute violators of the Geneva Conventions. After 6 years of torture, Cronin knew that Geneva Conventions prohibitions against torture and "humiliating and degrading" treatment were essential to protect US soldiers.

Thanks to Cronin's persistent lobbying, Congress passed the **War Crimes Act of 1996** with "overwhelming bipartisan support." The War Crimes Act provides US courts with jurisdiction "to convict any foreigner who commits a war crime against an American, or any American who commits a war crime at all." The War Crimes Act did not provide a real difference for soldiers and officers, who were already subject to military law that prohibits the abuse of prisoners. Under the War Crimes Act, for the first time, US civilians -- including intelligence officers, contractors, and government officials -- could be criminally prosecuted for ordering war crimes. Understandably, this US war crimes law was passed with strong bipartisan support because "nobody could have predicted that a decade later a U.S. administration, with the explicit consent of the president and the attorney general, would be accused of systematic war crimes."

Now, the recent US Supreme Court decision of Hamdan v. Rumsfeld **opens the door** for President Bush and Attorney General Gonzales to be prosecuted under the US War Crimes Act. The Hamdan case ruled that the Bush administration could not deny at least some of the Geneva Convention protections to prisoners suspected of ties to al-Qaeda and the Taliban. One legal expert has opined that Hamdan's ruling that al-Qaeda members are covered by at least parts of the Geneva Conventions would also apply to American soldiers and **CIA operatives**.

Since at least 2002, **internal memos show that the Bush team was worried about potential application of the War Crimes Act to their implementation** of torture and inhumane treatment policies:

Publicly released memos show that as far back as Jan. 25, 2002, Gonzales, then the White House counsel, worried that the president's policies could trigger prosecution under the act. That led the White House to declare, over the objection of the State Department, that al-Qaida was not protected by the conventions. In the memo, Gonzales argued that the president could create "a solid defense against any future prosecution" by declaring that the Geneva Conventions did not apply.

However, the Hamdan ruling eliminates this "solid defense" by holding that Geneva Conventions do apply, and thus places the Bush team in "a legally vulnerable position" as even an Air Force judge advocate recently testified before Congress that "some techniques that have been authorized" violated the Geneva Conventions.

A legal expert opined that the Hamdan case "probably could not be used retroactively to punish anyone for employing extralegal interrogation techniques," but certainly use of those techniques after the Hamdan case **will be grounds** for a war crimes prosecution. This is interesting. If Hamden does truly only have prospective application, and yet the Bush team is trying to quietly change the reach of the War Crimes Act, then is this not tantamount to an admission that the Bush team plan to continue to violate the Geneva Conventions? That is, continue to torture despite what the highest court in our country has ruled.

Expanding the Bush preemption doctrine to protect himself and administration officials, the Bush team is now "quietly circulating legislation to change the statutory interpretation of the War Crimes Act of 1996. In short, the legislation would make it difficult to prosecute U.S. personnel for the harsh interrogation methods authorized by President Bush and the Justice Department." These proposed changes have "not yet been spelled out publicly."

But, Human Rights Watch director says the "effort to change the interpretation of the War Crimes Act is

focused on protecting those outside the military chain of command who may have committed war crimes or ordered war crimes to be committed." In other words, the changes would protect Bush team officials who drafted the torture memos and passed the policies down to the military to be implemented, but would leave military officials and soldiers hanging in the wind. Another way that Bush supports our troops.

The fear is not that Bush team officials would be criminally prosecuted now under the War Crimes Act because that also requires a federal prosecutor to file charges against them. So, the Bush team must be fairly confident that they have all their ducks in a row with federal prosecutors. The fear is prosecution by the next administration or by the appointment of a special prosecutor.

The Bush team proposal wants to mandate that US enforcement of Geneva Conventions be subject to domestic interpretation, not international standards. This change is needed by Bush because the **US Supreme Court believes** that foreign interpretations of international treaties, like the Geneva Conventions, should at least be considered by US courts.

This minor change could have a "huge practical impact" because the Justice Dept. could "define certain interrogation techniques as legal in U.S. courts, even if the rest of the world considers them violations of the conventions." This "minor" change could provide retroactive immunity to Bush team because the War Crimes law today applies to the Bush team. Today, prosecution under this law would likely include international law interpretation as case law precedent because the War Crimes law is based on violating Geneva Conventions, an international treaty. Today, foreign countries and courts have stated in media reports that they do not agree with Bush's view of what constitutes torture or compliance with the Geneva Conventions, particularly disagreeing with the rules governing the Guantánamo prison and treatment accorded prisoners. That is the general state of the law when Bush and administration officials drafted their memos and issued their orders. That is why the Bush team memos issued before implementing their policies expressed concern of their own liability under the War Crimes Act. To change the substantive law after the actions were taken is tantamount to retroactive immunity. As one legal expert stated:

"They want retroactive immunity," said Mary Ellen O'Connell, a professor of international law at Notre Dame, who has been critical of the Bush administration's detention policies. "Have you known of any other time in our history when we have tried to immunize public officials against crimes after they have committed the crimes?"

Actually, yes. Bush is now also trying to obtain retroactive immunity for his legal liability in implementing his **illegal NSA spying programs**.

While Bush publicly proclaims we must all support our troops, he again works behind closed doors to protect himself from legal liability while rendering US soldiers less safe from physical and mental torture. Of course, some Democrats, like Sen Leahy, have promised to fight these changes in the law, saying that Attorney General Gonzales, who is the "highest law enforcement officer in the country is leading an effort to undercut the rule of law." Given that the Decider has years ago dispensed with the need for Congress or the Courts, without any effective action by either institution to stop the Decider, can any Democrat really be shocked or surprised by Bush's plan to change another law to protect himself from legal liability?

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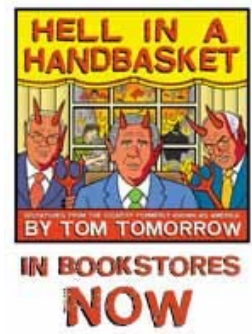
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