

# Bush Administration officials should be prosecuted for war crimes. Soldiers should disobey wrongful orders

Randy Dotinga interviews Marjorie Cohn

By [Prof. Marjorie Cohn](#)

Global Research, September 27, 2009

[Voice of San Diego](#) 26 September 2009

Region: [USA](#)

Theme: [Law and Justice](#)

*On the legal front, George W. Bush and Dick Cheney have few bigger enemies than [Marjorie Cohn](#), a professor at San Diego's Thomas Jefferson School of Law.*

*Cohn, president of the liberal National Lawyers Guild, is a leading voice demanding that members of the Bush Administration be prosecuted for war crimes. She also condemns the Afghanistan and Iraq wars as illegal under international law, which she says the United States. It's a debate that hinges on whether the wars were launched in self defense.*

*In a new book, "[Rules of Disengagement: The Politics and Honor of Military Dissent](#)," she and a co-author write about members of the military who have resisted service in the current two wars on legal grounds. She's also written a book about the Bush Administration called "[Cowboy Republic: Six Ways the Bush Gang Has Defied the Law](#)." So far, Cohn's opinions aren't gaining much traction in Washington D.C., although the Obama Administration is slowly making strides toward some torture prosecutions.*

So Cohn fights on. In an interview, she talked about the responsibility of soldiers to disobey wrongful orders, the prosecution of government lawyers and the country's ability to withstand the distraction of putting a former president and vice president on trial.

## **What are your biggest recent successes on the war-crimes front?**

I have testified as an expert witness in courts martial and military hearings for servicemembers who have refused orders to go to Iraq and Afghanistan. They have argued that those wars are illegal. My testimony has corroborated those beliefs by citing the U.N. charter, which is part of U.S. law, which says one country cannot invade another country unless it's in self defense or the U.N. Security Council agrees. And neither of those wars is lawful under the U.N. charter.

Under our law, there's a duty to obey lawful orders, but there's also a duty to disobey unlawful orders. The order to deploy to an unlawful war is an unlawful order.

My testimony has corroborated the reasonableness of the belief of some service members that it would be illegal for them to deploy to Iraq and Afghanistan. We've had some success with that testimony.

## **How so?**

In one case, the servicemember was given no time in custody. In another case, he was separated from the military under very favorable conditions.

I also [testified](#) in front of Congress last year on the Bush Administration's policy of torture and abuse, and that testimony has been useful in the move to bring to justice the people who set the policies and the lawyers who wrote the torture memos to justify the policies.

## **Can someone be prosecuted for merely having a legal opinion?**

They would be prosecuted for advising the president on how he can break the law and get away with it. There were lawyers who were prosecuted for war crimes and crimes against humanity after World War II advising Hitler on how to deport people to secret camps "legally" and get away with it.

## **What do you think should happen to the lawyers in this case?**

They should be investigated and prosecuted under U.S. statutes.

## **Should they go to prison?**

If convicted, yes, they should go to prison.

## **How far up would you extend the prosecutions for war crimes?**

All the way up the chain of command to the commander in chief.

## **So you would have Bush and Cheney prosecuted?**

Absolutely. And there's tremendous evidence to support prosecutions for torture, which is a war crime, and for leading us into an illegal war under false pretenses which has resulted in the deaths of thousands of Americans and tens of thousands of Iraqis.

**When you look at these issues, is it purely from a legal perspective or do you also think about how trials like these might affect the nation?** Both. My legal training makes it very clear to me that they have broken laws, and we are a nation of laws.

The Constitution requires the president to faithfully execute the laws.

It's also clear to me that if we don't bring people who have committed these high crimes to justice, then future administrations will think they can get away with war crimes. People in other countries will hate us even more because we let our leaders get away with murder and torture.

**What do you think will be the negative consequences if Bush and Cheney are prosecuted? Will the country be torn apart, and does that worry you?**

The Republicans will oppose it. The country is divided on many issues; it's divided on health care and the war in Afghanistan.

The fact that some people, especially Republicans, might be upset if members of the Bush

Administration are brought to justice should not prevent the president and attorney general from doing the right thing.

**What about the issue of distraction? A trial would be all the country would think about for months or years when there are other issues out there.**

There are all kinds of distractions. We are capable as a country of taking care of business in many different areas at the same time. That's a red herring.

**What do you think President Obama should do now regarding the wars abroad?**

He should pull out and use diplomacy and foreign aid and more peaceful means of resolving problems than escalating the military involvement in Afghanistan, Iraq and Pakistan.

**Is there anything that will change the tide in your favor?**

What could change the tide is a strong and vigorous anti-war movement. We don't have that now. We did during Vietnam, and one of the reasons was that we had a draft, and college students protested.

**What is your vision of humanity? Some people look at war and conflict and think that humans fight, this is inevitable. Then there are the peace activists who say we can work things out through diplomacy instead of violence.**

I'm not a pacifist. There are times when people have to act in self defense. But the United States government has not been acting in self defense.

Most problems between countries and within countries can be handled with peaceful means. Violence and fighting is a last resort. But unfortunately, the U.S. has used it as a first resort too often.

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