

# Reviewing Marjorie Cohn's "Cowboy Republic"

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Theme: [Law and Justice](#)

Global Research, August 09, 2007

9 August 2007

Marjorie Cohn is a distinguished law professor at Thomas Jefferson School of Law in San Diego where she's taught since 1991 and is the current president of the National Lawyers Guild. She's also been a criminal defense attorney at the trial and appellate levels, is an author, and has written many articles for professional journals, other publications, and for noted web sites such as Global Research, ZNet, CounterPunch, AfterDowning Street, Common Dreams, AlterNet and others. Her long record of achievements, distinctions and awards is broad and varied for her teaching, writing and her work as a lawyer and activist for peace, social and economic justice.

Cohn's latest book just published, and subject of this review, is titled "Cowboy Republic: Six Ways the Bush Gang Has Defied the Law." It provides a thorough, impressive and incisive account of the most important ways the Bush administration defied, defiled and weakened the rule of law and by so doing hurtled the nation toward tyranny. This book is an essential guide to their lawless record, its threat to the nation and world, and the desperate need to confront it, challenge it and remove it from office before it's too late. The stakes couldn't be greater - the fate of the republic hangs by a thread as well as all humanity if people of conscience fail to act and swiftly. Cohn's book lays out the problem clearly. The rest is up to us.

Richard Falk, Professor Emeritus of International Law at Princeton University, introduces what's to follow in his brief introduction to Cohn's book. In it, he states the most important lesson of the disastrous Iraq war is that "adherence to international law serves the national (as well as) human interest in time of war." More than at any other time, with the nation at war, US presidents can practically operate as dictators outside the normally constraining check and balancing influences of the other two branches of government, when they choose to use them.

For the past six and a half years, they've been nowhere in sight, and George Bush took full advantage. He's defied constitutional and international law with arrogance and impunity including the Nuremberg Principles defining what constitutes a war crime. Falk quotes its chief prosecutor, Justice Robert Jackson, saying ...."the record on which we judge these (Nazi) defendants today is the record on which history will judge us tomorrow." Throughout our history, pre and post-Nuremberg, this nation broke the "Nuremberg promise....repeatedly" but never to the degree as under George Bush. That's the legacy he'll pass to future administrations they'll have to live with and confront as an obstacle in an attempt to move ahead. Their job won't be easy.

## Introduction

Cohn begins her book with a definition of "cowboy" applicable to George Bush - one "who

undertakes a dangerous or sensitive task needlessly.” Other definitions refer to someone who’s “reckless, aggressive or irresponsible.” Those characterizations pretty much sum up the record of the current President who won’t go down in history like the legendary heroes who won the West and most dictionaries say are “hired hands who tend cattle and perform other duties on horseback” on the range “where the deer and antelope play.”

Despite our nominal constitutional protections, Cohn recounts how the history of the country was marked by abuses of power going back to the Alien and Sedition Acts under John Adams. They were enacted to stifle dissent in time of possible war, but, in fact, were used against Republican opponents to deny them what Jefferson called “the highest form of patriotism” – the right to dissent.

Our reputed greatest President, Abraham Lincoln, followed in Adams’ tradition during the Civil War. He suspended habeas and other civil liberties, instituted an unfair draft, blatantly abused his power overall and functioned ad libitum as a virtual dictator. Woodrow Wilson was no different, and so was Franklin Roosevelt, both of whom justified their right to set aside constitutional protections in time of war. No evidence suggests doing it helped. There’s plenty, however, to prove they weakened the republic making it easier for future Presidents to take even greater liberties interpreting the law as they wished. Enter George Bush. Case closed.

Cohn notes that few Americans understand international law, or the Constitution either, for that matter, aside from some pro forma words they can recite perfunctorily but not explain. They also don’t know international law is US law as well under the Supremacy Clause of the Constitution. It states all treaties “shall be the supreme Law of the Land.” They include the UN Charter, four Geneva Conventions, the UN Convention Against Torture banning any form of the practice at all times for any reason, and all other treaties the nation signs. Sadly, Cohn observes, constitutional and international law “didn’t prevent a series of executive branch violations in the 1960s (under Lyndon Johnson mostly) and 1970s (egregiously under Richard Nixon) when the executive branch” operated outside the limits of the law they were sworn to uphold but didn’t.

Cohn then gets into the meat of her important book recounting George Bush’s six specific appalling abuses of power still raging unrestrained out of control and in recent days got even worse as explained below.

### **A War of Aggression**

International law bans premeditated aggressive war under any conditions. The UN Charter clearly states a nation may only use force under two conditions: when authorized to do it by the Security Council or under Article 51 that allows the “right of individual or collective self-defense if an armed attack occurs against a Member....until the Security Council has taken measures to maintain international peace and security.” In other words, self-defense is permissible but an unprovoked attack on another nation violates sacred international law and constitutes what the Nuremberg Charter called “the supreme international crime against peace.”

Clear evidence exists that the Bush administration intended to attack Afghanistan and Iraq prior to 9/11. All that was needed (as laid out in 2000 by the neoconservative Project for a New American Century – PNAC) was “some catastrophic and catalyzing event – like a New Pearl Harbor” to militarize the nation and wage aggressive war. On 9/11, the Bush

administration got its wish and “swung into action” by going to war based on deceit and lies about invalid threats and for reasons other than stated.

Former CIA head of counterintelligence, Vincent Cannistraro, later acknowledged it was based on “cooked intelligence.” And CIA analyst Michael Scheuer said the agency was resigned “that we were going to war” and no facts or analysis would stop it. In addition, an August 6 John Conyers-ordered report found that “members of the Bush administration misstated, overstated, and manipulated intelligence with regards to linkages between Iraq and Al Queda; the acquisition of nuclear weapons” along with other lies to justify war including so-called WMDs known not to exist years earlier.

In July, 2002, the New York Times got access to a highly classified document titled “CentCom Courses of Action” containing what the Pentagon called a “war plan” to invade Iraq. It began in earnest as a secret air war in May, 2002 that by end of August “had become a full air offensive,” according to the London Sunday Times. British MI 6 chief Richard Dearlove then revealed the secret contents of the so-called Downing Street memo based on a July, 2002 Washington meeting where “the facts (to justify war with Iraq) were being fixed around the policy.”

Earlier on September 18, 2001, the administration set off on the road to war with the joint House-Senate resolution passage of the Authorization for Use of Military Force (AUMF). It authorized “the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.” Then in October, 2002, Congress surrendered its authority to George Bush by passing the Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq to “defend the national security of the United States against the continuing threat of Iraq.” Republicans and Democrats acted together knowing Iraq posed no threat and that its action violated the UN Charter.

Cohn explains the real motive behind attacking, invading and occupying Iraq that by now a bright ten year old understands. Paul Wolfowitz finally admitted using WMDs as an excuse was “for bureaucratic reasons” and the one pretext everyone could agree on. He later had to admit what everyone already knew. The real issue is oil and the fact that Iraq potentially has more of the cheap light sweet easily accessible kind than any other country on earth, including Saudi Arabia. One Wall Street oil analyst calls the country “the most valuable real estate on the planet” and the last of the “low-hanging fruit.”

Solidifying a huge military presence in the region is also key with the US well-entrenched now on 106 known sites, including four super bases (with more planned) as large as small towns and with all their amenities, and a Vatican-sized largest embassy in the world. The Middle East is where two-thirds of proved oil reserves are located, and that fact was never lost on present and prior US planners. Notions of WMDs, removing a dictator, protecting national security, preventive self-defense, establishing democracy and conducting a humanitarian mission were all concocted rubbish. Sadly, it was believed by most people and too many still do, the result of lots of forced-fed dominant media hyperventilating help round the clock and on board with the administration to the bitter end for an illegal venture gone sour.

Along with so many other violations of international law, Cohn noted the Bush administration ignored the International Covenant on Civil and Political Rights (ICCPR) that’s part of US law “under the Supremacy Clause of the Constitution.” Article I (1) says: “All people have the right of self-determination. By virtue of that right they (can) freely

determine their political status and (can) freely pursue their economic, social and cultural development.” Cohn stated the US had no “legal authority to intervene in the affairs of the Iraqi people and choose their leadership for them.”

The Bush administration set about doing it in March, 2003. It followed the secret air war it waged months earlier as a softening up action for the “shock and awe” to come that the New York Times praised as “almost (having) biblical power.” The entire corporate media also ignored the use of illegal weapons like depleted uranium, white phosphorous, and cluster bombs that keep killing and maiming long after the end of battle. In addition, experimental weapons are freely used, some targeting innocent civilians to inflict terror, and all intended to subdue a population hostile to a foreign occupier.

These are “weapons of mass destruction,” stated Cohn. She also cited the Geneva Convention Relative to the Protection of Civilian Persons in time of War (Geneva IV). It calls “willfully causing great suffering or serious injury to body and health” a grave breach of law. The Bush administration deliberately flouts the law and “is committing war crimes with its use of these weapons.” The result since March, 2003 alone has been mass deaths in appallingly high numbers, immeasurable human misery and suffering, and destruction on an enormous scale – all of which is still ongoing daily with innocent civilians afflicted most.

Has it made the US and world safer? Hardly, by any measure and quite the opposite, in fact, according to an April, 2006 National Intelligence Estimate Cohn quoted. It stated the Iraq conflict became “a ‘cause celebre’ for jihadists, breeding deep resentment (against the US) in the Muslim world (and) shaping a new generation of terrorist leaders and operatives.” In committing “the supreme international crime against peace” against two nations, the US has become “the greatest menace of our times,” quoting Nuremberg chief Justice Robert Jackson’s reference to the crime of aggression and by implication any nation committing it.

### **The Torture of Prisoners**

Post-9/11, “the gloves came off” said former CIA Counterterrorism Center chief, Cofer Black, now part of the paramilitary mercenary operation at Blackwater, USA operating freely outside the law as thuggish hired guns in Iraq, New Orleans and coming soon to a neighborhood near you. Cohn noted “Soon after 9/11, senior administration lawyers wrote memoranda to redefine and justify torture” along with most everything else they planned outside domestic and international law. George Bush announced Geneva Conventions didn’t apply to Guantanamo prisoners, and Alberto Gonzales (as White House legal council) sweepingly called them “quaint” and “obsolete” in 2002. What they had in mind is anything goes and that includes torture even though it’s widely known not to elicit useful information. It’s also known as an effective terror weapon and a useful means of social control.

The practice is also abhorrent and violates at least two US laws – the 1996 War Crimes Act and 1994 Torture Statute. That’s along with numerous widely accepted international ones, even though all too frequently many countries, including so-called “civilized” ones, don’t observe them. We all know what happened since from the appalling abuses at Guantanamo, Abu Ghraib and at secret CIA and Pentagon ‘black sites’ around the world. They’re in countries known to use torture and are now in league with US agencies doing it for whatever favors they’re getting in return.

Cohn reviewed some of the laws banning torture including the 1994 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment than bans

mistreatment as well as torture. The US is also “party to the International Covenant on Civil and Political Rights (ICCPR)” that guarantees the right to life and prohibits cruel, inhuman and degrading treatment. She then notes “the most famous anti-torture treaties are the four Geneva Conventions (of 1949). The first two provide for the protection of sick and wounded (forces in battle).” The third one defines who is a prisoner of war “and establishes minimum standards” for POW treatment. The fourth convention applies to civilians and affords them protections during war that require they be treated humanely.

All four conventions have a common thread called Common Article Three. “It requires that persons taking no active part in hostilities (including the detained) be treated humanely at all times.” War crimes are grave breaches under Geneva, and the 1996 War Crimes Act provides up to life imprisonment or the death penalty for persons convicted of committing war crimes within or outside the US. Administration memos from officials like Gonzales as well as John Yoo and Jay Bybee (writing for the DOJ Office of Legal Council) advised Al-Queda and Taliban interrogators were exempt from these laws “under the President’s commander-in-chief powers.” Cohn explained “the Torture Convention permits no such exemption, even during wartime.”

As bad or worse was narrowing and distorting definitions with Yoo and Bybee writing psychological harm must last “months or even years” to be torture. Cohn noted Yoo was the architect of the repressive Patriot Act and domestic surveillance program. Bybee was later appointed to the US Court of Appeals for the Ninth Circuit proving lawlessness is rewarded as long as lawbreakers have friends in high places.

Cohn reviewed how torture was authorized at the highest level with damning evidence from human rights organizations like Human Rights Watch, Amnesty International and the International Committee of the Red Cross (ICRC). They’ve shown how widespread it’s been in Iraq, Guantanamo and at all secret “black sites.” Human Rights Watch also documented that its use is “systematic” and known “at varying levels of command” with explicit testimony proving it.

The human consequences are devastating and widespread with the ICRC saying as many as 90% of persons detained were arrested by mistake. Seton Hall University Law School professor Mark Denebeaux and others analyzed unclassified government data gotten through FOIA requests, basing their report on evidentiary summaries from 2004 military hearings. They learned the majority of Afghan prisoners at Guantanamo weren’t accused of hostile acts and 95% of them were seized by Afghan bounty hunters who “sold” them to US forces for \$5000 per claimed Taliban and \$25,000 for supposed Al-Queda members.

What they endure as a result is horrific with Cohn detailing how they’re treated that’s reminiscent of the Spanish Inquisition or the worst abuses under the Nazis. They amount to a menu of “sadistic, blatant, and wanton criminal” acts against innocent people, including women and children.

One particularly appalling procedure is force-feeding applied to as many as one-third of Guantanamo detainees and an unknown number of prisoners elsewhere. The practice is so violent, it amounts to torture. Tubes, at times the thickness of fingers, are inserted in the nose and thrust all the way down throats and into stomachs causing extreme pain, vomiting up blood, and even greater pain when tubes are removed with blood gushing out in the process.

One victim of this practice described the pain as “unbearable,” and attorney Julia Tarver (representing Guantanamo clients) explained physicians violated their Hippocratic Oath to do no harm by being a part of it. The 53-nation UN Human Rights Commission also confirmed in 2006 that “doctors and other health professionals are participating in force-feeding detainees” by this method that amounts to horrific torture.

Cohn noted an August, 2004 Independent Panel to Review Department of the Defense Detention Operations report called the Schlesinger Report. It concluded “Policies approved for use on al Qaeda and Taliban detainees (who never got Geneva protection but should have)...(are also) applied to detainees who did fall under” Geneva. Another August, 2004 Army report indicated the most extreme abuses “are, without question criminal.”

They’re also done “by proxy” at “black sites” and through the illegal practice of “extraordinary rendition” with victims secretly sent to other countries where they disappear into torture-prison hellholes, out of sight and mind. The Convention against Torture prohibits what’s called “refoulement – expelling, returning, or extraditing a person to another country where there are substantial grounds to believe he would be in danger of being tortured.” Popular sites include Egypt, Syria, Saudi Arabia, Jordan, Pakistan, Uzbekistan, Morocco, Ethiopia and other repressive countries. Cohn quoted a former CIA agent saying: “If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear....you send them to Egypt.”

With the Bush administration earmarking \$63 billion in arms sales or giveaways to client Middle East countries like Israel, Saudi Arabia, Egypt and others, things are guaranteed to get worse and may become explosive and out of control. Increased violence will follow deliveries and with it abusive torture and much more.

On July 19, 2007, after the publication of Cohn’s book, George Bush’s arrogance, contempt for the law and hypocrisy were on display again in one package contained in another sweeping executive order (EO). According to AP, he “breathed new life into the CIA’s terror interrogation program (aka no holds barred torture) that would allow harsh questioning of suspects limited in public only by a vaguely worded ban (signifying none whatever) on cruel and inhuman treatment.”

The order pretends to prohibit some practices, “to quell international criticism,” describes them only vaguely, and doesn’t say what practices are still allowed. The Bush administration insists its interrogation operation is one of its most important tools in the “war on terrorism.” Bottom line – ugly business as usual will continue unchanged and unchecked, except for the doublespeak language signifying only deception from a President exposed as a serial liar.

### **Summary Execution and Willful Killing**

Summary executions, or extra-judicial murders, have long been practiced by past US governments with rogue agencies like CIA masters of the black art and skilled at covering its tracks. The Bush regime cares little about subtleties, so its operatives wantonly and openly engage in this simple way of removing adversaries even though Cohn stated: “Willful killing is a grave breach of the Geneva Conventions (and) punishable as a war crime under the US War Crimes Act.”

In the wake of the Vietnam war and Watergate, Gerald Ford (because of necessity, not

conviction) issued an executive order banning assassinations, but George Bush revoked it secretly in December, 2001. He established a “special-access program” authorizing “clandestine Special Forces to snatch or assassinate anyone considered a ‘high value’ al-Qaeda operative, anywhere in the world.”

George Bush, with roguish intent, turned a blind eye to willful murder, opening the door to mass, indiscriminate slaughter in Iraq, Afghanistan or anywhere in the world he chooses, including targets at home. In occupied countries, it’s allowed the military to operate in so-called “free-fire zones” with orders to shoot anything that moves. It sanctioned the use of terror weapons against resistance and civilian targets with casualties in the latter instance brushed off as “collateral damage.”

All Iraq is a “free-fire zone” even though the Fourth Geneva Convention bans collective punishment against an occupied people. The results have been horrific with cities like Fallujah suffering most. The US November, 2004 attack there killed as many as 6000 civilians, the result of vengeful indiscriminate assaults against defenseless people who just happened to live there. In November, 2005 a smaller massacre took place in Haditha where US Marines slaughtered 24 unarmed civilians “execution-style.”

Authorizations for these and other banned practices come right from the top with troops in the field likely believing they’re licensed to kill by their commander-in-chief, DOD boss and top Pentagon brass. They’re right.

Cohn noted allegations are that “US troops have engaged in (routine) summary executions and willful killing (across the country in cities like) Qaim, Abu Ghraib, Taal Al Jal, Mukaradeeb, Mahmudiya, Hamdaniyah, Samarra, Salahuddin and Ishaqi” along with British forces doing the same thing in Basra and southern Iraq where they’re based. It’s so simple and common a practice that one US soldier described it as easy as “squashing an ant” with no greater price to pay for it. The Bush administration and military command are contemptuous of Iraqis and show it by the huge numbers of innocent people they slaughter daily. In so doing, they commit the worst kinds of war crimes along with torture, abuse and neglect discussed above.

### **The Guantanamo Gulag**

Cohn noted that Amnesty International described this hellhole as “the gulag of our times.” Already discussed is the fact that most people sent there, and still held, were innocent bystanders snatched in Afghanistan by bounty hunters able to cash in on a huge payday at the cost of an innocent human being’s freedom.

Cohn explained that holding detainees at Guantanamo violates US and international law, and the prison camp itself is illegal. She recounted how “the Gitmo story start(ed) in 1903, when the US Army occupied Cuba after its war of independence against Spain.” The Platt Amendment, authorizing US intervention, “was included in the Cuban Constitution as a prerequisite for the withdrawal of US troops from the rest of Cuba.” However, it only allowed for the right to use Guantanamo Bay “as coaling or naval stations, and for no other purpose.” Franklin Roosevelt then signed a new treaty with the island state in 1934 for the same purpose with no provision to use the territory as an offshore prison camp or military base. Franklin Roosevelt never met George Bush.

Cohn explained it’s “no accident that the Bush gang” chose this spot for its gulag, one of

many offshore. All along, the administration “maintained that Guantanamo Bay is not a US territory” so US courts and US law have no jurisdiction there. The result is what Cohn called “indescribable torture,” and she listed some of the barbaric methods used.

She also discussed “due process” the Bush administration denied all Guantanamo detainees with the Supreme Court disagreeing in *Rasul v. Bush*. In the decision, the Court “settled the jurisdictional question” saying the US exercises “complete jurisdiction and control” at the base with all aliens held there “entitled to invoke the federal courts’ authority” under their habeas rights. The Court also rebuked the Bush administration in *Hamdi (a US citizen) v. Rumsfeld* with Justice O’Conner saying “a state of war is not a blank check for the President when it comes to rights of the Nation’s citizens.”

In response, the administration established Combatant Status Review Tribunals (CSRT) “ostensibly to comply” with *Rasul*. They do not as prisoners under them were only entitled to a “personal representative,” not a trained attorney able to defend their due process rights. Detainees were also only allowed to see summaries of unsubstantiated classified evidence against them, requests for witnesses were rarely granted, and their “representatives” ill-served them in tribunal hearings. As a result, they got no justice.

Cohn quoted attorney Joseph Margulies saying: “The CSRT is the first time in US history in which the lawfulness of a person’s detention is based on evidence secured by torture that’s not shared with the prisoner, that he has the burden to rebut and without the assistance of counsel.” Cohn then added: “CSRT violates the International Covenant on Civil and Political Rights which prohibits arbitrary detention and guarantees a detainee the right to be informed of the reason for his detention,” the right to counsel, to examine witnesses, to call witnesses, and “the right to the presumption of innocence.”

Shamefully, the Republican-led Congress backed the administration by passing the Detainee Treatment Act (DTA) in December, 2005. It prevents US courts from hearing habeas petitions filed after the date of DTA. Cohn explained “the Supreme Court (then) stepped in again in *Hamdan v. Rumsfeld* after the Bush administration charged this man (supposedly bin Laden’s driver) with one count of conspiracy “to commit....offenses triable by military commission.” It held that Congress didn’t intend to deny detainees like Hamdan their right to federal court jurisdiction, and that Geneva Conventions do apply.

Cohn then reviewed the outrageous Military Commissions Act (MCA) of 2006, aka “the torture authorization act.” It grants the administration extraordinary unconstitutional powers to detain, interrogate and prosecute alleged terror suspects and anyone claimed to be their supporters. In addition, it allows the President the right to call anyone anywhere in the world an “unlawful enemy combatant” and empowers him to arrest and incarcerate those accused indefinitely in military prisons without corroborating evidence proving guilt.

It also annuls habeas for “all non-US citizens charged”, lets the President decide what constitutes torture, grants US officials retroactive immunity from past crimes, prohibits detainees from invoking Geneva rights, allows “unlawful enemy combatants” and civilians to be tried by military commissions that can impose death sentences with no right of appeal, makes torture-extracted and hearsay evidence permissible, sanctions indefinite and secret detentions and more.

Cohn asked: “So how unconstitutional is the Military Commissions Act? Let us count the ways. MCA violates the Suspensions Clause of the Constitution by denying non-US citizens



(and citizens, too) any meaningful opportunity to challenge the legality of their detention.” It also violates Geneva plus the Fifth and Sixth Amendments. Above all, it violates the spirit and letter of the law and a nation claiming a tradition of respecting it. No longer under George Bush, who flouts the law openly, but it happened often earlier as well whenever past Presidents like Adams, Lincoln, Wilson, Franklin Roosevelt, Nixon, Johnson, Reagan and others ignored or twisted the law for political purposes. None, however, did it as brazenly, openly and systematically as George Bush who as chief executive believes the law is what he says it is. And never before was Congress and the courts as willing to go along with him as now.

Cohn quoted a former military linguist saying “A stench of despair hangs over Guantanamo,” and one detainee told his lawyer he’d rather die than stay there. Many have tried taking their lives and a few succeeded. The National Lawyers Guild, Association of American Jurists, Amnesty International and other human rights organizations all agree that Guantanamo (and all “black site” and other torture-prison hellholes) are a blight on the soul of America, they should be closed, and all detainees held at them released or charged with criminal offenses “in accordance with international legal norms.”

### **Spying on Americans**

Cohn recounted how on December 16, 2005, the New York Times “unleashed a bombshell” its editors knew about a year earlier but suppressed at the request of the administration. It reported “George W. Bush had been secretly spying on Americans without warrants since late 2001. The next day, Bush confirmed that he had authorized the National Security Agency (NSA) ‘to intercept the international communications of people with known links to al Qaeda’ and related terrorist organizations.” The operation was called the “Terrorist Surveillance Program.”

Cohn noted “wiretapping without probable cause or judicial oversight violates both the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment.” Thousands have been affected by it, and Cohn believes the administration used the program to target its critics. It’s a throwback to “the bad old days of FBI Director J. Edgar Hoover” and his domestic spying programs begun in the 1940s or earlier. It was used then, later and now to monitor, threaten and silence Americans (or anyone else) with “unorthodox political views” meaning they disagreed with government policies like McCarthy witch-hunts, racial abuse, the Vietnam war and most everything George Bush does.

The FBI began its COINTELPRO (counterintelligence program) in 1956 to “expose, disrupt, misdirect, discredit and otherwise neutralize” political and activist groups like the American Indian Movement, Black Panthers, Martin Luther King, and Vietnam war protesters. Richard Nixon later used national security wiretaps and illegal break-ins to target his political enemies. He had a long list of them.

Congress responded in 1978 to stop these practices with the Foreign Intelligence Surveillance Act (FISA) “to regulate electronic surveillance (while also) protecting national security.” The law established the Foreign Intelligence Surveillance Court (FISC). Its judges are appointed by the Chief Justice of the Supreme Court. They meet in secret “to consider applications for wiretap orders” when government must convince a judge probable cause exists to believe the target in question is a foreign power or its agent. FISA wiretap limitations don’t apply for foreign nationals abroad. “Its restrictions are triggered only when the surveillance targets a US citizen or permanent resident or when the surveillance is

obtained from a wiretap physically located within the United States. Also, FISA specifically covers warrantless wiretaps during wartime," only for the first 15 days after war is declared, and can't be used against US citizens.

Nothing deters George Bush, his Justice Department and compliant spy agencies. As Cohn put it, he made "and end run around FISA" and now can do it "legally" as of August 5 with more on that below. Earlier in late 2001, he sidelined FISC with a secret executive order establishing his Terrorist Surveillance Program. It authorized NSA to monitor phone and computer communications of Americans in the US at NSA's discretion - in other words, illegal warrantless spying on domestic communications of anyone for any reason, law or no law. Cohn noted Bush (as far as we know) is the first President to defy FISA since its 1978 enactment. He's now set a shameless precedent for others later on.

He also ignores the Fourth Amendment's protection against unreasonable searches and seizure to protect against police state practices. Cohn explained the Supreme Court "consistently declared that a judge must determine whether probable cause exists." George Bush flouts this ruling with impudence and arrogance. It's of no concern to him that the American Bar Association and the National Lawyers Guild declared his warrantless surveillance program violates the law of the land. He believes he's the law and can do what he pleases.

Alberto Gonzales is a war criminal marching in lockstep with his boss and continues to shame the Justice Department he heads. He falsely and criminally maintains Congress' Authorization for the Use of Military Force (AUMF) in September, 2001 provided legal justification for warrantless surveillance outside of FISA. Former Senator Gary Hart called such actions "a repeat of the Nixon years." Back then, he justified it because of civil unrest in protest against the Vietnam war. Today, it's the phony "war on terrorism" and raging ones in Iraq and Afghanistan. Cohn emphasized "Bush has already gone far beyond what the Constitution authorizes, and FISA makes it a crime." At least that was so until August 5.

The Terrorist Surveillance Program isn't the only secret spying the Bush administration authorized, but now it's got a Congress-sanctioned warrantless open field to do it without court oversight at the discretion of the Attorney General (AG) and/or Director of National Intelligence (DNI). Prior to its August recess, Democrats and Republicans cravenly caved to the politics of fear and hastily passed the White House crafted Protect America Act 2007 amending FISA in doublespeak language Orwell would love.

It will supposedly close so-called "communication gaps" but will allow virtual unrestricted mass data-mining monitoring and intercept of domestic and foreign internet, cell phones and other new technology as well as transit international phone call traffic and emails. The Act claims to restrict surveillance to foreign nationals "reasonably believed to be outside the United States" and will sunset in six months unless renewed. In fact, the new law targets everyone including US citizens inside the country if the AG or DNI claim they pose a potential terrorist or national security threat, and no evidence is needed to prove it. Further, in an election year, renewal is absolutely guaranteed, possibly with even harsher provisions added.

In point of fact, this law allows virtual unrestricted warrantless spying targeting anyone for any claimed national security reason. It thus renders any notion of illegal searches and privacy rights null and void. This hellish Act effectively legalizes illegality by Fourth Amendment standards that Patriot Act provisions pretty much swept away earlier. This is

how things work in a police state where laws render privacy issues (and all other freedoms) null and void and everyone is under constant surveillance and stripped of their rights.

Even without the new law, however, the administration had in place a menu of past and current programs that combined amount to “big brother” writ large and now is getting larger. In May, 2006, it was learned Verizon Communications, AT & T, and BellSouth provided NSA with telephone and internet communications flowing into and out of the country having nothing to do with national security. Cohn quoted the New York Times reporting a senior government official saying the program confirmed NSA was able to access most all phone calls in the country. It means everyone is being listened to illegally so the spy agency knows everything about us from the health of our family to what toppings we like on our takeout pizza.

Data mining violates the 1986 Stored Communications Act, but there’s lots more. The “Bush gang” secretly collects our most personal information from an operation called the Terrorist Finance Tracking System. With no court-approved authorization, they’ve been accessing records from a huge international database to examine the banking, credit card and other financial transactions of many thousands of Americans in the country. It amounts to a secret end run around bank privacy laws requiring the government to show cause for why these records are relevant to an investigation.

Still more civil liberties have been lost the result of Patriot act justice. It targets anti-war protesters and political activists hostile to Bush administration policies. The new law makes their actions crimes of domestic terrorism when they’re only, in fact, expressions of constitutionally guaranteed freedoms, including our most sacred First amendment ones.

Post-9/11, other unconstitutional speech-related monitoring began as well, including the short-lived Terrorism Information and Prevention System (Operation TIPS). The idea was to use civilian informers like postal employees to report “unusual” neighborhood activities, police-state style. The scheme flopped when the postal service refused to be spies.

Then, there was the Pentagon’s Total Information Awareness (TIA) renamed Terrorism Information Awareness to monitor anything about anyone under the spurious cover of it relating to “terrorism.” TIA came under considerable congressional flack but some or all of its activities continue under new names relating to other Pentagon projects and initiatives so illegal military spying continues unabated.

One such program is called the Threat and Local Observation Notice (TALON) to collect domestic intelligence by amassing a huge database, again spuriously related to “terrorism.” It focuses on war protesters targeted by police state monitoring of their constitutional right to freely oppose the nation’s illegal wars of aggression the Bush administration says are justified to protect against threats to national security. The Pentagon had second thoughts about it after drawing flack for illegally targeting peace activists. Its spokesperson called the program’s results disappointing and doesn’t warrant being continued as currently constituted in light of its image in Congress and the media as of last spring.

What’s likely is that TALON’s activities are now rebranded and continuing like all the other illegal intrusive spying known about or still secret. They include those run by the Pentagon now authorized to operate freely on US soil in the aftermath of last year’s Defense Authorization Act revising the 1807 Insurrection Act and 1887 Posse Comitatus. The change gives the President the right to deploy the military on US soil in the name of national

security or “war on terrorism.” It means, for the first time ever, federal troops can legally operate inside the country any time George Bush gives the order.

It gets even worse. On May 30, 2002, John Ashcroft and FBI Director Robert Mueller revealed sweeping new surveillance powers for this agency with a wide latitude to spy more effectively on law-abiding US citizens. The new “diktat” lets the FBI conduct investigations up to a year without having to show suspicion of criminal activity. They can target anyone they choose, peering anywhere they wish into our personal lives, that’s none of their business, to document trips we take, books and publications we read, internet sites visited, political and charitable contributions made, meetings attended and more. Anyone seen criticizing the government is fair game, especially if it relates to the Iraq and Afghan wars.

Another new data mining program is being used by police and federal authorities in some states. It’s called MATRIX standing for the Multistate Anti-Terrorism Exchange Program. An ACLU 2004 White Paper explained “it involves not the attempt to learn more facts about known suspects, but (is a form of) mass scrutiny of the lives and activities of innocent people.... to see whether each of them shows any signs of being a terrorist or other (type) criminal.”

MATRIX creates a “terrorism quotient” or High Terrorist Factor (HTF) measuring the likelihood individuals in the database are terrorists. The ACLU believes the program is “an effort to recreate the discredited Total Information Awareness (TIA) data mining program at the state level.” It shows the federal authorities are deep into efforts at all levels to spy on US citizens. MATRIX is another unprecedented effort to do it within or outside the law and constitutes a massive invasion of privacy and violation of our rights in a free society, along with all other post-9/11 unconstitutional spying invasions by any of the nation’s 16 spy agencies.

The Constitution doesn’t specifically mention a right to privacy, but Supreme Court decisions affirmed it over the years as a fundamental human right. As such, it’s protected under the Ninth Amendment as well as the Third prohibiting the quartering of troops in homes, the Fourth affording protection from unreasonable searches and seizures, and the Fifth protecting against self-incrimination. MATRIX and other intrusions enhance Patriot Act powers allowing them to persist outside of congressional oversight and judicial review. It’s another part of the overall scheme to subvert the rule of law under George Bush police state justice.

It advanced another step on July 17, after “Cowboy Republic” was published, when George Bush issued another of his many presidential “one-man” decrees. It was titled “Executive Order: Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq.” This unconstitutional action effectively criminalizes dissent and shifts the nation another perilous step closer to tyranny. It targets the anti-war movement in an effort to further weaken and defuse it. It also adds another unconstitutional layer onto the repressive Patriot Act author, analyst and activist Jennifer Van Bergen says has been built on to “establish a permanent framework for repression of free speech and dissent.” All “activists (now) = terrorists” as the administration cracks down hard to control, suppress and remove all opposition.

In his important and revealing 1980 book “Cracks in the Constitution,” Ferdinand Lundberg stated the US Constitution “nowhere implicitly or explicitly gives the President (the) power (to make) new law” by issuing “one-man”, often far-reaching” executive order decrees. But, Lundberg explained “the President in the American constitutional system is very much a de

facto king....(he is) by far the most powerful formally constituted political officer on earth." He has "vast power (and) stands in a position midway between a collective executive (like in the UK) and an absolute dictator."

George Bush proves Lundberg was right and then some. He's taken full advantage, within and outside the law, of what Lundberg called the "essence of presidential power....in a single (vaguely worded) sentence." Specifically, Article II, Section 1 reads: "The executive power shall be vested in a President of the United States of America." That simple statement, easily passed over and misunderstood, means the near-limitless power of this office is "concentrated in the hands of one man" free to abuse it if he chooses. Article II, Section 3 then almost nonchalantly adds: "The President shall take care that the laws be faithfully executed" while not saying Presidents are virtually empowered to make laws as well as execute them although nothing in the Constitution permits this practice.

Presidents also have no authority to stifle dissent, but that hasn't deterred George Bush. Post-9/11, former press secretary Ari Fleischer laid out the new "war on terrorism" rules of engagement saying Americans "need to watch what they say, watch what they do." It includes showing up for anti-war rallies and protesting military recruitment. They're now considered "political terrorist activit(ies)." We're being watched if we go and subject to future recrimination at the whim of a rogue President and criminal administration meting out police state justice.

### **Refusing to Execute the Law**

Cohn quoted James Madison from the Federalist Papers writing: "The preservation of liberty requires that the three great departments of power should be separate and distinct. The accumulation of all powers, legislative, executive and judiciary, in the same hands... may justly be pronounced the very definition of tyranny." George Bush proves the truth of Madison's words. Since taking office, he systematically sought to usurp all governing powers in his hands under his unconstitutional notion of a "unitary executive" with the right to claim the law is what he says it is. It isn't, never was, and never will be under a system of constitutional law George Bush doesn't recognize in his continued efforts to flout it recklessly.

Cohn stated: George Bush "has....asserted unparalleled executive power by putting his stamp of supremacy on more than one thousand provisions of law (more than all past Presidents combined) enacted by Congress." He "quietly attached 147 'signing statements' to 1132 (law provisions) passed by Congress" even though nothing in the Constitution permits this practice, and the Supreme Court banned line-item vetoes. He abused his power to rewrite laws to conform to administration policies and wishes, and Congress and the courts have done nothing to stop him.

Cohn gave some examples of this practice. "He issued his most notorious one" in December, 2005 after signing the Detainee Treatment Act that prohibits subjecting prisoners to cruel, inhuman and degrading treatment and punishment. The statement attached declared the administration would interpret the law "in a manner consistent with the constitutional authority of the President (as a "unitary executive") and as Commander in Chief and consistent with the constitutional limitations on the judicial power." Cohn's translation: George Bush will do as he pleases, law or no law. He kept his word in spite of the Supreme Court's ruling in Hamdan v. Rumsfeld affirming habeas petitions of Guantanamo detainees. "His gang continues" torturing prisoners in violation of the Detainee

Treatment Act and High Court ruling.

Another egregious example followed Patriot Act II (the renewal of the Patriot Act in even harsher form in spite of several new provisions regarding congressional oversight). George Bush's signing statement reserved for him the right to refuse to give Congress reports it mandated just as he did regarding previous laws. Contempt for the law, arrogance and extreme secrecy have been hallmarks of his administration. This is one of the many ways he shows it.

Another one came after Congress enacted a 2003 law requiring the Inspector General in Iraq inform Congress whenever officials won't cooperate with its investigations. Bush's signing statement said the IG had no obligation to keep Congress informed. Other signing statements flouted laws that:

- Ban US combat troops being used against Colombian rebels,
- Forbid uses of military intelligence that violate the Fourth Amendment,
- Require retraining prison guards under Geneva Convention standards of humane treatment,
- Mandate Iraq civil contractors undergo background checks,
- Prohibit firing or punishing DOE and NRC whistle-blowers,
- Require more minorities be recruited for Foreign Service and Civil Service jobs, and much more.

Cohn noted that the Task Force on Presidential Signing Statements and the Separation of Powers Doctrine of the American Bar Association (ABA) condemned the administration's use of signing statements as "contrary to the rule of law and our constitutional system of separation of powers." ABA president Michael Greco added: "We will be close to a constitutional crisis if this issue....is left unchecked." Wharton School of the University of Pennsylvania professor emeritus Edward Herman warned about the same thing saying: "The brazenness of Bush's use of (this practice) is remarkable. But even more remarkable (is that) it fails to elicit sustained criticism and outrage (anywhere, and as a result) We are in deep trouble (and getting increasingly deeper)."

The law of the land means nothing to George Bush and his band of rogues. He keeps finding new ways to subvert it such as unilaterally abrogating treaties and "courting nuclear disaster." Cohn noted he "thumbed his nose at our obligations under the 1970 Nuclear Non-Proliferation Treaty (NPT)" that's the "supreme law of the land under the Supremacy Clause of the Constitution." His abuses of power also include:

- claiming the right to develop new type nuclear weapons,
- refusing to eliminate present ones,
- reserving the right to test new nuclear weapons that will release radiation into the atmosphere,
- abrogating the Anti-Ballistic Missile Treaty,

- rescinding the subverting the Biological and Toxic Weapons Convention,
- refusing to consider a Fissile Material Cutoff Treaty that would prevent more nuclear bombs being added to present stockpiles,
- provokingly challenging Russia and China by planning to situate misnamed missile defense systems (intended for offense, not defense) near their borders to give the US a nuclear first-strike advantage,
- spending more on the military than all other nations combined with more large increases planned,
- being the only nation opposed to the 2001 UN Agreement to Curb the International Flow of Small Arms,
- Refusing to join 155 other countries as of February, 2007 in signing the 1997 Land Mine Treaty,
- supplying rogue states with sophisticated weapons likely to be used aggressively (and \$63 billion more of them earmarked for selected Middle East ones), and
- claiming the unilateral right to wage preventive wars of aggression under the Orwellian doctrine of “anticipatory self-defense” using first-strike nuclear weapons.

These are the reckless acts of a rogue President claiming to be above the law. Cohn has other ideas stating “The Constitution is unequivocal. It is George W. Bush’s job to enforce, not to rewrite, the laws Congress has passed.” Thomas Jefferson was also unequivocal in what he wrote in the Declaration of Independence:

“That to secure these (unalienable) rights (of Life, Liberty and the Pursuit of Happiness) Governments are instituted among Men, deriving their powers from the consent of the governed, - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government (for) their Safety and Happiness.”

## **Conclusion**

In response to growing public opposition to the Iraq war, George Bush committed 50,000 more troops with no set timetable for their drawdown or withdrawal. Even worse, he stepped up rhetoric against Iran, pointing to a possible enlargement of the Middle East conflict that will be catastrophic for the region and US if it happens.

The Iraq war alone is an illegal act of aggression and supreme international crime against peace. Along with growing numbers in the public, those serving in the military have a duty to disobey orders that violate international and constitutional law. In addition, the Democrat-led Congress is obligated to “convene a nonpartisan independent inquiry” to investigate prewar manipulated and distorted intelligence. Cohn believes high government officials should be held to account up to and especially George Bush and Dick Cheney.

She noted that DOJ regulations “call for the appointment of an outside special counsel when (1) a criminal investigation of a person or matter is warranted, (2) the investigation or prosecution of that person or matter (within DOJ) would present a conflict of interest for the

Department,” and (3) it’s in the public interest to appoint an outside Special Counsel because a criminal investigation of the administration is essential.

From what’s already known, the evidence pointing to criminal wrongdoing (recounted above) is overwhelming and demands action even though leading Democrats are conspiratorially involved and should be held to account as well. Those found guilty (in both parties) should be prosecuted. If US courts opt out, the International Criminal Court (ICC) in the Hague should step in and act as it’s mandated to do. Although the US is not a signatory, it should move ahead anyway in the name of humanity and grave threat it faces if it won’t. That’s the current condition and danger. The world can’t wait for niceties or hoped for change that won’t happen unless forced.

The ICC was established in 2002 (by the 1998 Rome Statute) as a permanent world tribunal to prosecute individuals for genocide, war crimes and crimes against humanity. They were defined by the 1945 Nuremberg Charter drafted by the US and its main WW II victorious allies to try Nazi war criminals. The court was mandated to step in and adjudicate in the kinds of high US officials’ law violations now in question, demanding redress. With world approval, it should act in defiance of the American Servicemembers Protection Act of 2002 – aka the Hague Invasion Act authorizing the President to send in the Marines to rescue any American the ICC detains. He’ll be hard-pressed to do it if he and Dick Cheney are shackled inside ICC cells where they belong, and not a moment too soon.

Cohn mentioned other prosecutorial options as well. Under the principle of “universal jurisdiction,” every country has the authority to charge and prosecute anyone committing grievous crimes of war or against humanity. None so far have acted, it’s unlikely a single one will be so bold, and that’s why the ICC was established to act for them.

The shameless Democrat-led 110th Congress has defied the electorate and ignored its call for action as well. The public demands what it has constitutional authority to do – cut off all funding for two illegal wars of aggression and end them. In defiance, Congress continues funding open-ended wars with only disingenuous lip service paid to troop drawdowns and withdrawals. Further, the Bush administration continues building a case for war against Iran, with no just cause or legal standing for it, and Democrats are rolling over in support shamelessly and dangerously.

Cohn ends her important book with an impassioned plea to “stop the Cowboy Republicans” while there’s still time. She points out what’s needed and clear. In the 1970s, Congress only ended the Vietnam war after “tens of thousands of people marched in the streets” against it, and a near-insurrection was seen possible inside the conscript military. The anti-war movement today is large but tepid by comparison, and the military is all-volunteer making the job harder.

Nonetheless, the need is urgent as the fate of a shaky republic and all humanity hang in the balance. “Bush’s hubris affects us all,” Cohn noted ominously. A way must be found “to demand truth, justice, and accountability from the Cowboy Republicans....insisting the Bush gang be held to account for its high crimes and misdemeanors.” People must demand an end to war and occupation and act to prevent another one. What better reason is there than “Our lives....those of our children (and all humanity) depend on it.”

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