

The War Crimes Act of 1996: Bush, Cheney and the Boys could be Indicted under US Law

By [George Washington's Blog](#)

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The War Crimes Act of 1996, a federal statute set forth at [18 U.S.C. § 2441](#), makes it a federal crime for any U.S. national, whether military or civilian, to violate the Geneva Convention by engaging in murder, torture, or inhuman treatment.

The statute applies not only to those who carry out the acts, but also to those who [ORDER IT, know about it, or fail to take steps to stop it](#). The statute applies to [everyone, no matter how high and mighty](#).

18 U.S.C. § 2441 has no statute of limitations, which means that a war crimes complaint can be filed at any time.

The penalty may be life imprisonment or — if a single prisoner dies due to torture — death. Given that there are numerous, documented cases of prisoners being tortured to death by U.S. soldiers in both Iraq and Afghanistan (see for example [this report](#)), that means that the death penalty would be appropriate for anyone found guilty of carrying out, ordering, or sanctioning such conduct.

The general in charge of the notorious Abu Ghraib prison in Iraq stated this week that [Secretary of Defense Donald Rumsfeld and other top administration officials ORDERED that inhuman treatment and torture be conducted as part of a deliberate strategy](#). This confirms what the Pulitzer prize-winning reporter who uncovered the Iraq prison torture scandal and the Mai Lai massacre in Vietnam [previously wrote](#).

Indeed, an FBI email declassified in December 2004 states that [Bush signed an Executive Order authorizing torture \(here is the list of documents obtained through a freedom of information act request, and take a close look, for example, at this one, which mentions the "executive order"\)](#).

An expert on Constitutional law said that [only Bush could have authorized the torture which has occurred](#).

It has also recently come out that, even after the torture at Abu Ghraib hit the news, torture still continues [at that prison](#) and, indeed, the U.S. is still [torturing people worldwide](#). Even to the casual observer, it is obvious that [the administration has no plans to stop, but has instead been working tirelessly to make it easier to carry out torture in the future](#).

Let's recap. We now know that torture in Iraq was ordered by top officials, and that torture is continuing, notwithstanding the administration's claims that it was only "a couple of bad

apples” that were responsible for Abu Ghraib. Making a potential prosecutor’s job easier, U.S. Attorney General Alberto Gonzales wrote a memo in January 2002 to President Bush saying that America should opt out of the Geneva Convention because top officials have to worry about prosecutions under 18 U.S.C. § 2441. By attempting to sidestep the Geneva Convention, Gonzales created a document trail that can be used to prove that top administration officials knowingly created a policy of torturing prisoners, and that such a policy could reasonably have been expected to result in the death of some prisoners.

The U.S. did opt out of the Geneva Convention for the Afghanistan war, but we never opted out of the Geneva Convention for Iraq. Indeed, President Bush has repeatedly stated that Geneva applies in Iraq (although he has since claimed that foreign fighters captured in Iraq are not covered). Thus, there would be very little room for fancy footwork by defense lawyers in a prosecution against top officials concerning torture in Iraq.

And to the extent that claims that the U.S. has sent prisoners to other countries [for the express purpose of being tortured](#) are true, violation of the war crimes act by the highest officials of our country would be even clearer. For who else but Bush, Cheney, Rumsfeld and other top officials would have the ability to authorize such flights? How could such a program be undertaken without their knowledge? And how could such a program be anything but the intentional “ordering” of torture, or at least “knowing about it” and “failing to take steps to stop it”?

The Abu Ghraib general’s recent statements about torture coming from the top and the existence of the “ghost flights” are important pieces of evidence for convicting Bush, Cheney, Rumsfeld, Gonzales, and a host of other top administration officials for violation of the War Crimes Act of 1996. Upon conviction, they could be sentenced to life in prison, or even death.

Additionally, violation of the war crimes act almost certainly constitutes a “high crime or misdemeanor” which would allow impeachment of such officials.

Postscript: Since this essay was written, new information has come out about torture and other potential violations of the Geneva Convention. The former director of the CIA accused [Cheney of overseeing torture policies](#). Colin Powell’s former chief of staff stated that [Dick Cheney is guilty of war crimes](#). Some of the torturers themselves [have come forward to confess their actions](#) (see also [this article](#); see also [this article](#), [this one](#), [this one](#), and finally [this one](#)). Of course, the U.S. has now admitted waterboarding, and admitted that it is illegal.

It was also revealed that [the U.S. is holding prisoners at gulags in Europe](#).

In addition, [before attacking Falluja, the marines allegedly stopped men “of fighting age” from leaving. The marines also levelled thousands of buildings, illegally denied access to the Iraqi Red Crescent and, according to the UN’s special rapporteur, used “hunger and deprivation of water as a weapon of war against the civilian population”](#).

And [the U.S. military’s use of white phosphorus](#) and [also napalm](#) as weapons in Iraq has been exposed (see also [this essay](#)).

These facts further strengthen the case that high level officials committed war crimes. Indeed, even the lawyers and other people who aided in the effort [may be war criminals](#);

see also [this article](#) , [this one](#), and [this press release](#).

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