

Key leaders of the new Democratic majority have pledged to open investigations. Incoming Senate Judiciary Committee chair Patrick Leahy recently wrote in a letter to Attorney General Alberto Gonzales, "The photographs and reports of prisoner abuse in Iraq, Guantánamo Bay and elsewhere that have emerged during the past two years depict an interrogation and detention system operating contrary to U.S. law and the Geneva Conventions." The American people deserve "detailed and accurate information about the role of the Bush Administration in developing the interrogation policies and practices that have engendered such deep criticism and concern at home and around the world." He has just announced that he will establish a new Human Rights and the Law Subcommittee to be headed by Dick Durbin--memorable for his vigorous hearing room confrontation with Alberto Gonzales over torture at Abu Ghraib.

Incoming Senate majority leader Harry Reid told the New York Times that "the first order of business" when Democrats take over in January will be to reinvigorate Congressional scrutiny of the executive branch, with a focus on Iraq. He told Bob Geiger, "We're going to find out how intelligence was manipulated, taking us to war. We have to look back to be able to look forward."

Senator Jay Rockefeller has promised to complete the Senate Intelligence Committee's stalled investigation of the political misuse of intelligence in the lead-up to the Iraq War. Senator Carl Levin says he plans to investigate "extraordinary rendition."

On the House side, Representative Dennis Kucinich, likely chair of the Government Reform Subcommittee on National Security, Emerging Threats, and International Relations, has called for hearings on Iraq. The election, he told Truthdig.com's Joshua Scheer, does not end "the questions about those who led us into war based on lies." When the people elected Democrats "they also voted for accountability." Kucinich, now a candidate for President, is not afraid to raise such painful issues as US responsibility for civilian deaths in Iraq; he recently held a briefing with the authors of the Lancet study that estimated 650,000 deaths under the occupation.

Beyond investigations, there will undoubtedly be efforts to strengthen the barriers to war crimes through legislation. Senator Chris Dodd of Connecticut, a presidential candidate and the son of a Nuremberg prosecutor, has introduced legislation restoring portions of the War Crimes Act that were gutted by the Military Commissions Act.

Civil Society

Human rights groups, from the Center for Constitutional Rights to the ACLU, have led the way in challenging the legality of Bush Administration actions. Hundreds of lawyers from major corporate firms have joined the defense of the Guantánamo captives. Religious groups have formed a National Religious Campaign Against Torture; an affiliated group in Connecticut called Reclaiming the Prophetic Voice successfully projected the issue of prisoner abuse at Guantánamo and elsewhere into the Congressional elections--even putting up billboards on major highways identifying those in the state's Congressional delegation who had voted to "allow torture" through the Military Commissions Act.

Some on the left have long called for prosecution of top US officials for war crimes, and charges that "war crimes are high crimes" have been part of the campaign to impeach Bush and Cheney. Similar calls are also now heard from the right. The libertarian Cato Institute report, "Power Surge: The Constitutional Record of George W. Bush," warns that we now have "a president who can launch wars at will, and who cannot be restrained from ordering the commission of war crimes, should he choose to do so."

Each of these initiatives is occurring in a different arena, with its own protagonists, strategies, targets and timetables. But striking synergies are emerging:

- The suits against Rumsfeld and other policymakers would not have been possible without the ACLU Freedom of Information Act suits that revealed the role of top officials in setting the rules for Guantánamo and Abu Ghraib.
- The 2005 leak in Britain of the Downing Street Memo promoted American disillusionment with the war and the public support for investigations

of its origins.

- Congressional interest in restoring the War Crimes Act has been substantially strengthened by the Supreme Court's forthright stand in the Hamdan v. Rumsfeld case.
- The Senate Judiciary Committee's expected investigation of "rendition" will rely on the work of European human rights "plane spotters" who uncovered the CIA's phantom jets secretly landing and taking off at their countries' airports.

As the new year unfolds, there are no guarantees that the Bush Administration will be held accountable for its abuse of executive power or for the war crimes it has committed. Its war in Iraq will almost certainly continue, despite the clear disapproval of the American people. But the forces of accountability are assembling. Whether and when they will pierce the Bush Administration's shield depends primarily on how vigorously the public demands it.

ACTION:

1. Live in hope. Join your efforts to one of the efforts mentioned above. For more info on how to do so, contact 8th Day Center.
2. For further info to issues mentioned in this article see the links at <http://www.zmag.org/content/showarticle.cfm?ItemID=11688>

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- TAKE HOPE IN 2007 -

2006: A Year of Living Dangerously

Jeremy Brecher & Brendan Smith
The Nation Magazine, 12/19/06

The year 2006 will be remembered as one in which the American people and the world rose up to challenge the criminal actions and deceit of the Bush Administration.

Despite massive evidence that top Administration officials have been complicit in systematic violations of national and international law through aggressive war, illegal occupation, rendition and detention of terror suspects without trial, secret prisons and torture, so far they have not been held accountable.

Now a diverse array of forces is contesting Bush Administration impunity for war crimes and trying to reassert the rule of law over the executive branch. Each is operating in different arenas and pursuing different kinds of accountability – from public shaming and political disempowerment to international isolation and even criminal prosecution. While all of these initiatives have been reported in the press, their convergence is one of the great underreported stories of 2006. For example:

- A court in Italy will decide in January whether to try twenty-six suspected American intelligence agents for abducting an Egyptian cleric off the streets of Milan.
- The US Supreme Court issued key decisions that declared Administration actions in Guantánamo in violation of national and international law.
- A US Army lieutenant refused to go to Iraq on the grounds that the war is illegal under US and international law and made plans to use his court-martial to "put the war on trial."
- An international team of lawyers brought a criminal complaint in a German court alleging that former Defense Secretary Donald Rumsfeld and eleven other top US government officials are guilty of war crimes.
- Senator Patrick Leahy, incoming Senate Judiciary Committee chairman, said he will

issue subpoenas if necessary to secure Bush Administration documents that may have authorized torture.

Here are some of the arenas in which accountability for Bush Administration war crimes is being pursued:

Foreign Governments

The exposure of foreign governments' role in Bush Administration "war on terror" abuses has led to condemnation and legal action both against US intelligence operations and the governments that may have participated in their clandestine activities.

The German Parliament is investigating the involvement of German intelligence services in the rendition of German citizen Khaled el-Masri, who, according to an ACLU suit in Virginia, was illegally abducted by the CIA in Macedonia in 2003, flown to Afghanistan, abused at a CIA-run secret facility and dumped in Albania five months later. Canada has issued a formal protest to the United States after an official Canadian inquiry established that a Canadian citizen, Maher Arar, was seized by US authorities and deported to his native Syria, where he was tortured; the case led to the resignation of the head of Canada's national police, Royal Canadian Mounted Police Commissioner Giuliano Zaccardelli. In November, the European Parliament issued an investigative report revealing that eleven European governments knew about secret US jails and that there were 1,245 suspicious CIA flights through Europe.

The rendition issue is beginning to have a political impact. Five days before the general election in the Netherlands in November, the campaign was rocked by news reports that members of the Dutch force in Iraq had tortured dozens of Iraqi prisoners in a US interrogation facility; the election brought large gains to the parties of the left that had raised the issue.

Also in November, a complaint initiated by German human rights lawyers in cooperation with the US Center for Constitutional Rights under the doctrine of "universal jurisdiction" asked the German federal prosecutor to indict Donald Rumsfeld, Alberto Gonzales and other key Bush Administration figures for war

crimes. The complaint utilized the recent passage of the US Military Commissions Act as evidence that the Bush Administration intended to immunize itself from any possibility of prosecution, even for the most heinous crimes.

Devastating testimony to an official British inquiry from Carne Ross, Britain's key negotiator at the UN, recently released after efforts by the Foreign Office to suppress it, reveal that the government knew that there were no weapons of mass destruction in Iraq and that the invasion of Iraq was illegal. Prime Minister Tony Blair has yielded to pressure to hold a parliamentary debate on Britain's role in Iraq by the end of January.

International Organizations

While US influence has made it impossible for the UN to act effectively against US war crimes, the international body has been an important forum for documenting and publicizing them. For example, after an eighteen-month study, five independent experts appointed by the UN Commission on Human Rights concluded early in 2006 that practices currently conducted at the US prison in Guantánamo amount to torture. The Commission's demand to close Guantánamo was quickly seconded by UN Secretary General Kofi Annan. And the EU Parliament voted 80 to 1 to ask the United States to close Guantánamo and give every prisoner "a fair and public hearing by a competent, independent, impartial tribunal" without delay.

US Military

Perhaps the most unexpected charges of war crimes have come from within the military and other parts of the national security bureaucracy. Former Secretary of State Colin Powell's top aide, Colonel Larry Wilkerson, told CNN late last year that the United States has practiced torture and that "there's no question in my mind where the philosophical guidance and the flexibility in order to do so originated in the Vice President of the United States' office." Asked by the BBC whether Cheney was guilty of a war crime, Wilkerson said the Vice President's actions were certainly a domestic crime and, he would suspect, "an

international crime as well."

For the first time since Vietnam, active-duty military personnel have organized to oppose a war that they are fighting via the Appeal for Redress campaign.

Some lower-level military personnel have begun refusing to serve in Iraq on grounds that the war there violates national and international law. Lieut. Ehren Watada, for example, defends his refusal to go to Iraq on the grounds that the Administration's invasion and occupation was "manifestly illegal." At the press conference announcing his decision, he said it "violates our democratic system of checks and balances. It usurps international treaties and conventions that by virtue of the Constitution become American law." Watada plans to use his impending court-martial, scheduled to begin February 5, to put the war on trial. He argues the Administration's invasion and occupation of Iraq was "manifestly illegal" because it "violates our democratic system of checks and balances. It usurps international treaties and conventions that by virtue of the Constitution become American law."

In a telephone news conference in November, Watada made explicit the tie between his refusal to go to Iraq and the need for official accountability: "The reason I spoke out, I saw that what was being done in terms of this war was so illegal and so immoral, and not being checked. It was a danger to our troops and a danger to our country. So, I think what needs to be done is some kind of accountability in Washington and also investigations into how this war was started in the first place."

US Legal Establishment

In this summer's Hamdan v. Rumsfeld decision--which Duke University law professor Walter Dellinger calls "the most important decision on presidential power ever"--the Supreme Court rebuked not only the Bush Administration's Guantánamo tribunals but the entire view of executive power the Administration used to justify them. The Court found the President's conduct illegal because it violated international treaties, specifically Common Article 3 of the Geneva Conventions. This has ramifications far beyond Guantánamo.

It means that the government must obey the provisions of the Geneva Conventions -- such as the ban on cruel and degrading treatment and the obligation of an occupying power to protect civilians.

The Bush Administration has vigorously fought the Hamdan decision and its consequences. It tried to virtually nullify it with provisions slipped into the Military Commissions Act of 2006. It is now using those provisions to resist in court even the most minimal protections for its captives, such as the right to talk with their lawyers. Interpretation of the Hamdan decision and the Military Commissions Act is now being fought out in the courts; for example, a federal judge just ruled in support of the MCA's ban on habeas corpus appeals for Guantánamo captives but declared its effort to apply that ban to legal immigrants is unconstitutional.

The Bush Administration is facing a powerful counterattack on behalf of the rule of law. For example, seven retired federal judges from both parties joined Guantánamo detainees in urging an appeals court to declare key parts of the Military Commissions Act unconstitutional. Similarly, a bipartisan group of former Justice Department officials, including former Attorney General Janet Reno, recently filed court papers rejecting the government's claim that it can hold putative enemy combatants arrested in the United States indefinitely. On December 8, Chief US District Judge Thomas Hogan opened a hearing on whether nine former prisoners at US military prisons in Iraq and Afghanistan, represented by lawyers from the ACLU and Human Rights First, can hold Donald Rumsfeld and top military commanders personally responsible for torture they endured.

US Congress

For the last six years, the Republican-controlled Congress has been the great enabler of Bush Administration's efforts to subvert the Constitution. There will likely be investigations of Bush Administration malfeasance by the incoming Democratic Congress. Just how far they are likely to go is unclear--and highly contested.