



Do the Secret Bush Memos Amount to Treason? Top Constitutional Scholar Says Yes

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In early March, more shocking details emerged about George W. Bush legal counsel John Yoo's memos outlining the destruction of the republic.

The memos lay the legal groundwork for the president to send the military to wage war against U.S. citizens; take them from their homes to Navy brigs without trial and keep them forever; close down the First Amendment; and invade whatever country he chooses without regard to any treaty or objection by Congress.

It was as if Milton's Satan had a law degree and was establishing within the borders of the United States the architecture of hell.

I thought this was -- and is -- certainly one of the biggest stories of our lifetime, making the petty burglary of Watergate -- which scandalized the nation -- seem like playground antics. It is newsworthy too with the groundswell of support for prosecutions of Bush/Cheney crimes and recent actions such as Canadian attorneys mobilizing to arrest Bush if he visits their country.

The memos are a confession. The memos could not be clearer: This was the legal groundwork of an attempted coup. I expected massive front page headlines from the revelation that these memos existed. Almost nothing. I was shocked.

As a non-lawyer, was I completely off base in my reading of what this meant, I wondered? Was I hallucinating?

Astonished, I sought a reality check -- and a formal legal read -- from one of the nation's top constitutional scholars (and most steadfast patriots), Michael Ratner of the Center for Constitutional Rights, which has been at the forefront of defending the detainees and our own liberties.

Here is our conversation:

Naomi Wolf: Michael, can you explain to a layperson what the Yoo memos actually mean?

Michael Ratner: What they mean is that your book looks moderate in respect to those issues now. This -- what is in the memos -- is law by fiat.

I call it "Fuhrer's law." What those memos lay out means the end of the system of checks and balances in this country. It means the end of the system in which the courts, legislature and executive each had a function and they could check each other.

What the memos set out is a system in which the president's word is law, and Yoo is very clear about that: the president's word is not only law according to these memos, but *no* law or constitutional right or treaty can restrict the president's authority.

What Yoo says is that the president's authority as commander in chief in the so-called war on terror is not bound by *any* law passed by Congress, any treaty, or the protections of free speech, due process and the right to be free from unreasonable searches and seizures. The First, Fourth and Fifth amendments -- gone.

What this actually means is that the president can order the military to operate in the U.S. and to operate without constitutional restrictions. They -- the military -- can pick you or me up in the U.S. for any reason and without any legal process. They would not have any restrictions on entering your house to search it, or to seize you. They can put you into a brig without any due process or going to court. (That's the Fourth and Fifth amendments.)

The military can disregard the Posse Comitatus law, which restricts the military from acting as police in the the United States. And the president can, in the name of wartime restrictions, limit free speech. There it is in black and white: we are looking at one-person rule without any checks and balances -- a lawless state. Law by fiat.

Who has suspended the law this way in the past? It is like a Caesar's law in Rome; a Mussolini's law in Italy; a Fuhrer's law in Germany; a Stalin's law in the Soviet Union. It is right down the line. It is enforcing the will of the dictator through the military.

NW: The mainstream media have virtually ignored these revelations, though it seems to me this is the biggest news since Pearl Harbor.

MR: I think that's right. We had a glimmering of the blueprint for some of this -- when they picked up Jose Padilla, the military went to a prison and snatched an American citizen as if they had a perfect right to do so.

Now we can see that these memos laid the legal groundwork for such actions. We knew the military could do this to an individual. We did not know the plan was to eliminate First Amendment constitutional rights for the entire population.

NW: If Bush only wanted these powers in order to prosecute a war on terror, why does he need to suspend the First Amendment? Isn't that the smoking gun of a larger intention toward the general population?

MR: Part of this plan was actually implemented: for instance, they tried to keep people like Padilla from getting to a magistrate. They engaged in the wiretapping, because according to these memos there was no Fourth Amendment.

They had to be planning some kind of a takeover of the United States to be saying they could simply abolish the First Amendment if the president believed it was necessary in the name of national security. It lays the groundwork for what could have been a massive military takeover of the United States.

Here they crept right up and actually implemented part of the plan, with Padilla, with

the warrantless wiretapping. Yet they are saying in the White House and in Congress that it is looking backward to investigate the authors of these memos and those who instructed Yoo and others to write them.

But investigation and prosecutions are really looking forward -- to say we need the deterrence of prosecution so this does not happen again.

NW: What about the deployment of three brigades in the U.S.? How should we read that?'

MR: With terrorism as less of a concern to many, but now with the economy in tatters there is a lot more militant activism in U.S. -- the New School and NYU student takeovers, protests around the country and strikes are just the beginning. I think governments are now concerned over people's activism, and people's anger at their economic situation. I don't think those brigades can be detached from the idea that there might well be a huge amount of direct-action protest in the U.S.

There could have also been a closer election that could have been stolen easily and then a huge protest. Those troops would have been used to enforce the will of the cabal stealing the election.

NW: As a layperson, I don't fully understand what powers the memos actually manifest. Are they theoretical or not just theoretical? What power did the memos actually give Bush?

MR: They were probably, in fact almost for sure, written in cahoots with the administration -- [Karl] Rove, [Dick] Cheney -- to give them legal backing for what they planned or wanted to carry out.

What I assume happened here is people like Cheney or his aides go to the Office of Legal Counsel and say, "We are going to need legal backing, to give a face of legality to what we are doing and what we are planning." When the president then signs a piece of paper that says, "OK, military, go get Jose Padilla," these memos give that order a veneer of legality.

If you are familiar with the history of dictators, coups and fascism (as I know you are), they (the planners) prefer a veneer of legality. Hitler killed 6 million Jews with a veneer of legality -- getting his dictatorial powers through the Reichstag and the courts.

These memos gave the Bush administration's [lawless] practices the veneer of legality.

NW: So are you saying that these memos actually created a police state that we did not know about?

MR: If you look at police state as various strands of lawlessness, we knew about some of this lawlessness even before this latest set of memos.

But the memos revealed how massive the takeover of our democracy was to be -- that this wasn't just going to be a few individuals here or there who suffered the arrows of a police state.

These memos lay the groundwork for a massive military takeover of the United States in cahoots with the president. And if that's not a coup d'etat then, nothing is.

NW: Can I ask something? I keep thinking about the notion of treason. In America now, people tend to read the definition of treason in the Constitution as if they are thinking of a Tokyo Rose or an American citizen acting as an agent for an enemy state -- very much a World War II experience of the traitor to one's country.

But I've been reading a lot of 16th and 17th century history, and it seems to me that the founders were thinking more along the lines of English treason of that era -- small groups of Englishmen, usually nobility, who formed cabals and conspired with one another to buy or recruit militias to overthrow the crown or Parliament.

The notion that a group might conspire in secret to overthrow the government is not a wild, marginal concept, it is a substantial part of European, and especially British, Renaissance and Reformation-era history and would have been very much alive in the minds of the Enlightenment-era founders. (I just visited the Tower of London where this was so frequent a charge against groups of English subjects that there is a designated Traitor's Gate.)

So clearly you don't have to act on behalf of another state to commit treason. The Constitution defines it as levying war against the United States or giving aid and comfort to its enemies. It says nothing about the enemy having to be another state.

When the Constitution was drafted, the phrase "United States" barely referred to a singular country; it referred to a new federation of many united states. They imagined militias rising up against various states; it was not necessarily nation against nation.

Surely, when we have evidence Bush prepared the way to allow the military to imprison or shoot civilians in the various states and created law to put his own troops over the authority of the governors and the national guard of the various states, and when the military were sent to terrorize protesters in St. Paul, [Minn.], Bush was levying war in this sense against the united states?

Hasn't Bush actually levied war against Minnesota? And if our leaders and military are sworn to protect and defend the Constitution, and there is clear evidence now that Bush and his cabal intended to do away with it, are they not our enemies and giving aid and comfort to our enemies? Again, "enemy" does not seem to me to be defined in the Constitution as another sovereign state.

MR: You are right. Treason need not involve another state. Aaron Burr was tried for treason. I do think that a plan to control the military, use it in the United States contrary to law and the Constitution and employ it to levy a war or takeover that eliminates the democratic institutions of the country constitutes treason, even if done under the president of the United States.

The authority given by these memos that could be used to raid every congressional office, raid and search every home, detain tens of thousands, would certainly fit a definition of treason.

This would be the president making war against the institutions of the United States.

Naomi Wolf is the author of Give Me Liberty (Simon and Schuster, 2008), the sequel to the New York Times best-seller The End of America: A Letter of Warning to a Young Patriot (Chelsea Green, 2007).

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