



Two newly-obtained documents show how American diplomats during the Bush administration worked tenaciously to incorporate what is commonly known as the Nuremberg Defense into a new international convention addressing enforced disappearances.

The rejection of the notion that government agents could avoid liability for crimes by arguing that they were simply following orders had been a bedrock principle of the American government ever since shortly after the end of World War II, when that defense was employed during the Nuremberg war-crimes trials.

But the new documents, obtained by the ACLU through Freedom of Information Act litigation, show how State Department officials tried to establish what they called "the good soldier defense" -- in this case, the right of government agents charged with seizing and holding people in violation of international law to claim as a defense that they acted in good faith based on representations as to the legality of the conduct they were undertaking.

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