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Appoint a Special Prosecutor: The Crimes of Bush, Cheney, and Other Top Officials Must Be Prosecuted

142 Organizations Agree With Leading Senators and Congress Members

By David Swanson
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Statement on Prosecution of Former High Officials

We urge Attorney General Eric Holder to appoint a non-partisan independent Special Counsel to immediately commence a prosecutorial investigation into the most serious alleged crimes of former President George W. Bush, former Vice President Richard B. Cheney, the attorneys formerly employed by the Department of Justice whose memos sought to justify torture, and other former top officials of the Bush Administration.

Our laws, and treaties that under Article VI of our Constitution are the supreme law of the land, require the prosecution of crimes that strong evidence suggests these individuals have committed. Both the former president and the former vice president have confessed to authorizing a torture procedure that is illegal under our law and treaty obligations. The former president has confessed to violating the Foreign Intelligence Surveillance Act.

We see no need for these prosecutions to be extraordinarily lengthy or costly, and no need to wait for the recommendations of a panel or "truth" commission when substantial evidence of the crimes is already in the public domain. We believe the most effective investigation can be conducted by a prosecutor, and we believe such an investigation should begin immediately.

DRAFTED BY The Robert Jackson Steering Committee, SIGNED BY the Center for Constitutional Rights, the National Lawyers Guild, the Society of American Law Teachers, Human Rights USA, After Downing Street, American Freedom Campaign, and a total of 142 organizations listed at <http://prosecutebushcheney.org>

NANCY PELOSI agrees: "Senator Leahy has a proposal, a Truth and Reconciliation Commission, which is a good idea. What I have some concern about though is it has immunity. And I think that some of the issues involved here, like the services part, politicizing of the Justice Department, and the rest, they have criminal ramifications, and I don't think we should be giving them immunity. ... No one is above the law. The president has said that. [... you would support a referral for a criminal investigation, potential prosecution?] Absolutely. No one is above the law." -- Feb. 25, 2009.

JERROLD NADLER agrees: "We have no choice. We must prosecute." -- Feb. 18, 2009.

JACK REED agrees: "I think we have to seriously investigate allegations of torture. I don't know if we require a formal new Commission to do that. We have the DOJ. We have Federal attorneys. But we cannot simply ignore credible allegations." -- Feb. 12, 2009.

RUSS FEINGOLD agrees: "As President Obama and Attorney General Holder have said, nobody is above the law. There needs to be accountability for wrongdoing by the Bush Administration, including the illegal warrantless wiretapping and interrogation programs. We cannot simply sweep these assaults on the rule of law under the rug." -- Feb. 10, 2009.

SHELDON WHITEHOUSE agrees: "Whitehouse said the Justice Department should probe the matter. He pointed out that the agency has long regarded waterboarding as torture and, back in the 1980s, prosecuted a Texas sheriff in the 1980s for using waterboarding to extract confessions from suspects. Simply fixing the law around a policy does not make it legal, Whitehouse added. - February 2009, <http://afterdowningstreet.org/node/39495>

ANTONIO TAGUBA agrees: "There is no longer any doubt as to whether the current administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account." -- February 2009.

THE AMERICAN PEOPLE agree: criminal investigation 38% independent panel 24% neither 34% USA Today / Gallup Jan 30 - Feb 1, 2009.

THE NINTH CIRCUIT COURT OF APPEALS agrees: On Feb. 27, 2009, it rejected an attempt by the Obama administration to use the state secrets privilege to block a lawsuit concerning the Bush administration's domestic surveillance program.

TORTURERS' OWN LAWYERS agree: "Once Holder said that [waterboarding is torture] I got nervous," said one lawyer who represents a CIA official involved in the interrogation program, who asked not to be identified talking about a legally sensitive matter. "If he says it was torture, he has to do something." -- Newsweek, January 2009.

JOHN CONYERS agrees: "The new administration should conduct an independent criminal probe into whether any laws were broken in connection with these activities. Just this week, in the pages of this newspaper, a Guantanamo Bay official acknowledged that a suspect there had been "tortured" -- her exact word -- in apparent violation of the law. The law is the law, and, if criminal conduct occurred, those responsible -- particularly those who ordered and approved the violations -- must be held accountable." -- Jan. 23, 2009.

CARL LEVIN agrees: "I suggested to Eric Holder ... that he select some people or hire an outside person who's got real credibility, perhaps a retired federal judge, to take all the available information, and there's reams of it. Look, the Vice President, the former Vice President of the United States, acknowledged that they engaged in torture. He says that waterboarding's not torture, he's wrong. Waterboarding is torture, period. And this administration and Eric Holder has said so. It's torture and there's other forms that they engaged in, so what needs to be done, I believe, in addition to finishing the investigation, is for the Attorney General, the new Attorney General, to identify some people in his office to take the existing documentation. The acknowledgment, folks, this is not a very difficult — this is almost like a case in court with an agreed upon statement of facts, that the previous administration acknowledges that they engaged in waterboarding, period." -- Jan. 22, 2009.

MANFRED NOWAK agrees: The incoming American President Barack Obama is legally obligated to prosecute Bush and Rumsfeld because the US has ratified the UN Convention on Torture and has also recognized it as legally binding, said UN Special Rapporteur on Torture Manfred Nowak. -- Jan. 20, 2009.

ERIC HOLDER agrees: At Holder's confirmation hearing, when Senator Patrick Leahy asked if waterboarding is torture and illegal, Holder agreed that it is. When Leahy then asked whether the President of the United States can immunize acts of torture, Holder said that he cannot. When Senator Diane Feinstein said that an Inspector General's report on politicized hiring, firing, and prosecuting at the Department of Justice is evidence that officials have lied to the Senate Judiciary Committee, and that doing so is illegal, Holder replied that he will review prosecutors' determination not to pursue criminal charges. When Senator Orrin Hatch asked if the president has the authority to engage in warrantless surveillance, Holder said no. When Senator Russ Feingold asked the same thing, Holder stammered and stuttered and called it a "hypothetical" but said no. When Feingold pointed out that lawyers at the Department of Justice, the White House, and the Office of the Vice President had written memos that clearly sought to sanction illegal actions, and asked "What is your view of the President's Constitutional authority to authorize violations of the law?" Holder replied that the president does not have that authority.

56 MEMBERS OF CONGRESS agree: "Dear Mr. Attorney General: "We are writing to request that you appoint a special counsel to investigate whether the Bush Administration's policies regarding the interrogation of detainees have violated federal criminal laws. There is mounting evidence that the Bush Administration has sanctioned enhanced interrogation techniques against detainees under the control of the United States that warrant an investigation." -- June 6, 2008, <http://afterdowningstreet.org/node/39727>

DICK DURBIN agrees: On February 12, 2008, Senators Durbin and Whitehouse wrote a letter to

the Department of Justice requesting an investigation into the role “Justice Department officials [played] in authorizing and/or overseeing the use of waterboarding by the Central Intelligence Agency... and whether those who authorized it violated the law.” The two senators wrote: “Waterboarding has a sordid history in the annals of torture by repressive regimes, from the Spanish Inquisition to the Khmer Rouge. The United States has always repudiated waterboarding as a form of torture and prosecuted it as a war crime.”