

Three Worst Reasons to Delay Putting Cheney in Prison

By [David Swanson](#)

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Region: [USA](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#)

#1: Cheney says that he and Bush ordered torture but did nothing wrong.

On Sunday, [Cheney said](#): “The fact of the matter is that these [torture] techniques that we’re talking about are used on our own people. In the SERE program that in effect trains our people with respect to capture and evasion and so forth, and escape, a lot of them go through these same exact procedures.”

If this were true, participants in the SERE program would be kidnapped and tortured by people willing to kill them. They would be waterboarded believing they might be drowned. This would be done upwards of 100 times. They would be hung by their wrists, beaten, electroshocked, deprived of sleep, stripped naked and exposed to cold, attacked by dogs, slammed against walls, kept in isolation, and in many cases killed, in many other cases driven insane.

“Once we [waterboarded Khalid Sheikh Mohammed 183 times] he produced vast quantities of invaluable information about al Qaeda,” Cheney said, while failing in multiple interviews to cite a single example of such information that has not [already been debunked](#). The same people fall for this sort of claim as fell for this one: “Iraq continues to conceal quantities, vast quantities, of highly lethal material and weapons to deliver it.” (Colin Powell, January, 2003). In both cases, the supposed evidence is classified. In both cases, the existence of that evidence and truth of the claim would do absolutely nothing to legalize the action being defended, be it aggressive war or torture.

#2: Harry Reid [said last week](#) that if we wait six more months for the Senate Intelligence Committee’s report to whitewash the torture story, it’ll be easier then to avoid legally required prosecutions of people like Cheney.

According to Reid’s way of thinking, Democrats will be able to campaign against torture in future elections even while condoning it, and isn’t electing more people like Reid more important than actually ending torture by enforcing the laws against it?

Reid: Something everyone has to weigh is this, we’re a nation of laws and no one can dispute that, but I think what we have to, the hurdle we have to get over is whether we want to go after **people like Cheney**. That’s a decision that has to be made....

Christiane Brown: ...Isn’t it our obligation if he’s violated the law ... ?

Reid: There are a lot of decisions that are made that are right that may not be absolutely totally within the framework of law. For example with President Nixon....

Try This at Home: “But, officer, surely you don’t want me to stay totally within the framework of law.”

#3: Elizabeth de la Vega [says that](#) if we delay, even though we have overwhelming evidence now in the public realm, we’ll have even more evidence to work with. And Obama secretly wants to prosecute his predecessors despite everything he’s said and done for years now.

These three opinions line up in wanting more delay and more information:

Cheney: “If we’re going to have this debate it ought to be a complete debate.”

Reid: “No matter how I personally feel about torture, I think that we, as you’ve indicated, that we are a nation of law. And that’s why we have to get the facts.”

De la Vega: “There is rich disagreement about particulars, but – in broad terms, at least – I think it’s fair to say that the goals are: (1) a cohesive and irrefutable public narrative of the criminal activity; (2) an opportunity for victims to be heard in an open forum; (3) and accountability for the perpetrators of these crimes, from Bush and Cheney on down.”

I don’t think that’s fair at all and is at the very least stated in the reverse order. Many Americans want accountability in order to deter repetition. Narratives and victims’ statements do not accomplish that. De la Vega is neither a criminal like Cheney, nor a corrupt spineless collaborator like Reid. She’s a former federal prosecutor who wants people like Cheney prosecuted. So there is a danger that people will actually take her opinion seriously. They shouldn’t.

De la Vega is a prosecutor, not a politician, not a historian, and not an activist. She believes that it is just as likely that people like Cheney will be prosecuted years from now as it is that they will be prosecuted soon. She believes it is just as likely that the whole gang will be prosecuted in one giant conspiracy case as it is that people like Bybee and Yoo will go down before Cheney and Bush are indicted. She believes, or at least considers it possible, that the U.S. Justice Department intends to enforce the law and is in fact delaying in order to acquire more evidence. She believes not only that decisions to prosecute shouldn’t be based on political pressure, but that in fact they are not.

Here’s de la Vega’s fantasy view of Obama and Holder:

“Notwithstanding the public statements that the president and attorney general made in connection with the release of the memos, I find cause for optimism in their actions. No smart lawyer who secretly wanted this entire issue to disappear would have released those torture memos. From a prosecutor’s point of view, the release of those memos with their authors’ names in full view was pretty much the same as releasing their photographs with bloody knives in hand. The president and the attorney general may not have said much, but what they did was quietly flip the switch on a searing bright light.”

We’ve spent the past four or five years switching on searing bright light after searing bright light, with people always willing to consider the latest one world-changing for a week or so, and people always willing to believe that more evidence is needed. (Since nothing’s

happened yet, we simply MUST need more evidence.) And yet, the Department of Justice already had those memos and has many more we haven't seen and much other evidence besides. They have the evidence they are supposedly waiting for in de la Vega's account, which confuses public desires for yet more evidence with the same desire by prosecutors. At the same time, de la Vega believes that announcing an investigation would be a public relations stunt, that a serious prosecution should proceed quietly. She misses the Obama-Reid-Leahy-Democratic strategy entirely, which explains the stunt of releasing the latest handful of memos without requiring that we set aside every word that has come out of their mouths.

The president and leading Democrats want to expose the evidence as campaign ads against Republicans. They want criminal activities to become Republican behavior that is remedied not by enforcing laws but by electing Democrats. They want President Obama and all future presidents to maintain the powers of detention, rendition, and torture, and the power to make law by decree, with Americans voting for the party that will abuse those powers less. They want to make Republicans look awful and then be seen as befriending the Republicans nonetheless. In the same interview in which Reid objects to prosecuting "people like Cheney," he attacks John McCain for going along with Cheney's loophole for the CIA in a bill that, had it become law, would have in no way altered the existing total ban on torture that already existed in the anti-torture statute and the war crimes statute. But Reid does not want to talk about Democrats' complicity in the Bush-Cheney crimes or the criminal activities of the Clinton or Obama years, which is why he favors closed-door "investigations."

Well, then, perhaps de la Vega is onto something. Perhaps we should all hush up about enforcing the laws, let the Democrats expose more evidence believing it's just campaign ads, and then spring into action with prosecutions. Here's what's wrong with this: First, we have more than enough evidence to put many members of the Bush-Cheney administration away for many crimes. The more we threaten action, the more Cheney goes on television and confesses. A special prosecutor who actually tried to investigate would acquire a great deal of additional evidence.

Second, while a well-trained lawyer like de la Vega who believes in the rule of law finds it hard to resist delaying in hopes of gaining even more evidence, Reid is exactly right that it will be easier to claim that the crimes are behind us and not worth dredging up, the more time goes by. This shouldn't be the case, and I wish it were not, and I will work with de la Vega in fighting against it if need be. But delaying means taking a tremendous risk. The window through which public pressure can force prosecutions is open now, but too many advocates are counseling delay. In the case of human rights groups calling for panels and commissions, this is mostly a function of top-down organizations taking their direction from the Democratic party. But that party's strategy is to delay until it becomes more difficult to mobilize public demand for action.

Third, there is a real problem with statutes of limitations. While de la Vega helpfully [points out](#) that if certain arguments can be won, some crimes can be prosecuted for longer than is often believed, she says nothing about most of the crimes of Bush and Cheney, the spying, the election fraud, the Hatch Act violations, the misspending of funds, the domestic propaganda, etc., etc. Only if a prosecutor can be persuaded to take on a larger conspiracy rather than a single crime, can an argument be made for starting the clock at a later point in time. And while death isn't needed to avoid limitations on prosecuting torture, but merely "a foreseeable (sic) risk of, death or serious bodily injury," why would we want to have to prove

the existence of that foreseeable risk when we could prosecute right now without having to? Why shouldn't our strategy be intense public pressure through the media, direct nonviolent action, and election challenges all aimed at forcing the appointment of a special prosecutor immediately, followed by further escalated pressure to demand swift prosecutions?

Fourth, the public narrative, although it already exists on the internet, is not going to happen in Congress or through a commission appointed by Congress or the president. De la Vega fears that once a prosecutor is appointed, congress members would clam up and "have a ready excuse." As compared to what? They clearly do not need an excuse and are not taking serious action, because not enough people are demanding it strongly enough; and counseling restraint does not help that situation. Missing from de la Vega's three goals above is the need to restore power to Congress and strip it from the president. Congress will have to be pushed, kicking and screaming, into reclaiming power. It does not want it. The most likely breakthroughs include impeachments, starting with [Jay Bybee](#) (an impeachment hearing and trial also being an ideal tool for exposing information to the public), and re-issuing and enforcing subpoenas. We could [force passage of the State Secrets Protection Act](#), of the [Lee-Wexler bill](#) to create a select committee, and of the [Baldwin resolution](#) on executive branch accountability. But all of these things would become easier with prosecutions underway. Congressman Jerrold Nadler says impeaching Bybee will wait for a decision on prosecutions.

Fifth, Leahy and others have proposed panels and commissions as substitutes for prosecution. They will not conduct such things, if — against the odds — they should come into being, in such a way as to make prosecutions more likely. And certainly not if the public has already cooperatively stopped demanding prosecutions in order to allow the panel or commission to do its whitewashing magic. If, on the other hand, [public pressure intensifies](#), we can compel, prosecutions, commissions, panels, public apologies, and a full restoration of both the rule of law and representation of the public through a legislature that makes public and enforceable laws. Justice delayed is likely to be justice denied entirely.

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***David Swanson** is the author of the upcoming book "Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union" by Seven Stories Press. You can pre-order it for a discount price at <http://tinyurl.com/daybreakbook>*

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