

Why We're Planning To Prosecute Cheney And Bush

Attorneys, academics, and activists to gather in Andover, Mass.

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Next weekend in Andover, Mass., a group of attorneys, academics, and activists will gather to plan the prosecution of Dick Cheney, George Bush, and the lawyers and advisors who, together with them, are responsible for war crimes. The conference is open to the public and expected to be well attended: <http://war-crimes.info>

I can't speak for everyone involved, but I can tell you why I'll be there. If I thought we could deter future presidents and vice-presidents from abusing power by giving Cheney and Bush immunity for life, billion dollar pensions, and royal crowns, then that is exactly what I would propose we do. In fact, if there were just about anything that we could do that I thought would have that deterrent effect, I would advocate for it. I would give my life for it. I take the matter this seriously because we are preparing to hand what Michael Goldfarb, Deputy Communications Director for presidential candidate John McCain, approvingly calls 'near dictatorial power' to every future president and vice president at a moment in history in which the twin dangers of global warming and nuclear war threaten us far more seriously than has any nation with which ours has ever clashed.

I'm adamantly opposed to the possibility of imposing the death penalty on anyone, no matter what they are convicted of, because it has been shown to encourage violence rather than to deter it. Future presidents are not more likely to refrain from abusing power if they might be executed than if they might be imprisoned for life. If they are imprisoned for life, they can express their regrets in ways that their successors can understand. If they are killed, we will be the ones killing them, and we will thereby send a message to everyone that violence and vengeance are appropriate and admirable. Vengeance disgusts me. Bush and Cheney bore me. What interests me and inflames me is the desire to establish the rule of law, not for its own sake but in order to promote peace, fairness, human rights, and human survival.

Now, we may have an honest and verifiable election in November, although I can't see how. And we may elect a president and vice president who abide fully by the Constitution, the treaties our nation has ratified, and the laws that are on the books, although that seems highly unlikely. We might even see unconstitutional laws repealed, tyrannical executive orders torn up, and the Constitution amended to strengthen checks on power and expand the democratic influence of the people, although if you believe all that I've got a quick little cakewalk of a war to sell you. But think for a minute what message all those successes would send to future presidents and vice presidents and their subordinates: If you break the law, the punishment shall be that the duumvirate immediately following yours will not break the law. Oh, the horror! I can almost feel the terror gripping the spine of every future Dick Cheney and George W. Bush who will claim the throne throughout the remaining short life of

our dying republic. 'Nooooooo! Don't say that the next chump who comes after us won't get to be a war president! We can't stand such agony!'

In a December 31, 2007, editorial, the New York Times faulted the current president and vice president of the United States for kidnapping innocent people, denying justice to prisoners, torturing, murdering, circumventing U.S. and international law, spying in violation of the Fourth Amendment, and basing their actions on 'imperial fantasies.'

If the editorial had been about Bush and Cheney robbing a liquor store or killing a small number of people or robbing a small amount of money or torturing a single child, then the writers at the New York Times would have demanded immediate prosecution and incarceration. Can you guess what they actually demanded? They demanded that we sit back and hope the next president and vice president will be better. Well, what if they are? The next guy who walked into the liquor store or played with the child would be better too. But how does that fact deter future crimes?

Well, we can announce new policies, pass new legislation, amend the Constitution. We can shift power to the Congress, and clean up our electoral system to allow real representation of the people in the Congress. We can shift our resources from the military to peaceful enterprises. We can eliminate secret government and create total transparency. We can perfect the brilliant cutting-edge democratic system that our nation created over two centuries ago and has done little to update since. We can put an end to plutocracy, reclaim our airwaves, ban war propaganda, and develop wholly different public attitudes toward those 95.5 percent of people in the world who are not Americans. And so we should. But even if we could do all of those things instantly, it would not be sufficient to chain the dogs of war. Exquisite laws and enlightened public attitudes are of no use at all as long as presidents and vice presidents suffer no penalty for disobeying them, and in fact benefit politically and financially.

Of course, in reality, we cannot reform our war government instantly, and we will be hard pressed to prevent even greater damage to our representative system as long as wars are going on. We are as likely to see President John McCain cheering for more wars in January as we are to see President Obama mumbling about moving wars from one country to another. If Obama loses or has his victory stolen, the Democrats will take everything they did wrong these past several years and redouble their commitment to screwing up even worse next time. Ending wars and impeaching criminal presidents will be even further 'off the table,' while patriotism, religion, and militarism will be on the rise. If, on the other hand, the Democrats win in November, they'll react exactly the same way. Their primary interest as soon as any election is won is winning the next one, and their only focus outside of the White House is on controlling the partisan re-gerrymandering of districts in 2012. I wish that this focus on each subsequent election could be seen as a sign of health in our democracy, but in the corrupt, money-laden, media-mangled, party-powered system we have, voters' choices are minimal, and the total focus on elections amounts to a total abandonment of governing in between elections.

During the Democratic primaries, Senator Obama said he'd have his attorney general look into the possibility that Bush and Cheney had committed crimes, but that as far as he knew they hadn't committed any. At the same time, Obama promised not to commit some of the same crimes himself. He later voted to give telecom companies immunity for cooperating with some of the crimes. This past week Obama's vice-presidential running-mate Joe Biden

said that he, too, didn't know of any crimes that had been committed, but that an Obama-Biden administration would look into the question. He also promised a justice department that would no longer commit crimes. The day after Biden made these nonsensical remarks, he went on TV to insist that an Obama-Biden administration has no intention of prosecuting Bush and Cheney.

There's a much more serious potential road block to domestic criminal prosecution than Barack Obama's belief that Bush and Cheney's crimes should be hushed up, namely the possibility that Bush will issue blanket pardons of anyone who engaged in crimes he authorized, including himself. If such a pardon strikes you as a sick joke, I'm with you. But signing statements and military tribunals and pentagon pundits and a partisan justice department and ATM companies building election machines without the safeguards that ATMs have would have all sounded like sick jokes if they weren't real. Without admitting that Bush or anyone else has committed any crimes, Obama or McCain could take a position against any president, himself included, ever pardoning anyone for a crime that the president authorizes. Congress, or at least the House of Representatives, could stop vacationing and pass legislation forbidding such pardons. Lawyers and Constitutional experts could publish op-eds in major newspapers on the unacceptability of such pardons. A massive movement in the coming months to raise public pressure against pardons makes at least as much sense as continuing to ask Congress to pretty please 'end the war,' as if Congress will overdo anything about wars other than what the president tells it to do. A focus on pardons at least begins to limit the power of the individual holding all the power. Congress, unless it is restored to power, serves- at best — as just more people lobbying the president.

Now, blanket pardons or self-pardons could be challenged. There may be local and state and civil prosecutions possible despite pardons and strengthened by pardons. And prosecution by a foreign country or the International Criminal Court (ICC) is a possibility as well. With Obama and Biden suggesting they will 'investigate' whether any crimes have been committed, there is no reason that they could not, without even joining the ICC or admitting that they know about the crimes, publicly commit to NOT vetoing at the United Nations any investigations that the ICC might choose to pursue. That commitment is a second demand that wean make of the candidates for emperor.

Some have expressed concern that when Cheney and Bush leave office they will destroy lots of evidence of their crimes. I do not share this concern, because they already have destroyed lots of such evidence, and nonetheless more than enough such evidence is in the public realm. We do not need any more, but do badly need to shake off the myth that we need any more. And there is something that cannot be destroyed: the many potential whistleblowers who have been keeping their mouths shut. We should not be relying on Congress. We should not be funneling our money through electoral campaigns and into TV ads on television networks that are destroying our country. We should be establishing whistleblower protection fund that can guarantee financial security and legal defense to those considering blowing the whistle on their superiors.

As far as Congress goes, we should be demanding a commitment that the endless charades they have gone through with subpoenas and contempt citations for the past two years, while conscientiously avoiding impeachment, will not be dropped along with the ball in Times Square on New Year's Eve. 'Executive privilege' loses even the slightest aura of respectability once the executive is guzzling beers on golf courses for a living. The committee chairmen and the House and Senate leaders who have authorized subpoenas

and contempt citations only to be mocked and laughed at by the gang of pirates who will set sail in January must be compelled to publicly commit to re-issuing the same once the new justice department is in place.

There are also a variety of ways in which citizens can file suit. My friend John Bonifaz served as attorney on a law suit against the President before the invasion of Iraq on behalf of Congress members and military families claiming an invasion would be unconstitutional without a proper congressional declaration of war. John consulted in 2007 with a professor at Rutgers University, who worked up a case with his students for a full year, and in 2008 filed it in Federal District Court in Newark, New Jersey. The Complaint, filed on behalf of a number of peace groups, seeks a Declaratory Judgment that the President's decision to launch a preemptive war against a sovereign nation in 2003 violated Article I, Section 8 of the United States Constitution, which assigns to Congress the power to Declare War. Every peace and justice group in the country should be working with lawyers, choosing their favorite Cheney-Bush crime, and filing a suit, the point being to change the public conversation until we reach the point that a prosecutor will act.

There's also a procedure called Qui Tam found in the Federal False Claims Act that allows individual citizens to sue if the government spends money fraudulently, and to receive a percentage of any funds recovered. Such a suit could conceivably be filed, or perhaps hundreds of such suits could be filed, against government officials, including Dick Cheney, who set up illegal contracts with Halliburton and other corporations, including contracts to spend in Iraq funding that had been legally appropriated for Afghanistan.

Prosecutions also possible in foreign nations. In May 2008 in Milano, Italy, 25 CIA agents and an Air Force colonel went on trial in absentia for kidnapping a man on an Italian street and renditioning him to Egypt to be tortured. The victim's wife testified for over six hours. A newspaper report read:

'Nabilaat first rebuffed prosecutors' requests to describe the torture her husband had recounted, saying she didn't want to talk about it. Advised by prosecutors that she had no choice, she tearfully proceeded: 'He wasted up like he was being crucified. He was beaten up, especially around his ears. He was subject to electroshocks to many body parts.' "To his genitals?' the prosecutors asked. "Yes,' she replied.'

The judge said that the current and immediate past prime ministers of Italy would be required to testify during the trial.

Foreign victims can also sue in U.S. courts. Also in May 2008, an Iraqi sued U.S. contractors for torture. Emad al-Janabi's federal lawsuit was filed in Los Angeles and claimed that employees of CACI International Inc. and L-3 Communications punched him, slammed him into walls, hung him from a bed frame and kept him naked and handcuffed in his cell. In July, three more Iraqis and a Jordanian who had been held and tortured in Abu Ghraib for years before being released without charges filed similar suits. Alleged methods of torture by the U.S. contractors included: electric shock, beatings, depriving of food and sleep, threatening with dogs, stripping naked, forcibly shaving, choking, being forced to witness murder, pouring feces on, holding down and sodomizing (a 14-year-old boy) with a toothbrush, being paraded naked before other prisoners, forcing to consume so much water that you vomit blood and faint, and tying a plastic line around your penis to prevent urination.

And on August 15, 2008, the Second Circuit Court of Appeals in New York announced that it

would hear the case against the United States of Canadian victim of U.S. torture Maher Arar. His suit names, among others, former Attorney General John Ashcroft, former Deputy Attorney General Larry Thompson, and former head of 'Homeland Security' Tom Ridge.

We can also work at the local level to follow the example of Brattleboro,Vt., passing ordinances making it the law that if Bush, Cheney, or keyco-conspirators enter our towns they will be arrested.

And we can make citizens arrests all on our own right now:
<http://afterdowningstreet.org/citizenarrest>

JudgeWilliam Price in Iowa in July heard the case of people who had been arrested for trying to make a citizens' arrest of Karl Rove. When told what they were charged with, the judge remarked 'Well, it's about time!'

And it's about time we put together a serious plan to establish the rule of law at home and abroad.

I'll see you in Andover next weekend.

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