



Written by [Thomas R. Eddlem](#) on July 14, 2009

Will Torture Probe Prosecute Peons and Protect Politicians?

But the question remains, will this probe simply limit itself to those lowly CIA peons who went outside the official torture guidelines served up by Bush Administration lawyers at the Justice Department? Or will it include an investigation of the higher-up Bush officials — including President Bush and Vice President Cheney — who undoubtedly conspired to torture detainees against [the law](#) and [the U.S. Constitution](#)?



The news leaked late last week from *Newsweek* magazine, which [reported](#) that "four knowledgeable sources tell *Newsweek* that he is now leaning toward appointing a prosecutor to investigate the Bush administration's brutal interrogation practices, something the president has been reluctant to do."

Newsweek explained some of [the internal discussion that have taken place in the Justice Department](#):

Holder began to review those policies in April. As he pored over reports and listened to briefings, he became increasingly troubled. There were startling indications that some interrogators had gone far beyond what had been authorized in the legal opinions issued by the Justice Department, which were themselves controversial. He told one intimate that what he saw "turned my stomach"

Holder couldn't shake what he had learned in reports about the treatment of prisoners at the CIA's "black sites." If the public knew the details, he and his aides figured, there would be a groundswell of support for an independent probe. He raised with his staff the possibility of appointing a prosecutor. According to three sources familiar with the process, they discussed several potential choices and the criteria for such a sensitive investigation.... In the end, Holder asked for a list of 10 candidates, five from within the Justice Department and five from outside.

The Justice Department is officially closed-mouth on a torture probe. "We have made no decisions on investigations or prosecutions, including whether to appoint a prosecutor to conduct further inquiry," Justice Department spokesman Matthew Miller [told Reuters wire service](#). "As the attorney general has made clear, it would be unfair to prosecute any official who acted in good faith based on legal guidance from the Justice Department." Miller said Holder will "follow the facts and the law." If he does that, then Bush and Cheney are clearly in legal jeopardy.

But there's solid opposition to a Justice Department investigation of torture from Republicans, even from the few anti-torture Republicans. Asked by NBC's David Gregory on *Meet the Press* last weekend about whether a torture probe was a good idea, Senator John McCain [replied](#):



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No. Look, I fought against waterboarding. I said waterboarding was torture. We passed the Detainee Treatment Act, which prohibited cruel and inhumane treatment. I have spoken out as forcefully as possible everywhere against what went on and that we need — it harms our image so much around the world when photographs come out and — we all know that bad things were done. We all know that the operatives who did it most likely were under orders to do so. For us to continue this and harm our image throughout the world — I agree with the president of the United States, it's time to move forward and not go back.

This is from a Republican who admits that [felony torture](#) was committed by top officials of the U.S. government. Of course, the United States has long had a law against torture, with a penalty of up to 20 years for infractions. McCain makes the ridiculous argument that the world will think better of us if the U.S. government continues to cover up the torture that everybody in the planet knows about (except perhaps a few obtuse neo-cons) and to let the perpetrators get away with their crimes.

David Gregory is a pale imitation of his formidable predecessor, the late Tim Russert, but even he was prompted to [follow-up — with the subsequent incredible reply from McCain](#):

MR. GREGORY: But where's the accountability?

SEN. McCAIN: Well, the accountability, obviously, is that people's reputations have been harmed very badly. The question is, is do we want America's image harmed more by dragging this out further and further? You've got to—what's going to be the positive result from airing out and ventilating details of what we already knew took place and should never have, and we are committed to making sure never happens again? I do not excuse it, I'm just saying what's the, what's the effect on America's image in the world? I don't, I don't mean to drag out my answer, but I did meet with a high ranking member of al-Qaeda in a prison in Iraq who said his greatest recruiting tool was the pictures of Abu Ghraib. We don't want to give the, the terrorists and the radical Islamic extremists more tools and bullets to shoot against us and help their recruiting in this ongoing struggle we're in.

We should not prosecute one of the worst crimes that could be committed against another human being because the criminals' "reputations have been harmed very badly"? McCain's argument is that there should be no accountability, and it prepares the way for more torture down the road. The harm in reputation wasn't enough to stop the sentencing of Bernie Madoff, and it shouldn't be in this much more serious crime.

McCain's argument that American prestige abroad would be hurt by further exposure of the crimes of our CIA is actually an argument for bringing the criminals to justice. More news of the torture crimes will continue to leak out anyway. Abu Ghraib pictures were great recruiters for al-Qaeda only because they were perceived throughout the Arab world as being the norm as to how Americans treat prisoners, and that American jailors could torture with impunity and without accountability. The only question is, will we set an example for the world by bringing the criminals to justice and quash that impression? Or will we continue the coverup, and continue to make our torture appear even worse to the world than it really was?

The real danger in this criminal probe is that Holder's office may only prosecute the "rogue" CIA torturers rather than the lawyers who authorized the torture and the politicians who demanded it. Not prosecuting the politicians and the lawyers would be reminiscent of the corruption described in several lines from Irish-American folk singer [Colm O'Brien's song](#) "Another Term Up in the Dial":

"We'll extract a confession



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Said the legal profession
For a bargain of 20 million an hour.
We'll charge enormous costs
If the case be won or lost
But don't worry if the taste of this is sour.
It's the taxpayers' money
And we think it very funny
That they think we'd convict the men in power
We look after one another
And he's one of our brothers.
We never lock away one of ours."



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