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LEGISLATIVE OFFICE



## **TEN REASONS WHY:**

### **CONGRESS SHOULD DEMAND THE APPOINTMENT OF AN INDEPENDENT PROSECUTOR FOR TORTURE CRIMES AND ANY CRIMINAL COVER-UP.**

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#### **Re: Ten Reasons Why Congress Should Demand that the Attorney General Appoint an Independent Prosecutor for the Investigation and Prosecution of Any Violations of Federal Criminal Laws Related to the Interrogation of Detainees, Including Any Obstruction of Justice**

Dear Member of Congress:

The American Civil Liberties Union strongly urges you to demand that the Attorney General appoint an independent prosecutor for the investigation and prosecution of any violations of federal criminal laws related to the interrogation of detainees held by, or being questioned by, the United States, including any obstruction of justice. Nearly six years after the first reported use of torture or abuse in interrogation and more than three and one-half years after the exposure of torture in Abu Ghraib, it is time for Congress to demand the full and fair enforcement of federal criminal laws.

An independent prosecutor should have a mandate that extends well beyond the destruction of videotapes of past interrogations. Although the destruction of evidence that was sought by courts, Congress, and the 9/11 Commission raises serious questions of possible criminal obstruction of justice, the reported content of the tapes raises even more serious questions of potentially far more serious crimes.

It is time for a prosecutor to look at the complete picture of misconduct over the past six years. Any and all investigations should take a broader look at what was being filmed in 2002--and who ordered these kinds of interrogation practices--rather than solely determining who ordered the destruction of the tapes and why. What was being filmed may be a much greater crime than the destruction of the film. The

authorization and use of torture and abuse over the past six years was deliberate and pervasive, and its investigation and prosecution requires the extension of broad authority to an independent prosecutor.

Congress should demand that the Attorney General appoint an independent prosecutor. In the absence of the Independent Counsel Act, which lapsed in 1999, Justice Department regulations require the Attorney General or his designee to appoint an independent prosecutor, designated as “an outside Special Counsel” in the regulation, to avoid a conflict of interest for the Justice Department. 28 C.F.R. 600.1-600.6. Although the Attorney General or his designee has sole power under the regulation to appoint an independent prosecutor, Congress should demand that the Attorney General exercise his power of appointment.

Based on prior government investigations, documents obtained by the ACLU through our Freedom of Information Act litigation, and numerous media reports, there is credible evidence that acts authorized, ordered, and committed by government officials constitute violations of federal criminal statutes.<sup>1</sup> Although Attorney General Michael Mukasey’s refusal to state that acts such as waterboarding are torture has caused some confusion in some press accounts, waterboarding and other forms of torture and abuse violate existing federal criminal laws, including the War Crimes Act, 18 U.S.C. 2441, the Anti-Torture Act, 18 U.S.C. 2340-2340A, and general criminal laws such as federal statutes that criminalize conduct such as assaults by or against U.S. nationals in overseas facilities used by the federal government.<sup>2</sup> There also are

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<sup>1</sup> Federal criminal law broadly defines who can be held liable for a crime as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. 2.

<sup>2</sup> Section 804 of the PATRIOT Act greatly expanded federal jurisdiction to prosecute crimes by or against U.S. nationals committed overseas. Federal criminal jurisdiction, as of October 26, 2001, includes “offenses committed by or against a national of the United States [on or in] . . . the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership . . .” 18 U.S.C. 7(9). This section was the basis for federal jurisdiction in the only

numerous federal criminal laws against obstructing or interfering with government investigations or court proceedings.

### **Three-Prong Test for Appointing an Independent Prosecutor**

The rule on appointment of an independent prosecutor is clear. Justice Department regulations require the Attorney General to appoint an outside special counsel when a three-prong test is met. First, a “criminal investigation of a person or matter [must be] warranted.” 28 C.F.R. 600.1. Second, the “investigation or prosecution of that person or matter by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department.” *Id.* Third, “under the circumstances it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.” *Id.* If the regulation’s three-prong test is met, then the Attorney General must select a special counsel from outside the government, *id.* at 600.3, who would have the authority to secure necessary resources for the investigation and prosecution and have full investigatory and prosecutorial powers, *id.* at 600.3-600.6.

## **Top Ten Reasons for Demanding an Independent Prosecutor**

### **REASON 1: There Is Credible Evidence of Numerous Federal Crimes**

There is credible evidence of unpunished federal crimes ranging from obstruction of justice to homicide. Although the current focus of congressional inquiry is on why the CIA destroyed videotapes of interrogations, which reportedly included the filming of detainees being waterboarded and subjected to other interrogation tactics, there is credible evidence of numerous other crimes that have not resulted in any indictments.

The range of alleged crimes is breathtaking in its scope. The potential crimes include the authorization of the use of torture and abuse by top officials in the White House, Justice Department, CIA, and Defense Department to an array of documented torture and abuse carried out by U.S. personnel or government contractors in prisons and torture cells located throughout the world.

The use of waterboarding and other criminal forms of torture was reportedly discussed and approved based on discussions that occurred at the highest levels of government, including participation by aides to the President and Vice President. The result was authorization of specific forms of torture and abuse, and a permissive climate that fostered even more torture and abuse.

Waterboarding and other so-called “enhanced interrogation techniques” violate the Anti-Torture Act, the War Crimes Act, and depending on the geographical location, general federal criminal statutes against assault. Ironically, there seems to be greater concern among many

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indictment or conviction of a civilian, David Passaro, for the torture or abuse of a detainee. Passaro was convicted of federal assault charges.

members of Congress that videotapes depicting waterboarding were destroyed than that government personnel committed waterboarding with impunity.

Torture and abuse also took many other forms, all of them criminal. Federal government documents obtained by the ACLU through our Freedom of Information Act litigation and reports of the International Committee of the Red Cross documented torture or abuse against U.S.-held detainees, including acts such as: soaking a prisoner's hand in alcohol and setting it on fire, administering electric shocks, subjecting prisoners to repeated sexual abuse and assault, including sodomy with a bottle, raping a juvenile prisoner, kicking and beating prisoners in the head and groin, putting lit cigarettes inside a prisoner's ear, force-feeding a baseball to a prisoner, chaining a prisoner hands-to-feet in a fetal position for 24 hours without food or water or access to a toilet, and breaking a prisoner's shoulders.

But unpunished crimes go even further, to include possible homicides. An October 23, 2005 *New York Times* article documents the role of CIA agents or CIA contractors in three deaths of detainees being interrogated in Afghanistan and Iraq. Although U.S. soldiers were charged in two of those deaths, the civilians working alongside the soldiers have not been charged. There are numerous other deaths that have not resulted in charges. In fact, autopsy records obtained by the ACLU through FOIA requests document CIA involvement in torture or abuse related deaths of detainees.

The Justice Department, under three different attorneys general, has been unable or unwilling to prosecute any civilian, other than a single contractor charged in June 2004, for any crime related to interrogation. It is time for an independent prosecutor to make these prosecutorial decisions.

## **REASON 2: Attempts to Shield Government Officials from Criminal Prosecution Were Pursued by the White House, Including by the President and Vice President**

From the very start of the torture program, the White House--including the President and Vice President themselves--has had a central role in trying to shield government officials from criminal prosecution. Only an independent prosecutor can avoid all conflicts of interest in investigating, and if appropriate prosecuting, any persons within the White House who committed any crimes.

The very decision by President Bush to try to deny the protections of the Geneva Conventions to alleged Taliban and al Qaeda detainees was made based on a memorandum that advised on how to avoid applicability of the War Crimes Act. In a January 25, 2002 draft memorandum for the President, then-White House counsel Alberto Gonzales advised against application of the Geneva Conventions to al Qaeda and Taliban detainees. He stated that a "positive" reason for denying Geneva Convention protections to these detainees was that denial of the protections would "[s]ubstantially reduce[] the threat of domestic criminal prosecution under the War Crimes Act." The memorandum to the President went on to highlight that some of the War Crimes Act provisions apply "regardless of whether the individual being detained qualifies as a POW."

The last item on the January 25, 2002 memorandum's list of "positive" reasons for finding the Geneva Conventions protections inapplicable went even further in stating the intent to avoid War Crimes Act prosecutions. Gonzales advised the President that "it is difficult to predict the motives of prosecutors and independent counsels who may in the future decide to pursue unwarranted charges based on Section 2441 [the War Crimes Act]. Your [the President's] determination [of inapplicability of the Geneva Conventions] would create a reasonable basis in law that Section 2441 does not apply, which would provide a solid defense to any future prosecution." In other words, Gonzales urged the President to find the Geneva Conventions protections inapplicable to these detainees as a way to block criminal prosecutions under the War Crimes Act. President Bush subsequently ordered the Geneva Conventions inapplicable to the al Qaeda and Taliban detainees. In 2006, the Supreme Court held that Common Article 3 of the Geneva Conventions did protect these detainees.

After attempting to render the War Crimes Act inapplicable to the detainees, the White House coordinated an attempt to make the federal Anti-Torture Act similarly inapplicable. As White House counsel, Gonzales asked the Office of Legal Counsel to issue at least two memoranda that attempted to redefine and restrict the prohibitions of the Anti-Torture Act, and then apply that narrow interpretation to a specific list of interrogation tactics. The result was the since-withdrawn August 1, 2002 OLC memorandum finding torture must cause pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," and a subsequent OLC memorandum that approved waterboarding and other practices.

Top White House officials participated in the preparation of these memoranda. For example, a January 5, 2005 *Washington Post* article stated that one of the authors of the August 1, 2002 memorandum, then-Deputy Assistant Attorney General John Yoo, briefed then-White House counsel Gonzales several times on the August 1, 2002 memorandum during its drafting. The *Post* also reported that Yoo also briefed then-Attorney General John Ashcroft, Vice President Cheney's counsel David Addington, the general counsel for the Defense Department William Haynes, acting general counsel for the CIA John Rizzo, and Condoleezza Rice's advisor John Bellinger. In addition, the *Post* described a meeting that included detailed discussions of "methods that the CIA wanted to use, such as open-handed slapping, the threat of live burial and 'waterboarding'--a practice that involves strapping a detainee to a board, raising the feet above the head, and dripping water onto the head . . . [which] produce[s] an unbearable sensation of drowning."

President Bush and Vice President Cheney have repeatedly defended the CIA interrogation program. For example, President Bush publicly defended the interrogation practices of the CIA, Vice President Cheney--during congressional consideration of both the McCain Amendment in the Detainee Treatment Act and the Military Commissions Act--personally lobbied for stronger criminal defenses for CIA personnel or exclusion of the CIA, and the Administration ordered more recent OLC memoranda trying to limit the protections of the Military Commissions Act and the McCain Amendment.

Although there are no public records showing what the President and Vice President knew or ordered in interrogations, both of them presumably knew at least as much as the

leadership of the House and Senate Intelligence Committees. In addition, in a document obtained through the ACLU FOIA litigation, former Major General Michael Dunlavey, who asked the Pentagon to approve more aggressive interrogation methods for use at Guantánamo, claimed to have received "marching orders" from President Bush. On May 12, 2004, the *Baltimore Sun* quoted then-Secretary of State Colin Powell, who reportedly had fought internally for the government to comply with the Geneva Conventions, describing his informing President Bush directly on reports of abuse, long before at least some of those reports became public. Whether anyone in the White House violated any criminal laws would be a question for an independent prosecutor.

### **REASON 3: Attorney General Mukasey Still Refuses to Say Whether Waterboarding and Other Forms of Torture Are Illegal**

The Justice Department cannot fully and fairly investigate and prosecute any matter related to the torture and abuse of detainees, as long as Attorney General cannot state what acts constitute torture or abuse. Any investigation or eventual prosecution will be affected by whether the Justice Department believes that the videotape depicted legal conduct or criminal conduct. Destruction of videotapes depicting criminal conduct is a far more serious matter than destruction of videotapes depicting legal conduct--but Attorney General Mukasey does not seem to know the difference between what is legal and what is criminal.

The Justice Department is now led by an attorney general who is not defining criminal acts. In response to questions from members of the Judiciary Committee during his confirmation, Mukasey not only refused to state whether waterboarding is torture when authorized by or committed by the federal government, but he also refused to say whether it is illegal for foreign countries to commit acts such as waterboarding, electric shocks, beatings, head slaps, and induced hypothermia on Americans.

In a four-page response to ten members of the Judiciary Committee, Mukasey described how he would decide the question of whether waterboarding is torture, but he stated the question is "hypothetical" and that "the actual facts and circumstances are critical." The actual facts and circumstances of waterboarding are brutal, but fairly simple. Several senators described to Mukasey all of the elements of waterboarding, as practiced over the centuries by dictatorships, rogue nations, and war criminals--and as prosecuted by the United States as war crimes. Mukasey has the law, including the Anti-Torture Act and the War Crimes Act, and all of the facts before him. After decades as a federal prosecutor and federal judge, Mukasey certainly has the capacity to answer the question of whether waterboarding is torture.

Moreover, in a little-noticed written question-and-answer, Senator Edward Kennedy asked Mukasey, "Do you think it would be lawful for another country to subject an American to waterboarding, induced hypothermia or heat stress, standing naked, the use of dogs, beatings, including head slaps, or electric shocks?" Mukasey responded with his stock response that he cannot answer hypotheticals, and that "the actual facts and circumstances are critical."

At this point, there are no reasons left for Mukasey to refuse to answer the fundamental question of what is torture--other than an unwillingness to implicate others in the Administration

who authorized or ordered torture. The question is not hypothetical because an array of reports, including media interviews this week by a former member of a CIA interrogation team, state that waterboarding was used on detainees. Moreover, he has had more than a month to be briefed on CIA practices and Justice Department policies. Mukasey's refusal to characterize the legality or illegality of the underlying conduct requires that he turn the matter over to an independent prosecutor.

#### **REASON 4: The Current Head of the Criminal Division Was in Meetings on Interrogations**

The Justice Department's litigating division for criminal prosecutions is headed by a person who has at least the appearance of a conflict of interest. In the absence of an appointed independent prosecutor, all prosecutorial authority for violations of federal criminal law is concentrated in the Criminal Division of the Justice Department and the individual U.S. Attorney offices. The current head of the Criminal Division is Assistant Attorney General Alice Fisher.

While serving as a deputy in the Criminal Division from 2001 through 2005 overseeing terrorist suspect prosecutions, Fisher participated in at least some meetings on interrogations. In May 10, 2004 emails, an FBI agent identified Fisher as attending meetings on interrogation techniques. In response to written questions from senators during her confirmation to head the Criminal Division, Fisher stated that she recalled regular meetings between the Criminal Division leadership and FBI agents, but could not "recall . . . that interrogation techniques were discussed at these meetings." However, in those same written response, she could recall discussions with the then-head of the Criminal Division Michael Chertoff comparing the "effectiveness" of FBI tactics with Defense Department tactics. The FBI agent who authored the May 10, 2004 emails subsequently told Senator Levin in an interview that he had detailed discussions of interrogation tactics, including tactics which he considered "completely inappropriate" with two of Fisher's fellow deputies, but not with Fisher, in the political leadership of the Criminal Division.

There are some unanswered questions in determining Fisher's precise relationship to the interrogations, but she had at least some role in receiving information and at least some contemporaneous knowledge of at least some of the approved interrogation tactics. She also was part of a small working group within the leadership of the Criminal Division, which included other members identified as having detailed knowledge of the interrogation tactics employed. At minimum, Fisher is someone who should be questioned on her knowledge of interrogation tactics and who ordered any criminal acts, rather than being entrusted with prosecuting federal torture and abuse crimes, or any criminal cover-up.

#### **REASON 5: The Past Head of the Criminal Division Reportedly Advised on Interrogation Practices, Possibly Including the Interrogation of Abu Zubaydah**

The past head of the Criminal Division, Michael Chertoff, also had a significant role in the development of the torture program, which raises further concerns about the conflict of interest for the Justice Department to investigate and prosecute crimes related to interrogations. Specifically, during his confirmation hearing for the position of Secretary of Homeland Security,

Chertoff testified that, while Assistant Attorney General for the Criminal Division, he counseled “intelligence officials” on applying the Anti-Torture Act and the August 1, 2002 Office of Legal Counsel torture memorandum. He testified that he provided advice on possible criminal liability under the Anti-Torture Act.

Based on a media report, it appears that the role of Chertoff and the Criminal Division in the interrogation of Abu Zubaydah (a reported subject of the destroyed videotapes), and in stating what torture tactics could be used without fear of prosecution, may have been even greater. A January 29, 2005 *New York Times* article details significant involvement by Chertoff and the Criminal Division in advising CIA officials on specific interrogation techniques. Citing one former and two current Administration officials, the *New York Times* reported that Chertoff was “directly involved in these discussions” as the CIA sought “to determine the legal limits of interrogation practices in case like that of Abu Zubaydah,” so that the CIA could use the tactics “without fear of prosecution.” The article reports that “Mr. Chertoff’s division” approved, “under certain circumstances,” the use of waterboarding.

If the media reports are correct that the past head of the Criminal Division advised the CIA that it would not be prosecuted for the tactics used on Abu Zubaydah, it is impossible to see how the Justice Department does not have a conflict of interest in investigating and prosecuting anyone for any matter related to the interrogation of Abu Zubaydah.

#### **REASON 6: The Justice Department Wrote the Legal Opinions Authorizing Torture**

The Office of Legal Counsel of the Justice Department wrote several legal opinions interpreting the Anti-Torture Act, stating the legality of specific interrogation tactics, and interpreting recent statutory protections against torture and abuse essentially as not changing its earlier conclusions. One opinion, the August 1, 2002 memorandum interpreting the Anti-Torture Act was eventually withdrawn and replaced. However, the status and the content of the other memoranda have not been disclosed. In fact, the Justice Department has refused even to let members of the Senate and House Judiciary Committees--which have oversight over the Justice Department--review the memoranda in secret.

The OLC opinions were important to the White House, the Defense Department, and the CIA because OLC opinions generally represent the legal position of the government. It appears that the Administration sought OLC opinions in order to avoid prosecutions under federal criminal statutes. The same Justice Department that produced opinions designed to insulate government officials against criminal prosecutions cannot credibly investigate and prosecute any crimes that may have been authorized in OLC opinions.

#### **REASON 7: The Justice Department Has Failed to Bring Any Indictments Based on Twenty CIA and DOD Referrals of Possible Crimes by Civilians**

The Justice Department has prosecuted only one civilian for torture or abuse. On June 24, 2004, then-Attorney General John Ashcroft announced the indictment by a federal prosecutor in North Carolina of civilian contractor David Passaro for assault, and also said that he was transferring all other referrals of alleged civilian crimes of torture or abuse to the U.S. Attorney



for the Eastern District of Virginia. The Justice Department subsequently wrote to Senator Dick Durbin that it received twenty referrals from the Defense Department and the CIA Inspector General. The *New York Times* reported on October 23, 2005 that at least two of these referrals involved deaths related to the interrogations. Nearly three and one-half years after those twenty referrals were made, Passaro remains the only civilian indicted for any torture or abuse crime. Only an independent prosecutor can determine whether the Justice Department made the correct decision in all of those cases, and only an independent prosecutor can be trusted to fully and fairly investigate, and if appropriate, prosecute any other civilians.

### **REASON 8: Military Prosecutors Have Not Gone Up the Chain of Command**

Although a few low-ranking enlisted men and women have been charged and convicted under the Uniform Code of Military Justice for their roles in the use of torture or abuse against detainees, few officers have been charged and even fewer convicted. Despite substantial evidence of top military officers having knowledge of torture and abuse, or having approved illegal tactics, none of these officers have been charged. Only an independent prosecutor could assess whether the lack of prosecutions reflects the weight of available evidence.

Moreover, an independent prosecutor would be in the best position to determine whether any officer committed any crimes that should be prosecuted in civilian federal courts. For example, there is a serious question of whether then-Lieutenant General Ricardo Sanchez was truthful in his testimony under oath on what interrogation tactics he approved for use in Iraq.

During sworn testimony before the Senate Armed Services Committee on May 19, 2004, Senator Jack Reed asked General Sanchez, who commanded the Combined Joint Task Force Seven (CJTF-7) in Iraq, whether he “ordered or approved the use of sleep deprivation, intimidation by guard dogs, excessive noise and inducing fear as an interrogation method for a prisoner in Abu Ghraib prison.” General Sanchez testified in response that he “never approved any of those measures to be used in CJTF-7 at any time in the last year” and that he “never approved the use of any of those methods within CJTF-7 in the 12.5 months that I’ve been in Iraq.”

However, a document that the Defense Department released to the ACLU on March 25, 2005 specifically contradicted General Sanchez’s testimony. In a memorandum signed by General Sanchez and dated September 14, 2003, General Sanchez ordered the immediate implementation of a policy signed by him, entitled “CJTF-7 Interrogation and Counter-Resistance Policy.” The policy approved by him for interrogation of “detainees, security internees and enemy prisoners of war under the control of CJTF-7” specifically approves “significantly increasing the fear level in a detainee,” “adjusting the sleep times of the detainee (e.g., reversing sleep cycles from night to day),” “sleep management: detainee provided minimum 4 hours of sleep per 24 hour period, not to exceed 72 continuous hours.” The policy also approves for detainees who are not prisoners of war (and sets up an individualized approval process for prisoners of war) additional techniques, including “yelling, loud music, and light control: used to create fear, disorient detainee, and prolong capture shock. Volume controlled to prevent injury,” and “presence of military working dogs: exploits Arab fear of dogs while maintaining security during interrogation. Dogs will be muzzled and under control of MWD

handler at all times to prevent contact with detainee.” Parts of the memorandum were modified or rescinded in a subsequent memorandum later in 2003.

The September 14, 2003 memorandum signed by General Sanchez does not square with his testimony before the Senate Armed Services Committee. Although all of this information was provided to the Justice Department in 2005, only an independent prosecutor can be trusted with such high-level matters involving top military officers implementing Administration policy.

### **REASON 9: Further Delay in Criminal Investigations Could Put Some Crimes Outside the Statutes of Limitation**

Further delay in commencing a full and fair criminal investigation of torture and abuse could jeopardize prosecutions by missing applicable statutes of limitation. The federal government began the systematic use of torture and abuse roughly six years ago and, based on documents that we have obtained through the ACLU FOIA litigation, its use appeared to escalate at least through the exposure of the torture at Abu Ghraib more than three and one-half years ago. Other acts of torture and abuse have been more recent, the destruction of the videotapes reportedly was in late 2005, and statements made to courts regarding the videotapes have been even more recent.

Applicable statutes of limitation vary in length. The general statute of limitation for most federal felony crimes is five years. However, there is no limitation period for capital offenses, and certain specific offenses have different statutes of limitation. For example, at least some acts under the Anti-Torture Act have an eight year statute of limitation (but there is no limitation period if the violation of the Anti-Torture Act “resulted in, or created a foreseeable risk of, death or serious bodily injury to another person”), while one of the criminal contempt statutes has a one year statute of limitation. For at least some alleged crimes, there is a risk that the government will run out of time for filing charges.

### **REASON 10: Congress and the Agencies Have Failed in Holding Torture Perpetrators Accountable**

More than three and one-half years after the horrors of Abu Ghraib were exposed, America is hardly any closer to holding the torture perpetrators accountable than on the day that the photos were first shown. Despite several congressional oversight hearings, requests from members of Congress, numerous government inquiries, and litigation under the Freedom of Information Act, the public still does not even have the complete picture on the causes and scope of the abuse.

No one with the authority to prosecute civilians for violations of federal criminal laws prohibiting the torture or abuse of prisoners has investigated, or been ready to prosecute if warranted, the full scope of potential criminal acts by civilians. The military has begun the process of investigating, and when appropriate, prosecuting servicemembers, but the military cannot prosecute civilians. Similarly, Major General Antonio Taguba and Major General George Fay investigated and reported on widespread abuses in military-controlled prisons, and former Defense Secretary James Schlesinger led an investigation of the origins and scale of the torture

and abuse problem, but none of them had the authority to force disclosure of information from civilians and, of course, none of them had the authority to prosecute civilians if warranted.

Similarly, several congressional committees, the Inspector General of the Justice Department, and we have been told during the course of the FOIA litigation, the CIA, either have or are investigating at least some aspects of the torture issue. But the House and Senate Judiciary Committees have not used their subpoena powers, leaders of the House and Senate Intelligence Committees can do no more than secretly document their disagreement with the use of torture, the internal agency investigations do not cross into other departments or agencies, and none of the investigators have prosecutorial powers.

There is an obvious public interest in investigating and prosecuting all persons committing torture or abuse or conspiring to commit those crimes against detainees being held or questioned by the United States. Responsibility, and possibly criminal liability, for the wrongdoing extend higher up the military chain of command and to civilians. A small number of enlisted men and women and a few military officers should not be the only persons prosecuted for crimes, if civilians also engaged in criminal wrongdoing.

Given the increasing evidence of deliberate and widespread use of torture and abuse, and that such conduct was the predictable result of policy changes made at the highest levels of government, an independent prosecutor is clearly in the public interest. The country deserves to have these outstanding matters addressed, and have the assurance that torture will stop and never happen again. An independent prosecutor is the only sure way to achieve these goals.

Thank you for your attention to this matter, and please do not hesitate to call us at 202-675-2308 if you have any questions regarding this matter.

Sincerely,



Caroline Fredrickson  
Director



Christopher Anders  
Senior Legislative Counsel