

POPPY BUSH NOT JOINING OTHER DCIS OPPOSING INVESTIGATION OF W BUSH'S TORTURE

There are a number of fascinating details in this letter from seven former living CIA Directors opposing DOJ's torture investigation—starting with the fact that Poppy is one of just ~~two~~ three living CIA heads who didn't sign (the others are Carter's Stansfield Turner and close Poppy ally Robert Gates who, as Secretary of Defense, also has to weigh how our torture puts service men and women at risk). (h/t Ambinder)

Michael Hayden
Porter Goss
George Tenet
John Deutch
R. James Woolsey
William Webster
James R. Schlesinger

But that's not all.

Note that these men are asking the President to intervene in a DOJ investigation.

We respectfully urge you to exercise your authority to reverse Attorney General Holder's August 24 decision to re-open the criminal investigation of CIA interrogations that took place following the attacks of September 11.

They're not asking Obama to pardon those CIA officers under investigation, which would be a proper request of the President; they're asking Obama to spike an investigation the Attorney General has deemed necessary. They are, in short, asking for legal process to be set aside

for, ultimately, a political decision.

And they're making that request by appealing to an investigation conducted under a prior Attorney General—Alberto Gonzales—still (as far as we know) under investigation for politicizing DOJ.

The post-September 11 interrogations for which the Attorney General is opening an inquiry were investigated four years ago by career prosecutors.

They're further making that request by appealing to a US Attorney—Paul McNulty—also involved in that politicization.

Career prosecutors under the supervision of the US Attorney for the Eastern District of Virginia determined that one prosecution (of a CIA contractor) was warranted.

So they pile up political interference on top of political interference. Now, these former DCIs repeat the term "career prosecutor" four times. And it may well be the case that—unlike some other cases under Alberto Gonzales—there was no interference here. But they ignore one of the precipitating causes for the investigation being reopened: The Office of Public Responsibility's finding that there was serious misconduct involved with the referrals in these cases (the DCIs say there were fewer than 20).

It has been known that the Justice Department ethics report had criticized the authors of the legal opinions and, in some cases, would recommend referrals to local bar associations for discipline.

But the internal inquiry also examined how the opinions were carried out and how referrals of possible violations were made — a process that led ethics investigators to find misconduct serious

enough to warrant renewed criminal investigation.

Of course, the misconduct involved in those referrals may well implicate the two DCIs who served during those referrals: George Tenet and Porter Goss. Which might be why the DCIs make **this** claim, in a letter that's supposed to be about ongoing legal jeopardy for the officers who conducted the torture.

Moreover, there is no reason to expect that the re-opened criminal investigation will remain narrowly focused.

They don't explain what the problem is with a criminal investigation that has an expanded focus, mind you (again, they ignore OPR's finding of misconduct in referrals themselves). It just is bad, I guess, if you're a DCI who oversaw such activities.

From there, the former DCIs just make shit up. They claim, notably, that those being investigated will be subject to huge legal bills by Holder's decision.

Not only will some members of the intelligence community be subjected to costly financial and other burdens from what amounts to endless criminal investigations, but this approach will seriously damage the willingness of many other intelligence officers to take risks to protect the country.

As a threshold matter, the Detainee Treatment Act by law provides for the legal representation of those officers who conducted act that were "officially authorized and determined to be lawful at the time that they were conducted." (h/t Spencer) And Goss and Hayden must know this, as they were both in intelligence leadership positions when DTA was passed (indeed, Goss was involved in some of the

meetings at which McCain was pressured to put this clause in DTA).

But even assuming some of the officers who might be investigated here didn't act pursuant to orders, the CIA has already said it's going to pay everyone's legal bills. So no one is going to be subject to costly financial burdens. Yes, they might think twice before they break the law, even if they've got a Yoo memo protecting them.

And the problem is???

The DCIs go on to argue that the investigation will release information that will make it easier for al Qaeda to elude intelligence officers.

But, the administration must be mindful that public disclosure about past intelligence operations can only help Al Qaeda elude US intelligence and plan future operations. Disclosures about CIA collection operations have and will continue to make it harder for intelligence officers to maintain the momentum of operations that have saved lives and helped protect America from further attacks.

Just last week, a bunch of spooks close to Cheney's hagiographer were announcing they want more of this information to be out. Perhaps they're just different spooks, but it seems the intelligence community can't agree on whether the release of more information hurts or helps their cause.

Besides ... who said an investigation would end in the release of more information on the torture methods in the first place? Are they assuming the investigation is bound to end in a trial? And are they suggesting such a trial would somehow be devoid of all CIPA process?

And the DCIs ignore CIPA when they make this claim, too:

As a result of the zeal on the part of some to uncover every action taken in the post-9/11 period, many countries may decide that they can no longer safely share intelligence or cooperate with us on future counter-terrorist operations. They simply cannot rely on our promises of secrecy.

I guess as DCIs, some of whom oversaw the criminal referrals which OPR has determined involved serious misconduct, have forgotten that some of these same allies also hold us to international laws that require us to investigate torture allegations.

Now, the letter from the DCIs is transparently wrong on several counts. Mostly, though, I find it sad. I mean, do they really think Obama doesn't know that CIA has already agreed to pay legal fees for those under investigation? Do they really expect Obama—who has overseen egregious claims of state secrets in court cases—will dispose of all CIPA process?

And most of all, consider their execution. Seven former spooks-in-chief, and not one of them understands how Friday night news dumps work? (Actually, we know at least Tenet knows this, having pulled off a rather famous Friday night news dump on July 11, 2003).

They say CIA trade craft has gotten bad. But a misuse of a Friday night news dump like this is really just sad.

Update, via Spencer: Eerily, I seem to have hit precisely the same issues as DOJ.

The Attorney General works closely with the men and the women of intelligence community to keep the American people safe and he does not believe their commitment to conduct that important work will waver in any way.

Given the recommendation from the Office of Professional Responsibility as well

as other available information, he believed the appropriate course of action was to ask John Durham to conduct a preliminary review. That review will be narrowly-focused and will be **conducted by a career prosecutor who has shown an ability to handle cases involving classified information.** Durham has not been appointed as a special prosecutor; he will be supervised by senior managers at the Department.

The Attorney General's decision to order a preliminary review into this matter was made in line with his duty to examine the facts and to follow the law. As he has made clear, the Department of Justice will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees. [my emphasis]

Update: I screwed up the names and numbers of former DCIs not on this list. I think I've got it correct now. Thanks to JimWhite and bmaz for earlier corrections.