

By David Swanson

From [War Is A Crime](#) | Original Article

Elizabeth Holtzman knows something about struggles for justice in the U.S. government. She was a member of Congress and of the House Judiciary Committee that voted for articles of impeachment against President Richard Nixon in 1973. She proposed the bill that in 1973 required that "state secrets" claims be evaluated on a case-by-case basis. She co-authored the special prosecutor law that was allowed to lapse, just in time for the George W. Bush crime wave, after Kenneth Starr made such a mockery of it during the Whitewater-cum-Lewinsky scandals. She was there for the creation of the Foreign Intelligence Surveillance Act (FISA) in 1978. She has served on the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, bringing long-escaped war criminals to justice. And she was an outspoken advocate for impeaching George W. Bush.

Holtzman's new book, coauthored with Cynthia Cooper, is called "Cheating Justice: How Bush and Cheney Attacked the Rule of Law and Plotted to Avoid Prosecution -- and What We Can Do About It." Holtzman begins by recalling how widespread and mainstream was the speculation at the end of the Bush nightmare that Bush would pardon himself and his underlings. The debate was over exactly how he would do it. And then he didn't do it at all.

Holtzman ends her book by pointing out that legal accountability can come after many years, as in the case of various Nazis, or of Chilean dictator Augusto Pinochet, or of the murderers of civil rights activists including Medgar Evers.

In between, for the bulk of the book, Holtzman, a former district attorney, lays out the prospects for a prosecution of Bush and others on charges of lying to Congress about the grounds for war, wiretapping Americans, and conspiring to torture. This is an excellent sampling of the many horrors on the list of Bush's abuses, and clearly the three areas in which Holtzman believes a prosecution would stand the best chance of success. Her analysis of the war lies parallels and builds on that of Elizabeth de la Vega, another former prosecutor who has written on the topic. Holtzman adds an analysis of the steps Bush took to protect himself from prosecution in this and each other area. She also examines his possible legal defenses, finding some of them strong and others easily overcome.

In each area Holtzman finds charges that would stick, if our laws were enforced. She also finds charges that would have stuck, had the statute of limitations not elapsed, and others for which a couple of years yet remain. Holtzman believes charges for conspiring to defraud the government with war lies could be brought until January 20, 2014. She also believes that charges for violation of FISA could be brought until that same date, pointing out that changes made to the law have not provided immunity for prior violations of what the law used to be, and that immunity has been granted from civil suits but not from criminal prosecution. Charges of torture, Holtzman concludes, could be brought at any time in the future.

Holtzman argues for lengthening the statutes of limitations for grave abuses of power, for creating a special prosecutor, restoring the War Crimes Act, reclaiming protection against unchecked surveillance, recovering missing records, pursuing civil cases, impeaching torture lawyer turned judge Jay Bybee, and looking abroad for hope and change. She sees some chance of the International Criminal Court pursuing charges of torture.

This book is an ideal guide for a prosecutor with nerve and decency, although we haven't found one in this country in the past several years. Other than Kurt Dains who is running for the office of Town Grand Juror in Brattleboro, Vermont, which voted to direct its police to indict Bush and Cheney four years ago, I'm not aware of any prosecutors in the United States with plans to pursue this kind of justice.

Glaringly absent from Holtzman's book, despite its 2012 publication date, is any significant mention of the approach that President Obama has taken. There's not one word about "looking forward, not backward," not even so much as one tangential reference to Obama's public instructions to Attorney General Eric Holder, no analysis of the intense effort that the Justice Department, State Department, and White House have pursued to protect Bush and Cheney from accountability, no mention of the ways in which Obama has continued a similar pattern of criminality -- a state of affairs which, of course, might explain his reluctance to allow the enforcement of laws against his predecessor.

I don't think it's an unfair criticism to object that a book has left out a large but intimately related topic, one that appears to have been carefully avoided. Partisan prosecution of crimes and non-crimes by Republicans under President Clinton has been aggravated by Republican defensiveness and Democratic spinelessness under Bush. But it is the Democratic switch to defending all presidential wrongdoing since 2008 that has put the largest nails into the coffin of legitimate rule by law in this country. Bush's crimes have been legitimized. Obama has

claimed the power to torture as he deems necessary, the power to imprison and rendition as he sees fit, the power to murder any human being including U.S. citizens and children as he and he alone declares necessary, and powers of state secrecy that Nixon and Cheney never dreamed of. While Bush lied the Congress into a war that a reasonably intelligent 8 year old could have seen through, Obama has made the launching of wars a matter for the president alone. And that's just fine with Democrats. Surely Holtzman is aware that this partisanship is a cancer, that it has ruined the power of impeachment and done away with truly independent special prosecutors, and that the purpose of accountability is to halt the ongoing acceptance of crime.

I have to quibble as well with Holtzman's lowballing of the Iraq war death count by two orders of magnitude. I know everybody does it, but I still find it grotesque.

And yet I have to strongly recommend that this book be read and presented to every prosecutor in this country, including the seemingly shameless Eric Holder. We've got 23 months.