

# BULL DURHAM UPDATE: TORTURE TAPE INVESTIGATION WINDING DOWN AGAIN

Take this with a grain of salt, because we have heard it before, but there is a new story out that John Durham is winding down his torture tape investigation. Carrie Johnson and Julie Tate at the Washington Post are out this afternoon with an article intimating the investigation appears to be “nearing a close” and, as predicted here, there appears to be little, if anything, useful going to come from it. A false statements charge against a single secondary CIA official appears to be all that is potentially in the offing, and even that is shaky:

Assistant U.S. Attorney John H. Durham, who is leading the investigation, recently bestowed immunity from prosecution on a CIA lawyer who reviewed the tapes years before they were destroyed to determine whether they diverged from written records about the interrogations, the sources said. That could signal that the case is reaching its final stages. Durham has been spotted at the Justice Department headquarters in the District over the past few weeks, in another signal that his work is intensifying.

The agency lawyer, John McPherson, could appear before a grand jury later this month or in April, according to the sources, who spoke anonymously because the investigation continues. CIA lawyers have been essential to understanding the episode because they offered advice to agency personnel about the handling of the tapes and whether they should have been included when agency records were

turned over in other court cases.  
McPherson is not believed to be under criminal jeopardy but he had previously hesitated to testify, the sources said.

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Investigators now are turning their attention to the grand jury testimony last year by another agency official, the sources said. Lawyers point out that prosecutors routinely search for discrepancies in grand jury testimony as part of any broad investigation.

Jose A. Rodriguez, the former chief of the CIA's directorate of operations, triggered the destruction of the 92 tapes in November 2005. But he has not offered any testimony to prosecutors. But an official who worked alongside him did appear before the grand jury for more than a day and that testimony is being scrutinized closely by prosecutors, the sources said. The Washington Post was asked not to publish the name of the official, who is undercover. The official's attorney declined comment Wednesday.

If the reporting is accurate, there are several things of interest here. First off, there is little, if any, accountability in the offing. False statements against a secondary official giving closed door testimony is not going to take us rule of law adherents where we want to go. And if this official is indeed covert, the odds of charges really being pursued are not very good; not to mention that any prosecution, even if it were pursued, would be fastidiously kept narrow and constrained by CIPA procedures. I find very little hope for anything useful here.

The other thing of note is that there appears to be no consideration of action against Jose Rodriguez. Almost makes you wonder if his camp is not one of the sources for the Post article. Also, it had not previously been known that CIA

lawyer John McPherson had been given immunity in return for his cooperation. Which makes this line from the article "McPherson is not believed to be under criminal jeopardy but he had previously hesitated to testify" pretty funny. McPherson and his attorney clearly sure thought he had criminal exposure. McPherson was one of the people smack in the middle of the review of the tapes for accuracy of the written records. Yeah, a guy involved in the veritable Catalog of Destroyed Torture Evidence couldn't have any criminal exposure and ought to be immunized. Un huh.

The other thing of note is that, again if the reporting is indeed accurate, Big Bull Durham has bit off lock, stock and silencer barrel on the patently laughable proposition that the CIA bleating on "the motive for getting rid of the tapes was innocent" makes prosecution for obstruction and perjury too difficult. This is so ridiculous it is absurd. As I have said many times before, the immutable fact is the tapes were direct evidence in the cases of the detainees being ~~tortured~~ interrogated in them, abu-Zubaydah and al-Nashiri. The tapes were also directly responsive to the 9/11 Investigation proceeding, an official US government investigation, and the CIA and Bush Administration were more than aware of that fact. There is absolutely no way around either of those facts, and thus no way to paint the destruction as being in "good faith". It is complete and irreducible bullshit, and that is only the start of the absurdity of this claim.

So, while John Durham does run a tight ship and any "leak" from it does need to be considered carefully, much of this article seems about right, and is just the kind of greasing of the skids you would expect to be laid if the investigation was about to be wrapped up into a big bow of nothing. It is a safe bet that is exactly what is going on.