

# DURHAM TORTURE TAPE CASE DIES, US DUPLICITY IN GENEVA & THE PRESS SNOOZES

From the best available information as to the original destruction date of the infamous "Torture Tapes" having been on November 8, 2005, the statute of limitations for charging any general crime by employees and/or agents of the US



Government for said destruction will expire at midnight Monday November 8, 2010 as the general statute of limitation is five years. By operation of law, the statute would have run yesterday were it not a Sunday. So, by the time you are reading this, it is over. Absent something extraordinary, and I mean *really* extraordinary, a criminal statute of limitation is effectively a bar to subject matter jurisdiction and that is that. Ding dong, the John Durham torture tape investigation is thus dead.

Last week, I wrote a letter to the DOJ and saw to it that it was delivered to the main contacts, Dean Boyd and Tracy Schmalzer, as well as John Durham's office. None of them responded. Finally, late Monday afternoon I called Durham's office, and they acknowledged having received the letter. Although extremely cordial, there was simply no meaningful information or discussion to be had on the subject. "We have no comment" was about the size of it. I asked about the remote possibility of the existence of a

sealed indictment; there was “no comment” on that either, and there is absolutely no reason in the world to think anything exists in this regard.

Oh, there was one thing; when I asked why there had been no formal response to my letter, I was told perhaps it was a “little edgy”. Apparently actually phrasing an inquiry with legal specificity and facts makes it too “edgy” for the United States Department Of Justice. Who knew? Ironically, at the same time this discussion was transpiring today, the very same Obama DOJ was in US Federal Court, in front of Judge John Bates of the DC District, arguing for their unfettered right to extrajudicially execute an American citizen, and do so in secret without explanation. But my letter asking about the dying Durham investigation was edgy. The DOJ’s priorities, morals and duties seem to be a bit off kilter when it comes to their assignment of the term “edgy”.

Apparently TPM got the same brick wall. The open and shut criminal case against Jose Rodriguez is gone. The clear potential for cases against the four Bush/Cheney White House attorneys involved in the torture tapes destruction, as well as the two CIA junior attorneys, gone. Same for any case against Porter Goss. Gone, and the DOJ has no explanation and nothing to say. At this point, the excuse for not commenting is *not* that there is an ongoing investigation into destruction of tapes, the criminal subject matter of that investigation is gone, outside of the statute of limitations.

But the irony of the DOJ’s position on the Durham investigation does not end with a misplaced sense of what is “edgy”, an even rarer instance of irony played out last Friday in Geneva with the US presentation at the UN Universal Periodic Review. On Friday, November 5th, the US defense to its human rights and torture record was given by Harold Koh, the chief Legal Advisor to the State Department. What did Koh rely on as evidence of US

accountability for its now proven torture regime? Why the DOJ John Durham Investigation of course. From AFP:

"I think that the Obama administration defines waterboarding as torture as a matter of law under the convention against torture and as part of our legal obligation... it's not a policy choice," Koh told journalists after being asked about the report.

Asked whether the United States was still considering investigation or federal prosecution of those who might have ordered such a practice in the past, Koh said the matter was being examined by Special Prosecutor John Durham in Connecticut.

"Those investigations are ongoing. So the question is not whether they would consider it, they're going on right now," he explained.

Yep, the DOJ's John Durham investigation. The very same intrepid arm of justice and accountability that couldn't bring itself to indict up the Jose Rodriguez ham sandwich served up to them on a silver platter on January 2, 2008, nearly three years ago. The same DOJ/John Durham investigation so derelict in duty that it just let the statute of limitations on his original special prosecutor jurisdiction, the criminal destruction of the torture tapes, bleed out on the table in front of him. That certainly ought to be reassuring for the UN UPR, the UN Special Rapporteur, and the other world defenders of human rights.

So, just how inattentive and asleep at the wheel does the government think the American media and citizenry are, to brazenly engage in the simultaneous duplicity of relying on the Durham investigation in Geneva for the UN UPR On Human Rights at the same moment it was using the Durham investigation to bleed out the statute of

limitation on the primary jurisdiction of the investigation at home? Well, they think the media and people are completely asleep and, sadly, they are quite correct.

Look at how the New York Times covered the initiation and early stages of the DOJ John Durham criminal investigation into the destruction of the torture tapes. Here is CBS News, the Wall Street Journal, the Washington Post, Jonathan Turley, the list is endless. At several times since the initiation of the Durham torture tape investigation, there has been wide and excited coverage of leaks that Durham was "wrapping up" or on other aspects leaking out; here is the New York Times, Washington Post, more New York Times, Politico; again, the list is potentially endless. the torture tape investigation of the DOJ and John Durham has had constant coverage by any number of endless media sources until it came time for the expiration of the statute of limitations that effectively terminates the entire original jurisdiction of John Durham. Somehow, the end of the road merited no coverage whatsoever by the ever present American media. None. Nada. Zip.

So, where did the American media that has been covering the John Durham torture tape destruction investigation since its inception suddenly go; what hole did they crawl into when the actual statute of limitation, on the base acts for the whole investigation, was expiring? That is a question worth hearing an answer to. It is not that they didn't know, because you can bet they saw the letter last week. Why would the media stand by as the government whistles past the graveyard point of the primary jurisdiction of the John Durham Special Prosecutor jurisdiction?

(Graphic by the one and only Darkblack)