

# WHY JOSE RODRIQUEZ SHOULD BE IN PRISON, NOT ON A BOOK TOUR

As Marcy noted, Adam Goldman and Matt Apuzzo of the AP have gotten their hands on an early copy of Jose Rodriquez's new screed-book, "Hard Measures".

The one substantive point of interest in their report involves the

destruction of the infamous "torture tapes". What they relate Rodriquez saying in his book is not earth shattering nor particularly new in light of all the reporting of the subject over the years, but it is still pretty pretty arrogant and ugly to the rule of law:



The tapes, filmed in a secret CIA prison in Thailand, showed the waterboarding of terrorists Abu Zubaydah and Abd al-Nashiri.

Especially after the Abu Ghraib prison abuse scandal, Rodriguez writes, if the CIA's videos were to leak out, officers worldwide would be in danger.

"I wasn't going to sit around another three years waiting for people to get up the courage," to do what CIA lawyers said he had the authority to do himself, Rodriguez writes. He describes sending the order in November 2005 as "just getting rid of some ugly visuals."

As you may recall, specially assigned DOJ

prosecutor John Durham let the statute of limitations run out on prosecuting Jose Rodriquez, and others directly involved, including four Bush/Cheney White House attorneys (David Addington, Alberto Gonzales, John Bellinger and Harriet Miers) involved in the torture tapes destruction, as well as two CIA junior attorneys, on or about November 9, 2010. There was really never any doubt about what Rodriquez's motivation was in light of the fact he destroyed the tapes of Abu Zubaydah and al-Nashiri within a week of Dana Priest's blockbuster article in the Washington Post on the US "black site" secret prisons.

But, just as there was no doubt, then or now, as to the motivation of Rodriquez and/or the others, there was similarly never any doubt about the legitimate basis for criminal prosecution. The basic government excuse was they could not find any proceeding in which the torture tapes were material to so as to be required to have been preserved. For one thing, Judge Alvin Hellerstein determined the tapes were indeed material to the ACLU FOIA suit and within the purview of their evidentiary hold (even though he refused to hold CIA officials in contempt under the dubious theory they may not have had notice).

More important, however, was the immutable and unmistakable fact that the torture tapes were of specific individuals, al-Qaeda members Abu Zubaydah and Abd al-Rahim al-Nashiri, who, at the time of destruction of the tapes, were in detention awaiting trial, whether it be in an Article III court or a military commission. With al-Nashiri there was the added fact that he was a named co-conspirator (though unindicted) in the open indictment of his Cole bombing mates al-Badawi and al-Quso. It was, and is, patently duplicitous to claim there were no possible cases the tapes had pertinent evidentiary value to. And the DOJ knew it. Because I told them in a letter prior to the expiration of the statute of limitations:

Secondly, I would like to point out that should you be thinking about relying on some rhetoric that Mr. Durham simply cannot find any crimes to prosecute and/or that there were no proceedings obstructed, it is intellectually and legally impossible to not consider the tapes to be evidence, and as they almost certainly exhibit torture to some degree and to some part they would almost certainly be exculpatory evidence, in the cases of Abu Zubaydah and al-Nashiri themselves. The United States government continues to detain these individuals and they have charges that will putatively be brought against them in some forum (civil or tribunal), Habeas rights and/or indefinite detention review processes that will occur in the future.

In short, there exist not just the potential, but the necessity, of future proceedings, and agents of, or on behalf of, the United States government have destroyed material, and almost certainly exculpatory, evidence. Crimes have been committed. At a bare root minimum, it is crystal clear Jose Rodriquez has clear criminal liability; there are, without question, others culpable too.

In short, the tapes were material evidence in multiple ways, in multiple forums, and the crime of obstruction of justice by destruction of evidence is patently obvious. If you have any questions about the willingness of the DOJ to charge obstruction of justice for evidence destruction, look no further than yesterday's charging affidavit for destruction of text messages in the BP Gulf Oil Spill case. The DOJ knows how to charge the kind of crimes Jose Rodriquez and the others committed when they want to. Thing is, the DOJ of Barack Obama and Eric Holder did NOT want to charge any crime, even patently obvious obstruction, that impinged

on the Bush/Cheney illegal torture program.

Marcy made a very salient point in that “the problem with the torture tapes is not what they showed, but what they didn’t show”. That may well be true, but it does not detract from the fact the tapes were directly material evidence to Abu Zubaydah and al-Nashiri, in fact it only confirms the malicious intent the government had with respect to covering up their torture – the blank spots and erasures are powerful evidence. In and of themselves, the blank spots, erasures and inoperability of some of the tapes, in conjunction with the corresponding torture session logs, demonstrate malicious intent to cover up torture.<sup>3</sup> And let’s not mince words, whatever was still on the tapes was so powerful that it shocked the conscience of CIA Inspector General John Helgerson and displayed, at a minimum, waterboarding. So, there was critical evidence of many varieties possessed in and on the tapes Jose Rodriquez et. al wantonly destroyed.

So, why is Jose Rodriquez out running free, pimping his book and slamming President Obama, instead of in a federal prison? Well, it most certainly is not because he could not have been charged and convicted, it is because the Administration of Barack Obama refused to do so. Jose Rodriquez is one wired in spooky guy, and the CIA, well there is no telling what they might do to protect themselves. Maybe Dianne Feinstein and the Senate Intel Committee could investigate what levers Rodriquez and the Company pushed to obtain this result before the reach they looming completion of their “investigation” of the Bush/Cheney interrogation program.

[UPDATE] And Dana Priest has just weighed in this morning with her take on Rodriquez and his book. The entire article at the Washington Post is worth a read, but the pertinent part for this post is:

In late April 2004, another event forced his hand, he writes. Photos of the abuse


of prisoners by Army soldiers at the Abu Ghraib prison in Iraq ignited the Arab world and risked being confused with the CIA's program, which was run very differently.

"We knew that if the photos of CIA officers conducting authorized EIT [enhanced interrogation techniques] ever got out, the difference between a legal, authorized, necessary, and safe program and the mindless actions of some MPs [military police] would be buried by the impact of the images.

"The propaganda damage to the image of America would be immense. But the main concern then, and always, was for the safety of my officers."

Readers may disagree with much of what Rodriguez writes and with the importance of some of the facts he omits from his book, but the above sentence speaks volumes about why this book is important. In this case, a loyal civil servant – and the decision-makers above him who blessed these programs – were not thinking about the larger, longer-lasting damage to the core values of the United States that disclosure of these secrets might cause. They were thinking about the near term. About efficiency. About the safety of friends and colleagues. In their minds, they were thinking, too, about the safety of the country.

And after some back-and-forth with agency lawyers for what seemed to him the umpteenth time, he writes, Rodriguez scrutinized a cable to the field drafted by his chief of staff, ordering that the tapes be shredded in an industrial-strength machine. The tapes had already been reviewed, and copious written notes on their content had been taken.



"I was not depriving anyone of information about what was done or what was said," he writes. "I was just getting rid of some ugly visuals that could put the lives of my people at risk.

"I took a deep breath of weary satisfaction and hit Send."

Priest is exactly right about "the larger, longer-lasting damage to the core values of the United States". One of those values is fairness and the rule of law. Those values demand that the rights of the accused rate just as much or more moment than the self serving cover you rear desires of the accusers and abusers.

(Graphic by the one and only Darkblack)