

# UNSAID AT THE UN: “BECAUSE THE PRESIDENT ORDERED IT”

I caught a bit of the grilling that UN experts put the US panel of witnesses through, asking about the various areas where the US does not abide by our treaty obligations on torture and cruel treatment. The spin was thick, as US officials tried to pretend things like the Durham investigation were legitimate exercises. Here's Kevin Gosztola's take:

One of the many critical issues raised was the fact that Attorney General Eric Holder had appointed Assistant US Attorney John Durham in 2009 to conduct a [preliminary review](#) into “whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations.” But, in June 2011, Durham [decided](#) that only the death of two individuals in US custody at overseas locations warranted the opening of “full criminal investigations.”

By August 30, 2012, the criminal investigations into the deaths of those individuals were closed. The Department of Justice declined to prosecute “because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.”

David Bitkower, who is the Deputy Assistant Attorney General for the Justice Department's Criminal Division, attempted to satisfy the concerns of the Committee:

...Mr. Durham and his team reviewed the treatment of 101 such detainee cases. In so

doing, he drew upon information provided by the CIA inspector general and report from the International Committee of the Red Cross regarding the treatment of high-value detainees formerly in CIA custody, the Department of Justice's report on legal guidance related to enhanced interrogation techniques and other sources. After reviewing a substantial volume of information, Mr. Durham recommended the opening of two full criminal investigations and Attorney General Eric Holder accepted that recommendation.

After investigation the Department ultimately determined not to initiate prosecution of those cases. That decision was made based on the same principles that federal prosecutors apply in all determinations of whether to initiate a prosecution. Specifically, Mr. Durham's review concluded that the admissible evidence would not be sufficient to obtain and sustain convictions beyond a reasonable doubt..

However, there were no specific incidents, which Durham may have examined, mentioned by Bitkower.

"Because the cases did not result in prosecutions, I cannot publicly describe with specificity the investigative methods employed by Mr. Durham or the identities of any witnesses his team may have interviewed," he declared.

"Overall, however, the investigations involved interviews of approximately 96

witnesses and the examination of physical and documentary evidence. In short, Mr. Durham had access to and reviewed a broad array of information relating to allegations of mistreatment.”

The easy explanation these officials should have offered is that Durham let the Statutes of Limitation on torture expire on the torture and wrongful death cases he investigated.

But there’s another, one mirrored in US claims that David Passaro represents its commitment to prosecute abuse. Passaro, I’ve pointed out, was specifically denied documents that would have shown his alleged conduct (there were other problems with his trial) fell squarely in the Interrogation Guidelines in place at the time. Passaro was also denied access to the Presidential finding, which not only authorized his function in training Afghan paramilitaries, but authorized what was ultimately the torture program. (See my review of these issues from the last time the government used Passaro’s case as an exemplar.)

The people Durham would have investigated would all have had much better access to those documents (though Passaro had a briefcase of documents that were seized from him). As soon as you got to the Jonathan Fredmans and the Stephen Kappes, you’d have people with good claims to have been ordered personally to implement a torture program.

Ordered, by the President.

That’s why the panel yesterday all gave such consistently awkward answers. They’re still trying to hide that this came right from the President.