

# TWO DEAD DETAINEES MAY GET JUSTICE. THE OTHER 99 WILL NOT.

Eric Holder just released an announcement revealing that John Durham has recommended criminal investigation of two detainees tortured to death. But cases of the remaining 99 detainees whose treatment Durham investigated will be dismissed.

On January 2, 2008, Attorney General Michael Mukasey appointed Assistant United States Attorney John Durham of the District of Connecticut to conduct a criminal investigation into the destruction of interrogation videotapes by the Central Intelligence Agency. On August 24, 2009, based on information the Department received pertaining to alleged CIA mistreatment of detainees, I announced that I had expanded Mr. Durham's mandate to conduct a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations. I made clear at that time that the Department would not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees. Accordingly, Mr. Durham's review examined primarily whether any unauthorized interrogation techniques were used by CIA interrogators, and if so, whether such techniques could constitute violations of the torture statute or any other applicable statute.

In carrying out his mandate, Mr. Durham examined any possible CIA involvement with the interrogation of 101 detainees who were in United States custody subsequent to the terrorist attacks of

September 11, 2001, a number of whom were determined by Mr. Durham to have never been in CIA custody. He identified the matters to include within his review by examining various sources including the Office of Professional Responsibility's report regarding the Office of Legal Counsel memoranda related to enhanced interrogation techniques, the 2004 CIA Inspector General's report on enhanced interrogations, additional matters investigated by the CIA Office of Inspector General, the February 2007 International Committee of the Red Cross Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody, and public source information.

Mr. Durham and his team reviewed a tremendous volume of information pertaining to the detainees. That review included both information and matters that had never previously been examined by the Department. Mr. Durham has advised me of the results of his investigation, and I have accepted his recommendation to conduct a full criminal investigation regarding the death in custody of two individuals. Those investigations are ongoing. The Department has determined that an expanded criminal investigation of the remaining matters is not warranted.

As I noted at the time I announced the expansion of Mr. Durham's authority, the men and women in our intelligence community perform an incredibly important service to our nation, and they often do so under difficult and dangerous circumstances. They deserve our respect and gratitude for the work they do. However, I concluded based on information available to me then, and continue to believe now, that the Department needed to thoroughly examine

the detainee treatment issue. I am confident that Mr. Durham's thorough review has satisfied that need. [my emphasis]

We know one of these detainees is Manadel al-Jamadi. I haven't heard the identity of the second; I'm betting it more likely to be Major-General Abed Hamed Mowhoush (though I'm trying to verify whose custody he was in when he died) than it is to be Gul Rahman. Update: Adam Goldman reports that the second detainee is Gul Rahman. That is rather surprising news, as it may implicate the chain of command.

But note the implication here?

Durham only considered investigating the death by torture of those killed in CIA custody. Which seems to suggest detainees killed while in military custody would not be investigated.

Oh well. I suppose as Americans we should be content that 2% of the people we torture to death might get justice.

Update: Thanks to Eric Jaffa for pointing out the murder/torture error in my last line.

Update: al-Jamadi's name fixed.