

# **TORTURE TAPE DESTRUCTION ACCOUNTABILITY: HOW IT IS DONE**

✘ When the government possesses videotape evidence of the torture of subjects under its dominion and control, there is only one reason to destroy the tapes. That reason is not because they possess no evidentiary value; in fact it is the direct opposite, it is because they are smoking guns. Videotapes are definitive for one of the two sides; they either prove the subject was tortured, or they prove that he was not.

Either way, videotapes of detainee treatment are of paramount evidentiary value where there are allegations of torture. It would be insane to argue that such tapes have “no possible evidentiary value”; yet that is exactly what the United States government has officially claimed as their rationale with respect to the infamous destruction of the “torture tapes” depicting the treatment of detainees Abu Zubaydah and Abd al-Rahim al-Nashiri. The tapes were wantonly destroyed by the CIA in 2005, news of the destruction became public via a December 6, 2007 article in the New York Times and the DOJ specially assigned a prosecutor, John Durham, at the end of December 2007.

In the nearly two years that have elapsed since the appointment of Durham, he and the crack US Department of Justice have apparently not been able to find anything wrong with the destruction of the torture tapes. But, once again, US Federal courts have demonstrated the dithering perfidy of the Executive Branch, whether it be that of George W. Bush or, in many key Constitutional respects, his clone, Barack Obama.

From the Kansas City Star:

A Missouri prison inmate claims he was restrained for 17 hours without breaks to get a drink of water or use the bathroom.

But videotape that could prove or disprove Darrin Scott Walker's allegations of abuse cannot be found.

And a federal judge this week concluded that prison officials intentionally destroyed the tape "in a manner indicating a desire to suppress the truth."

U.S. District Judge Richard Dorr made the ruling in a lawsuit Walker filed alleging that he was subjected to cruel and unusual punishment.

The case is Darrin Scott Walker v. Michael Bowersox, and is filed in the Western District of Missouri (WDMO) in Case No. 05-3001-CV-S-RED. Here is a copy of Judge Dorr's Order.

First off, it should be noted that as bad as the alleged torture of *Walker* is, it is nowhere near the the sadistic and egregious conduct performed upon Zubayduh and al-Nashiri. Secondly, in *Walker*, the court was confronted with a tape that was "lost", maybe taped over. In the cases of Zubayduh and al-Nashiri, the US government, with malice aforethought, wantonly and intentionally physically destroyed the evidence; light years worse conduct than that in *Walker*. Yet Judge Dorr blistered the state for its acts in destruction of evidence:

For all of the following reasons, this Court agrees with Walker that the videotape was intentionally destroyed in a manner indicating a desire to suppress the truth. The prison had adopted a policy that required episodes on the restraint bench be videotaped. The Defendants offered no explanation of what happened to the tape, other than the fact the tape could have been taped

over, which indicates intentional destruction. The videotape was delivered to a responsible person for safekeeping by people who believed the videotape should have been kept in case of litigation. The Defendants were on notice to keep the videotape because prison officials knew Walker was considering a lawsuit the night of the incident. Lastly, the loss or taping over of the videotape was not a first time incident.

You have to wonder what Judge Dorr would think of the acts of Jose Rodriguez, the CIA and the highest levels of authority in the Executive Branch in destroying the "torture tapes" if this was his opinion in *Walker*. Dorr went on to hold that there should be a presumption that the destroyed tape was negative to the interests of the government in *Walker* and cited strong authority for said holding.

The *Walker v. Bowersox* case, and the strong foundation it is based on, just adds to the curiosity of the lack of ability of John Durham to find addressable conduct in the case of the torture tapes. Granted, one is a civil rights lawsuit, and one is a criminal investigation for obstruction, but the theory of culpability is the same.

Hey John Durham, where are you and what say you? Or are we just going to be peddled a bunch of Bull by Durham?