

# JOHN DURHAM'S THIRTEEN DOCUMENTS

As William Ockham has noted, there are thirteen documents described in the torture tapes FOIA over which John Durham has asserted a law enforcement exemption.

Of the 55 documents [in the Vaughn Declaration], the Agency determined that 13 documents could be released in part. Prior to releasing the 13 documents, however, the Agency was informed by the Department of Justice that Special Prosecutor John Durham was asserting Freedom of Information Act (FOIA) Exemption (b)(7)(A) over the portions of the 13 documents that the CIA was prepared to release.

Now, it may be that those are the only documents from this time frame that Durham sought to protect (he has said he was more concerned about documents closer to 2005), or it may be that he only reviewed the 13 that the CIA would have otherwise released.

But it seems worthwhile to pull out which of the 55 documents described in the Vaughn Index were singled out by Durham. I've put them below, in the likely date order.

## **Document 1, April 27, 2002, AZ Interrogation**

This document is a one-page email from a CIA officer to another CIA officer, with several additional CIA officers and attorneys copied. The email contains information relating to the interrogation of Abu Zubaydah,

## **Document 15, October 25, 2002, Disposition of videotapes—security risks**

This is a two-page cable from field to CIA headquarters discussing the security

risks if videotapes are retained.

**Document 8, December 3, 2002, Closing of facility and destruction of classified information**

This document is a two-page cable from CIA Headquarters to the field discussing the destruction of videotapes and other classified material at a field facility.

**Document 16, December 20, 2002, Source material on videotapes**

This is a three-page memo, with a cable attached, from headquarters to field regarding the policies on tape usage and destruction.

**Document 18, January 13, 2003, Guidance on retention of videotapes**

This is a two-page email, with a cable attached from CIA headquarters to field, providing guidance on the procedures for retention of AZ videotapes.

**Document 29, UNDATED, Meeting on disposition of AZ tapes**

This is a one-page email that on scheduling a meeting to discuss the disposition of the tapes. [Neighbor emails are from February 2003 and concern the response to Jane Harman's concerns about torture tape destruction.]

**Document 6, August 4, 2003, Response to destruction of videotapes**

This document is a thirteen page cable that discusses the disposition of the 92 videotapes.

**Document 3, November 8, 2005, Request for approval to destroy videotapes**

This document is a one-page cable from the field to CIA Headquarters requesting permission to destroy 92 videotapes.

**Document 5, November 8, 2005, Request for approval to proceed w/authorization of tape destruction**

This document is a one-page cable from the field to CIA Headquarters requesting permission to destroy 92 videotapes.

**Document 2, November 9, 2005, Request approval to destroy field videotapes**

This document is a fourteen-page email chain with six embedded cables. Three of the cables relate to the decision to destroy the 92 videotapes. The remaining cables discuss an unrelated counter-terrorism operation.

**Document 4, November 9, 2005, Videotape destruction confirmation**

This document is a one page cable from the field to CIA Headquarters, confirming the destruction of the videotapes.

**Document 23, November 25, 2005, Short backgrounder of tape destruction**

This is a three-page email chain that provides background information on the tape destruction.

**Document 22, October 5, 2007, Videotapes—cable granting approval**

This is a one-page email, between CIA officers, approving destruction of tapes. [This must have a cable—presumably the November 9, 2005 one—attached to it to have been included in this Vaughn Index]

And here are my thoughts on the inclusion of these documents among Durham's 13.

Document 1 is interesting because it is actually the second document, by date, in the series (there is one dated April 17). It would have been written at a time when both FBI officers

were still in Thailand, but would also have been written at a time when the interrogators were beginning to use harsher treatment (such as nudity and sleep deprivation).

Document 15, 8, and 16 are just three of quite a few in this series that capture discussions between Field and HQ over whether or not Field could destroy the torture tapes. They start in October not long after a photograph of Abu Zubaydah was taken on October 11. And the actual closure discussions take place against the backdrop of detainees dying in Afghanistan, even while CIA asked to expand the use of torture. I'm especially intrigued by the reference to destruction of videotapes "and other classified material" in Document 8.

Document 18 was written after OGC finished its review of the torture tapes (completed on January 9), and appears to have been done in anticipation of briefing Congress—there was some related discussion of how they could refer to the tapes, apparently in an attempt to avoid referring to them in such a way as CIA would acknowledge they were official records.

I suspect Document 29 was written in February 2003, because it appears in the middle of the several emails pertaining to CIA's and the White House's efforts to respond to Jane Harman. In any case, given that it's an email about scheduling a meeting—and not, apparently, about the discussion or resolution of that meeting, I suspect it's important because of the invitees as much as anything else. Of course, all of this is a bunch of wildarsed guessing.

I am perhaps most intrigued by Document 6, dated August 4, 2003. Here's what the timeline just before that date looks like:

**June 26, 2003:** In speech, Bush says we will prosecute those who torture. In response, Tenet requests and gets memo approving of water-boarding—giving the program "top cover."

**July 13, 2003:** CIA Directorate of

Intelligence, *Khalid Shaykh Muhammed: Preeminent Source on Al-Qa'ida* (July 13, 2004) created.

**July 29, 2003:** Tenet and Muller meet with Cheney, Condi, Ashcroft, Acting head of OLC?, DAAG, Gonzales, and Bellinger to discuss torture. Principals reaffirmed that program was lawful. CIA claims Ashcroft reaffirmed support for program, but Ashcroft contested their description of his approval.

**August 4, 2003:** 13-page cable discussing "disposition of the 92 videotapes."

That is, this was a discussion about destroying the torture tapes not long after CIA had demanded a document from President Bush authorizing torture. Further, it was written just the controversial July 29, 2003 meeting including Cheney. It was at this meeting, remember, where Ashcroft gave some kind of reaffirmation for the program, though CIA and DOJ differed on how extensive that reaffirmation was. In other words, this discussion about the torture tape destruction took place when top Administration officials were reassessing whether they could keep their torture program going (notably, in the wake of the torture of KSM).

Documents 3, 5, 2, and 4 seem to capture the chain of documents asking for—and getting—authorization for the destruction of the torture tapes. Note the two different formulations asking for permission: one requesting authorization to destroy the tapes, the other asking for approach to give authorization to destroy the tapes (so there may be two levels of command here).

Document 23 is the second most intriguing document, IMO. Who got this background, weeks after the torture tape destruction—and also after CIA had told Leonie Brinkema the government had no such videos? Is this document

as interesting for its intended recipient as anything else?

As I noted here, Document 22 appears to reflect the CIA researching itself who authorized the torture tape destruction after it had discovered they had missed some.