

# THE TIMELINE OF TORTURE TAPE DESTRUCTION IN JOHN DURHAM'S DOCUMENTS

As I said the other day, most of the documents we received the other day are the 13 or so documents that CIA had cleared for FOIA release, but over which John Durham had declared a law enforcement privilege. This chart compares what we got with what had been declared in Vaughn Indices in November (this showed the hard copy documents explaining the destruction of the torture tapes) and January (this showed the electronic documents discussing the destruction of the torture tapes; there are 6 files total to this index). While this doesn't show us everything John Durham is looking at (presumably, there are a number of documents that are too sensitive to release), looking at the documents from this perspective gives us a sense of what Durham is investigating.

As you'll see from the chart, I have numbered the documents from 1 to 27. I just assigned them in the order the documents appear in the complete PDF file. I'll also refer to the PDF number for each document.

## **The Documents Not on Durham's List**

First, assuming I matched the documents up to the Vaughn descriptions properly, there are four documents that were not on Durham's list:

- Document 9, January 9, 2003, Review of Interrogation Videotapes (PDF 24-28)
- Document 11, June 18, 2003, Interview Report (PDF 33-37)
- Document 22, December 3, 2007, Potential Statement (PDF 86-93)

▪ Document 23, December 10,  
2007, Trip Report (PDF  
95-99)

I believe these documents all did appear elsewhere in the earlier FOIAs on this (I'm going to try to find the Vaughn descriptions later), but presumably CIA had earlier said it could not release them, which meant it was that decision, rather than Durham's determination, that had prevented their earlier release.

Most of these documents (except the questions) pertain to the CIA Office of General Counsel review of the torture tape, and the Inspector General's subsequent discovery that the original review had neglected to mention key details about blank tapes and discrepancies between what was portrayed in the video and what OLC authorized. Curiously, their release seems to be tied to the events reported by the WaPo, in which John McPherson, reportedly the lawyer who conducted that review, was given immunity to testify before the grand jury in the last month or so. In other words, now that McPherson has testified about this stuff, CIA has decided to release the details of his review publicly. I have included the documents in the timeline below.

*Update: I've added in some of the dates reflected in the Vaughn Indices that I think flesh out this timeline. Those dates will not be bolded.*

### **The Chronology on the Tapes**

Many of the rest of these documents pertain to the correspondence regarding videotapes. The chronology they show is:

April 13, 2002: Interrogators start videotaping interrogations.

April 17, 2002: Two page Top Secret cable providing guidance on the retention of video tapes.

**April 27, 2002:** A letter directing the tapes “should all be catalogued and made into official record copies” and asking when they would “arrive here.” (Document 1; PDF 1)

**May 6, 2002:** Someone sends a cable providing guidance to “please do not tape over or edit videos of Abu Zubaydah’s interrogations” and “please preserve all videos.” Note, we don’t get the original copy of this, but it appears in an email forwarding the cable to Scott Muller and John Rizzo in January 2003. (Document 10; PDF )

**September 5, 2002:** According to October 25, 2002 cable (see below), “HQS elements discussed the disposition of the videotapes” and determined that “the continued retention of these tapes ... represents a serious security risk.” (Documents 2 and 3; PDF 3-7)

September 6, 2002: Two emails: A five-page email between CIA attorneys regarding a draft of a cable discussing the disposition of the video tapes, and a one-page email between CIA attorneys on the revisions of a draft cable regarding the disposition of the video tapes.

**October 25, 2002:** Cable directing field to tape over tapes each day and promising someone will deploy to assist in destroying the existing tapes. (Document 2, Document 3; PDF 3-7)

**October 27, 2002:** Some excerpts the October 25 cable and another one (which is entirely redacted) into a one-page summary. Note that both prior cables were classified Secret, but this summary is classified Top Secret. (Document 4; PDF 9)

**November 28, 2002:** It appears this cable was included among those collected in Document 12 some time after the tape destruction. But what we got in FOIA cuts off the cable (and entirely redacts what is there). (PDF 39-50) Note that the November 11, 2009 Vaughn Index described document 12 as a 13 page document, but we’ve only got 12 pages.

**November 30, 2003:** John McPherson reviews the

torture tapes. This is noted in an undated timeline of the facts surrounding the torture tape destruction. (Document 25; PDF 103-104)

December 1, 2002: A two-page email that discusses the notes of a CIA attorney.

**December 3, 2002:** After McPherson reviewed the videotapes on November 30, someone sent out a cable stating that it was a mistake to move the videotapes, and ordering that "no tapes will be destroyed until specific authorization is sent." Documents 5, 6, and 7 all appear to be identical copies of this cable, save for routing information that is redacted; the routing on Document 6 is very long. (PDF 11-18)

December 3, 2002: A one-page email outlining the destruction plan for video tapes.

**December 9, 2002:** Someone sends a cable referring to McPherson's review of the videotapes, as well as an inventory conducted on December 3, 2002. The inventory matches this inventory, though Friday's version does not redact the description of Tape 88 as "no video but there is sound" nor the description "begin other materials." Also note the appearance of "H20" below number 75. We don't get the original of this cable, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12; PDF 39-50)

December 20, 2002: A two-page memo from the CIA General Counsel to the Director of Central Intelligence discussing the disposition of the videotapes.

**December 20, 2002:** At a time when CIA is discussing what to do with the videotapes (there are emails between the Office of General Counsel and Tenet on December 20 and December 26 noted elsewhere in the Vaughn index), someone from Counterterrorism Center (probably their legal department) forwards the October 25 cable to someone else, perhaps to explain why the officers in the field had started taping over tapes on a daily basis. (Document 8; PDF 20-22)

December 20, 2002: Draft/outline of leaks memo, requesting formatting of an attached three page memo.

December 23, 2002: Two-page email with draft language for a memo on disposition of video tapes.

December 23, 2002: One page email described as "first cut at Memo on disposition of AZ videotapes," drafted by CIA OGC.

December 24, 2002: One-page email receipt of a copy of a memorandum and the writing of a cover memorandum regarding the interrogation video tapes.

December 24, 2002: Change to first draft memo on disposition of AZ videotapes.

December 26, 2002: A three-page memo and one-page cover sheet from the CIA General Counsel to the Director of Central Intelligence discussing proposed options for disposition of the tapes.

**January 2, 2003:** Someone requests HQS decision regarding videotapes. We don't get this cable, but it is noted in Document 12. (PDF-39-50)

**January 9, 2003:** John McPherson completes his memo on his review of the tapes. (Document 9; PDF 24-28)

**January 10, 2003:** A meeting to discuss the disposition of the torture tapes. For a variety of reasons, I believe this to be written by George Tenet's Chief of Staff, John Moseman. The note requests CTC to write a paper explaining the reasons to destroy the tapes. (Document 24; PDF 101)

January 12, 2003: A one-page Top Secret email asking what actions will make the video tapes an official record. A one-page email proposing how to reference the video tape for a briefing. A two-page email informing and reminding CIA officers of the question, what actions make the video tapes an official record.

**January 13, 2003:** Someone forwards Scott Muller

and John Rizzo and others “early background on videotapes.” The subject line says four cables are included, but only one appears here, the one sent on May 6, 2002 described above. (Document 10; PDF 30-31)

**January 2003:** Document 27 (PDF 110-122) appears to have been written before January 28, 2003 because it refers to the “Guidelines” that were finalized on January 28 as still being coordinated by CTC. The document summarizes Abu Zubaydah’s treatment up to that point and speaks of his status in the present tense. I’ll do a separate post on this, but the document may have been part of CIA efforts in January 2003 to justify destroying the torture tapes. It gives some background on him, lists the intelligence he has given, lists the techniques used on him (though, curiously, the description of the techniques is redacted), describes the videotapes and OGC’s review of them, and describes the efforts to fix the torture program. In addition, there are two extensive redacted sections. Most curiously, there is a one-page passage, classified “Secret” (the rest of the document is classified “Top Secret”) that summarizes who AZ was claimed to be, intelligence he provided, and his injuries. I suspect the entire document was used to brief Congress during their February 4 and 5 briefings, and the Secret summary was what the members of Congress were allowed to take away—though that’s just a wild guess.

**June 18, 2003:** Someone from CIA Inspector General’s office interviewed John McPherson. The report makes clear that McPherson did not think the videotapes that had been taped over were “noteworthy.” The report also suggests that McPherson had not compared the videotape content with guidance sent to the interrogators to see if it matched. McPherson appears to have said he was not under any pressure to ignore those aspects of the videotapes. (PDF 33-37)

**July 13, 2003:** A cable from the field asking for instructions for disposition of hard drives and

magnetic media. Note, we don't have the original document, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12; PDF 39-50)

**August 3, 2003:** Someone sends a cable to the field directing someone to maintain control of all magnetic media (but not the videotapes in someone's possession), and forward the inventory document for it to someone. We don't get the original of this cable, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12; PDF 39-50)

**August 4, 2003:** Someone sends a cable asking for "a cable from the Inspector General authorizing ref action." We don't get the original of this cable, but it appears someone pulled it up from the files some time after the tape destruction in November 2005. (Document 12, PDF 39-50)

**April 1, 2004:** A completely redacted event that appears in the undated timeline summarizing the key events surrounding the torture tape destruction. (Document 25; PDF 103-104)

April 12, 2004: A two page email discussing what actions would make the tape an official record.

**May 11, 2004:** David Addington and Alberto Gonzales tell Scott Muller not to destroy the torture tapes. This is noted in an undated timeline of the torture tape destruction. (Document 25; PDF 103-104)

November 10, 2004: Two page email chain on the video tapes and OIG's open investigation, described as "Memo w/OIG comment on tape disposition."

July 28, 2005: A one-page email with a CIA attorney's opinion, conveyed to his client, regarding the DNI's position [on] the destruction of the videotapes.

**November 4, 2005:** The timeline event reads: "At ODDO request, [redacted]CTC[redacted] drafts

language to be included in a cable from [redacted] requesting DDO approval to destroy the tapes. [Redacted]CTC[redacted] sends the language to [redacted] and the ODDO front office, as well as OGC for approval. The plan was for [redacted] to cut and paste the text into a cable and send it to HQs for approval.” (Document 25; PDF 103-104)

**November 5, 2005:** The timeline event reads: “[Redacted] sends cable requesting approval to destroy the tapes.” (Document 25; PDF 103-104)

**November 8, 2005:** A cable claiming the IG no longer needed the videotapes and OGC had determined they “accurately documented [redacted] activities on video tape” requests approval to destroy the videotapes. Documents 13, 15, and 16 all appear to be identical copies of this cable though with different routing information and (for Document 15) a different typeface. (PDF 52, 57, 59) Note, the timeline suggests this cable was sent on November 5, not November 8. (Document 25; PDF 103-104)

**November 8, 2005:** A cable granting permission to destroy the tapes. (Document 14, PDF 54-55) The timeline makes it clear that DDO–Jose Rodriguez–authorized the tape destruction. (Document 25; PDF 103-104)

**November 9, 2005:** The field informs HQ that it has destroyed the videotapes and within a minute of receipt of that cable—at 5:19 AM—someone forwards the cable to someone else. Note, we have both the original cable (Document 18; PDF 64) and the forwarded cable (Document 17; PDF 61-62)

**November 10, 2005:** The timeline on the tape destruction shows the following three events (Document 25; PDF 103-104):

[Redacted]CTC[redacted] sends a note to [redacted] saying he has gotten [redacted] concurrence on the language for the cable. He also says that he understands [redacted] is going to call [redacted] with the language for the



cable rather than email it to him.

[Redacted] receives the note and replies that the exchange with [redacted] has already taken place. He phoned the language to [redacted] sent the cable. He notes that DDO already approved the destruction of the tapes.

AGC learns that the tapes were destroyed and contacts DCIA Chief of Staff. AGC notes that DNI and Harriet Miers as recently as a few months ago opposed the idea of destroying the tapes. He states they need to be notified of the destruction as well as others.

Also on November 10, 2005, someone sends two cables with the subject line "Short backgrounder" to Dusty Foggo, first saying everything on the tape destruction made sense (though John Rizzo was upset), then noting that the approvals had not been as originally represented. (Document 20; PDF 81-82)

**November 25, 2005:** The November Vaughn (but not the January one) describes a 3 email chain with the subject line "short backgrounder" with a November 25 date. This suggests that the two emails sent on November 10 (Document 20) were actually part of a 3-email chain, the last email of which was written on November 25. Note that since the November Vaughn was hard copy documents and the January one electronic copy documents, there may not be an electronic copy of this email chain.

**September 25, 2007:** Someone sends another person the information for the email authorizing the tape destruction, as if asking for help doing a search. (Document 21; PDF 84)

**October 5, 2007:** Someone forwards the September 25 email, as if asking someone else for help searching for the email. (Document 21; PDF 84)

**December 3, 2007:** This appears to have been a request for a statement for the NYT, which broke

the story of the torture tape destruction the following day. It begins by laying out the problem we've identified with the tapes—that they showed that interrogators had used waterboarding more times and differently than they had been directed to. 7 pages of this document remain totally redacted (suggesting that the problems with the tapes were not just what they portrayed). (Document 22; PDF 86-93)

**December 10, 2007:** This appears to be someone sending the IG, internally, the summary of a trip taken during the IG Review of the interrogation program. This may have been the May 2003 trip when IG reviewed the tapes themselves, though the report also seems to discuss interviews. Note, the forwarding email says the summary table—which appears to summarize all Abu Zubaydah's waterboard applications—"was subsequently refined. (Document 23; PDF 95-99)

**December 20, 2007:** Some pulls the three cable sequence on tape destruction (perhaps for the IG?), as well as a document dated August 19, 2003. The November Vaughn suggests the August 19, 2003 document discusses an "unrelated counter-terrorism operation." (Document 19; PDF 66-79)