

JOHN DURHAM'S TORTURE TAPE DOCUMENTS

Jason Leopold reported on and posted a late update to the ongoing torture tape FOIA exchange. If I read the latest exchange correctly, Special Prosecutor John Durham is at least preparing to identify—and potentially make available through FOIA—a number of older documents on the torture tape destruction, as well as admitting that some more recent documents on the torture tape destruction exist.

Today's letter does two things. First, it withdraws John Durham's objection to Judge Hellerstein's order that:

The government shall produce documents relating to the destruction of the tapes, which describe the persons and reasons behind their destruction, from a period reasonably longer than April through December 2002. I find that the period for such production should be April 1, 2002 through June 30, 2003. If this longer period imposes an unreasonable burden, the Government should show why, and whether a reasonably shorter period would provide sufficient disclosure.

Today's letter states:

For the reasons stated in the enclosed ex parte letter from John H. Durham provided for the Court's in camera review, we write to advise the Court that Mr. Durham withdraws his objection to paragraph 4 of the Court's April 20, 2009 Order.

In addition, the letter admits that the CIA has documents pertaining to the torture tape

destruction,

that fall outside the date range provided in the Order; namely, April 1, 2002 through June 30, 2003. Mr. Durham may have objections to the production of documents created outside the date range specified in the Order.

This news is not surprising—it had always bugged me that the otherwise thorough Hellerstein hadn't demanded documents for the period right up until the destruction of the torture tapes in November 2005. Now, Durham is admitting such documents exist—which we knew, because among other things, we knew that John Negroponte sent Porter Goss a memo in 2005 telling him not to destroy the tapes. But it's nice to know that Durham is willing to go out of his way to admit that such documents exist.

If I had to guess, I'd say that Durham has finished his investigation of the earlier period—through June 30, 2003—so is now willing to produce at least a Vaughn Index of what documentation exists for the period (note, this should include the documents surrounding the Jane Harman briefing from February 5, 2003, including her letter telling the CIA not to destroy the tapes, and any paper response Scott Muller made internally at CIA). And I'd guess Durham has finished any interviews in which he would have wanted to avoid disclosing that there are documents of any sort from the later period. But it sounds like he's not willing to give these later documents up.

Yet.