

THE CIA'S CHERRY PICK, TWO

Update, July 21: As this post describes, the CIA explains that the timelines and outlines are derivative records, and therefore permissibly withheld from the Vaughn Index.

In my last post, I noted that the CIA's selection of materials for the Vaughn Index (Part One, Part Two) just happened to avoid any deliberative discussions from April and May, when interrogators were reportedly getting approval for techniques on a regular basis.

In this post, I will look at what the CIA has included and excluded from the later part of its Vaughn Index—the materials in which the torture tapes and their destruction were discussed. I've taken the timelines I did in this post and added in what we learn from the Vaughn Index—the additions are **bolded**.

Once again, the CIA's selection of materials for Hellerstein's reviews appear very careful. While the materials include specific details on waterboarding, they appear to exclude the main investigative records surrounding both the torture and the destruction of the tapes.

The IG Report materials

One chunk of material pertains to the IG Report on interrogation eventually published in 2004. The materials in the index include:

January 9, 2003: Review of Interrogation Videotapes. A 5-page memorandum for the record written by a CIA attorney. The document contains information relating to the contents of the destroyed videotapes, pre-decisional information pertaining to policy and legal guidance, confidential communications between the attorney and CIA personnel, and attorney work-product.

February 3, 2003: Interview report

February 10, 2003: Interview report
May 9, 2003: Notes from Tape Review. A 47-page handwritten document of notes from a review of the videotapes that was written in the field with a one-page email enclosed. The notes and email include information concerning the destroyed videotapes that was incorporated into a final report.
May 22, 2003: Trip Report. A 4-page memorandum for the record written by a CIA employee. The document contains information regarding the destroyed videotapes, and recommendations and opinions of CIA employees.
June 17, 2003: Notes of CIA Attorney Discussion. A 6-page record of handwritten notes from a CIA employee discussing the interrogation videotapes with a CIA attorney. The notes include details concerning the destroyed videotapes, communications between the attorney and Agency management, and attorney work-product.
June 18, 2003: Email
June 18, 2003: Interview report

A few interesting details about these materials. We know from the IG declaration submitted in this case that the IG review was initiated in January 2003. I earlier wondered whether that January 9 document was the document that initiated the review; I can't tell one way or another from the description. But I find it interesting that it is titled "review of interrogation videotapes." Is it possible that the entire IG review started as a review of the torture tapes?

As expected, those May documents appear to have been the work product of the IG's trip to view the torture tapes. I'm pretty interested that the CIA did not let Hellerstein review any of the interview reports. Are they worried about letting him see the product of the IG's investigation?

The torture tape scandal materials

One chunk of the material pertains to the CIA's reaction as the torture tape scandal broke in December 2007. Note, I've put these amongst the other known dates from the scandal.

December 3, 2007: Review of Potential Public Statement. A 3-page email chain between a CIA employee and his management discussing comments on a two-page attachment that is a draft of an Agency statement regarding the destroyed videotapes.

December 5, 2007: NYT informs CIA

they're going to publish story on tapes

December 6, 2007: Michael Hayden writes

letter to CIA personnel explaining

matter; NYT **breaks** story of torture tape destruction

December 8, 2007: DOJ **opens** preliminary investigation into torture tape destruction

December 10, 2007: Trip Report. A one-page email from a CIA employee to his management, with a 4-page attachment that is a memorandum for the record written by a CIA employee. The document contains information concerning the destroyed videotapes and preliminary recommendations and opinions of CIA employees.

December 10, 2007: 2-page email

December 11, 2007: Hayden **briefs** SSCI on the torture tape destruction, discussed the techniques used on Abu Zubaydah, including waterboarding

December 12, 2008: ACLU moves to hold CIA in contempt for destroying torture tapes

December 28, 2007: 7-page interview report

January 2, 2008: Mukasey **announces** appointment of John Durham to conduct investigation into torture tape destruction

January 7, 2008: Notes Concerning

Destroyed Tapes. A one-page email between a CIA employee and his management with a 12-page attachment of notes concerning the destroyed videotapes. The email discusses the attachment; first hearing on ACLU's contempt motion
January 10, 2008: CIA submits motion opposing contempt

As we discussed in my last post on this, the first document appears to be the CIA's initial reaction (and potential public statement) to learning the NYT was going to break this story.

I find it interesting that there's a "trip report" from the days after DOJ announced a preliminary investigation of the torture tape destruction.

More interesting, I note that the CIA did not give Hellerstein the interview report that precedes Mukasey's decision to appoint John Durham. As a product of an ongoing investigation, this may be proper. But once again, Hellerstein doesn't get to see the investigations underlying the torture and torture tape destruction.

The unknown timelines and notes

And then there are a slew of undated documents, many of them timelines and outlines. Of those, we get only:

Not Dated: A one-page note which summarizes details of waterboard exposures from the destroyed videotapes.
Not Dated: A 3-page memo which summarizes details of waterboard exposures from the destroyed videotapes.

I find this particularly interesting. The CIA is willing to give undated descriptions of waterboarding itself to Hellerstein. But not any timelines that would put those waterboarding

scenes into the context of what they did with
Abu Zubaydah and al-Nashiri over time.