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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES  
UNION, et al.,

Plaintiffs,

v.                                      04 CV 4151 (AKH)

DEPARTMENT OF DEFENSE, et al.,

Defendants.

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New York, N.Y.  
September 30, 2009  
2:00 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
HEATHER K. MCSHAIN  
SEAN H. LANE  
Assistant United States Attorneys

BRIAN KNIGHT  
Central Intelligence Agency

ALSO PRESENT: Leo Kittay, Law Clerk

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1                                      (In chambers)

2                                      THE COURT:    This is an in camera session called at my  
3                                      request to help me go through the backdrop of motions for the  
4                                      fourth summary judgment and the fifth summary judgment. And  
5                                      we'll take them each in turn. The fourth summary judgment  
6                                      motion deals with four memoranda issued by the Office of Legal  
7                                      Counsel of the Department of Justice, Mr. Lane?

8                                      MR. LANE:    Correct.

9                                      THE COURT:    To the CIA, which to a very large extent  
10                                     have been made public. And perhaps you want to state the issue  
11                                     for the fourth summary judgment.

12                                     MS. McSHAIN:    Sure.

13                                     THE COURT:    Ms. McShain.

14                                     MS. McSHAIN:    Sure, your Honor. With respect to the  
15                                     OLC memos, there are only two that are at issue in the fourth  
16                                     motion for summary judgment. I say "at issue," because there  
17                                     are only two with which the plaintiffs have challenged  
18                                     redactions. One of those is the May 10, 2005, OLC memo which  
19                                     is 46 pages in length. It is referred to in our briefing as  
20                                     the second OLC memo. And then plaintiffs are also challenging  
21                                     the redactions to the May 30, 2005, memo, which we referred to  
22                                     in our briefing as the fourth OLC memo.

23                                     Your Honor, just I can categorize the types of  
24                                     redactions that plaintiffs are challenging quickly for you.  
25                                     There are three categories. The first type of challenge

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1 affects detainee names and dates of detention or capture. We  
2 have, CIA has invoked exemptions one and three to withhold the  
3 detainee names and dates of capture.

4 The second broad category are intelligence methods and  
5 CIA standard interrogation policy that is still in use by CIA.  
6 And we have invoked exemptions one and three to withhold that  
7 information.

8 The third and final category, your Honor, are the  
9 names of three individuals who are consulted by the CIA. And  
10 that affects only one of the two memos that we are going to  
11 show you. So if I can begin.

12 THE COURT: These are all the memos in issue.

13 MS. McSHAIN: In the fourth --

14 THE COURT: We are not dealing with a sample; we are  
15 dealing with the entire universe?

16 MS. McSHAIN: That's correct, your Honor. It is only  
17 these two memos, and only those three categories of redactions.  
18 There are other redacted information in these two memos that  
19 plaintiffs have not challenged. It is only those three  
20 categories that are at issue.

21 THE COURT: All right. Our procedure would be for me  
22 to look at the redaction and what's under the redaction, and to  
23 make rulings as we go along. Then to explain those rulings in  
24 the public session that's going to follow this one, and make  
25 myself available for argument.

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1 MS. McSHAIN: Okay.

2 THE COURT: All right?

3 MS. McSHAIN: Okay.

4 THE COURT: Let's turn to the first document which you  
5 have labeled memo number two.

6 MS. McSHAIN: Yes. That's the 46 page May 10, 2005,  
7 memo.

8 THE COURT: Are you able to say who wrote it?

9 MS. McSHAIN: Yes, I am, your Honor. It is written by  
10 I believe Mr. Bradbury. One second. It's written by Steven G.  
11 Bradbury, who at the time was Principal Deputy Assistant  
12 Attorney General at OLC.

13 I apologize for hovering, your Honor.

14 THE COURT: Don't. Listen, make yourself comfortable.

15 MS. McSHAIN: Thank you.

16 THE COURT: There is a lot of papers to deal with and  
17 you needn't apologize.

18 It's from Steven Bradbury of the Office of Legal  
19 Counsel to John A. Rizzo, Senior Deputy General Counsel,  
20 Central Intelligence Agency.

21 MS. McSHAIN: Yes.

22 THE COURT: I see various redactions, beginning  
23 redactions at the top and bottom of the first page and  
24 throughout. So how should we proceed?

25 MS. McSHAIN: I think it makes sense for us to proceed

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1            in order through the memo, and I will just direct you to the  
2            actual redaction challenged by plaintiffs.

3                            THE COURT:    All right.

4                            MS. McSHAIN:    So the first challenge --

5                            THE COURT:    I should say also that it is possible for  
6            us to proceed by identifying pages, but even in that respect  
7            and other respects that this can possibly be a public record.

8                            MR. LANE:    Yes.

9                            THE COURT:    I am going to try to conduct it so the  
10          record can be made a public record.

11                           MR. LANE:    Yes, your Honor.

12                           MS. McSHAIN:    I am going to direct your attention  
13          first to page five of the second OLC memo.

14                           THE COURT:    We should identify the production number  
15          as well. The first page is 13. The last page is?

16                           MS. McSHAIN:    It is a 46 page memo.

17                           THE COURT:    The pages are not identified.

18                           MS. McSHAIN:    Right.

19                           THE COURT:    It is 46 pages.

20                           MS. McSHAIN:    Yes.

21                           THE COURT:    Those numbers seem to have been put on the  
22          document or were they there?

23                           MS. McSHAIN:    I think that, your Honor, if you notice,  
24          the version that we have, unfortunately as the redactions were  
25          done with respect to compartments that could not be disclosed,

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1            some of the page numbers were not part of the photocopy for  
2            this particular memo.

3                      THE COURT:    So we've put on 46 numbers.

4                      MS. McSHAIN:    Yes.

5                      THE COURT:    For convenience. Okay.

6                      First page, top page being page one. Go ahead.

7                      MS. McSHAIN:    I am going to direct the Court's  
8            attention to this line in the first paragraph of page five.

9            The CIA has sought to withhold this information.

10                     THE COURT:    What page is this?

11                     MS. McSHAIN:    Sorry. Page five.

12                     THE COURT:    It is the first page, the first words of  
13            which "the detainee is then interviewed by trained and  
14            certified interrogators to determine."

15                     MS. McSHAIN:    Yes.

16                     THE COURT:    The first redaction is about two-thirds  
17            down in the first paragraph.

18                     MS. McSHAIN:    Yes, your Honor. And the CIA has  
19            withheld this information as an intelligence method. It is  
20            currently in use and is not unique to the now-discontinued  
21            program of the CIA. So this is still in use by the CIA as a  
22            current intelligence method. And Mr. Lane can correct me if  
23            I'm wrong, but this information has never been disclosed,  
24            although it has been at issue in this case previously.

25                     THE COURT:    It is hard for me to understand why the

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1                      [REDACTED] should be classified.

2                      MR. LANE: Your Honor, I can provide a little  
3 background information. The Court had previously reviewed  
4 documents that raise this issue before. [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] and that has not been acknowledged publicly.

8                      And in I think the third summary judgment motion, the  
9 Court had withheld this. Obviously, the documents for the  
10 third summary judgment motion went up to the circuit and came  
11 back. But this particular intelligence method is still in  
12 operation, still an operative -- so it is still being withheld  
13 because it has the same issues as it did before when the Court  
14 reviewed it in the third summary judgment motion.

15                      MS. McSHAIN: If I could add, your Honor, it is not  
16 affected by the executive order that stops or ended the CIA's  
17 interrogation program.

18                      THE COURT: What is it about [REDACTED] that is secret?

19                      MR. LANE: I think it is the [REDACTED]  
20 [REDACTED]

21                      MS. McSHAIN: [REDACTED]

22                      MR. LANE: I don't know if we can say more without  
23 getting into SCI information, your Honor, but we're happy to if  
24 that would be of assistance.

25                      THE COURT: I think we need to discuss this in a

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1            classified manner. So starting with Ms. McShain's previous  
2            remark, we'll have this discussion not in the public record.

3                                      (Discussion off the record)

4                                      THE COURT: We had a very brief discussion off the  
5            record how physically to deal with the transcription of a  
6            transcript, parts of which are likely to be classified, but the  
7            bulk of which is likely to be public. Mr. Lane reminded me  
8            that in the past, we've treated the entire transcript as  
9            classified, and then in the next stage we've unclassified, as  
10          it were, a part that will be available to the public. So we'll  
11          follow that procedure as well. So this discussion is now going  
12          to be clearly classified unless I order to the contrary.

13                                      We discussed at the outset also whether some of this  
14          discussion will be for me alone with Mr. Kittay, my law clerk,  
15          being excused or whether he can be privy to this. And I'll ask  
16          for guidance from Mr. Lane.

17                                      MR. LANE: I think that's correct. With all due with  
18          respect for Mr. Kittay, I think that's appropriate.

19                                      (Law clerk not present)

20                                      MS. McSHAIN: Your Honor, if I could also direct your  
21          attention, this is the classified declaration of Wendy Hilton.

22                                      THE COURT: Yes. Thank you.

23                                      MS. McSHAIN: This paragraph five discusses -- I can  
24          now say it since -- [REDACTED]

25                                      THE COURT: [REDACTED]



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MS. McSHAIN:

[REDACTED]

The particular withholding.

THE COURT: I can accept the proposition that the

material discussed [REDACTED] should be

secret. But the fact that [REDACTED]

[REDACTED]

[REDACTED] doesn't strike me as something that is sensitive  
in any way.

MR. LANE: Your Honor, my understanding, and

Mr. Knight can chime in to straighten me out if I have it

incorrectly, but that [REDACTED]

[REDACTED]

THE COURT: I know you said that.

MR. LANE: I think what it does is [REDACTED]

[REDACTED]

So while the CIA detention and interrogation program  
is one thing the CIA was doing that it is no longer doing, [REDACTED]

[REDACTED]

Again, I think in the remand and the fact that things  
were sent back, this is one of the things that actually did not

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1 change. So certainly there has been a change --

2 THE COURT: The public memo says that "with regard to  
3 certain interrogation techniques, they are submitted to CIA  
4 headquarters which must review the plan and approve the use of  
5 any of these interrogation techniques before they may be  
6 applied." [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 MR. LANE: Certainly, your Honor, we've -- this is not  
14 classified, everything that your Honor has read up to [REDACTED]

15 [REDACTED]

16 MS. McSHAIN: Could I also add, your Honor, this is  
17 coming from the classified Hilton declaration in paragraph  
18 five. [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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[REDACTED]

2

[REDACTED]

The program in which the enhanced

3

interrogation techniques were used, however, is no longer still

4

active.

5

THE COURT: Ms. McShain and Mr. Lane, I cannot follow

6

that argument. Because what has been made public is that

7

[REDACTED]

8

9

[REDACTED]

is something that I

10

can't see at all compromising in any way with regard to

11

national security.

12

However, I'm just a judge. I am not invested with

13

responsibility to conduct intelligence activities and

14

counter-intelligence activities. My obligation is to defer.

15

So I'll put it this way: My tentative ruling is that [REDACTED]

16

[REDACTED]

But I

17

will suspend the effectiveness of my ruling until you have an

18

opportunity to discuss this with whoever makes these decisions,

19

and then you will have an opportunity to try to persuade me

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again on this.

21

So tentatively I rule that there should not be

22

redaction of that line.

23

MS. McSHAIN: Okay. Your Honor, this particular --

24

[REDACTED]

appears several times throughout the memos so --

25

THE COURT: I don't need to keep on making the same

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1                    rulings.

2                    MS. McSHAIN:    Okay. Okay.

3                    THE COURT:    So let's just stop for a moment. How  
4                    should we implement this tentativeness?

5                    MR. LANE:    Your Honor, I think if you could give us 10  
6                    days to get back to you and consult within the government,  
7                    because we think this is [REDACTED]

8                    [REDACTED]  
9                    [REDACTED]

10                    MS. McSHAIN: [REDACTED]

11                    THE COURT:    That's reasonable. How should I present  
12                    this to the attorneys for the plaintiff or plaintiffs?

13                    MR. LANE:    I think perhaps --

14                    THE COURT:    I could say perhaps that I made a  
15                    tentative ruling in favor of disclosure, but allowed 10 days to  
16                    the government to give me stronger authority for its position.

17                    MR. LANE:    That would be fine, your Honor. Again, I  
18                    think what we're liable to do in terms of explaining is that

19                    [REDACTED]

20                    [REDACTED] but we can set that  
21                    forth more clearly.

22                    I believe my math is probably faulty, that 10 days  
23                    will fall on a Saturday. If I'm counting correctly.

24                    THE COURT:    Two weeks.

25                    MS. McSHAIN:    Thank you.

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1                    MR. LANE: Thank you, your Honor.

2                    MS. McSHAIN: Would you like me to get your law clerk,  
3 your Honor?

4                    THE COURT: I'll do that. Why the redaction of the  
5 top and bottom of the page?

6                    MS. McSHAIN: Your Honor, first of all, these aren't  
7 challenged by plaintiffs, but these are the compartments, and  
8 the names of the compartments remain classified.

9                    THE COURT: Okay.

10                   (Law clerk present)

11                   MS. McSHAIN: Your Honor, the next redaction appears  
12 on page 15.

13                   THE COURT: Yes.

14                   MS. McSHAIN: And this is a detainee name that the CIA  
15 has invoked exemptions one and three to withhold.

16                   THE COURT: I rule in your favor. It is obvious to me  
17 that the names of detainees, if the CIA orders that such name  
18 be classified, should be followed by the district judge. The  
19 district judge is not in a position to evaluate the quality of  
20 potential compromise of national security that could be  
21 obtained from seeing the name of a detainee.

22                   Now, let me just anticipate an argument that will come  
23 up and ask you to respond to it. Not that I want to make a  
24 ruling on that at this point, but just in case that there is  
25 confidential information that needs to be used in the response.

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1            I would expect that the plaintiffs would argue that there is a  
2            Geneva Convention that requires identification of people who  
3            are taken into the detention. I'm not sure of that, but that's  
4            my suspicion. And what kind of response would you intend to  
5            make?

6                            MR. LANE:    Your Honor, I don't think they've made that  
7            argument. But I think what we would say is that I think  
8            consistent with what we said before about dealings with the  
9            detainees and things like the International Committee and The  
10           Red Cross, that they have their own discussion that's sort of  
11           off line of the public so as to promote candor on both sides.  
12           That's something that's essentially worked out between the  
13           United States and international organizations. And it is done  
14           very much as the Court ruled in withholding those kind of  
15           exchanges, withheld under exemption three, that they're done  
16           that way and off the public record so that it allows both  
17           parties to be reasonable. So I think that's how those issues  
18           are resolved consistent with national security.

19                            THE COURT:    Okay.

20                            MS. McSHAIN:    May I continue?

21                            THE COURT:    Please.

22                            MS. McSHAIN:    On the next page, page 16, this page 16  
23            again includes names and dates of capture of detainees.

24                            THE COURT:    The same ruling has to do with the  
25            identity issue.

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1 MS. McSHAIN: Yes. And also in --

2 THE COURT: In the footnote.

3 MS. McSHAIN: Yes.

4 THE COURT: Footnote 21. Yes. I accept the

5 government's position or I defer to the government's position.

6 MS. McSHAIN: Then, your Honor, the next redaction in  
7 the fourth memo.

8 THE COURT: Second memo.

9 MS. McSHAIN: I'm sorry. Second memo. Page 29 of the  
10 second memo, your Honor. We have two different categories of  
11 information. The first is the same intelligence method that  
12 you already ruled upon. Footnote 33 provides names and titles  
13 and other identifying information of individuals who are  
14 consulted by the CIA. And we have withheld that information  
15 under exemption three. We've provided titles of in some  
16 instances.

17 THE COURT: These refer to various people by titles.  
18 And what is the rationale?

19 MS. McSHAIN: There is also one name, too, your Honor.

20 THE COURT: Yes.

21 MS. McSHAIN: The rationale, your Honor, is this  
22 information is exempt under exemption three pursuant to the NSA  
23 and the CIA Act as consultants and contractors who assisted the  
24 CIA. I can direct you to 403(J) of the CIA Act. And I can  
25 describe it for your Honor. Section 403(J) of the CIA Act

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1        allows the CIA to retain personal services of individuals,  
2        including the advice of paid as well as unpaid consultants in  
3        support of its mission.

4                      THE COURT:    That's part of the overall protection of  
5        the CIA organization.

6                      MS. McSHAIN:    Yes. And falling within the CIA Act,  
7        that information is exempt from disclosure.

8                      THE COURT:    So I rule in your favor. Except for that  
9        one point that's covered by the previous ruling.

10                     MS. McSHAIN:    Yes. So with respect to page 29.

11                     THE COURT:    Textual paragraph on page 29.

12                     MS. McSHAIN:    With respect to the intelligence method.

13                     THE COURT:    Yes. Not the intelligence.

14                     MS. McSHAIN:    Intelligence method, that is how we  
15        withheld this information in the paragraph of the body of the  
16        page.

17                     THE COURT:    Yes. The reference is [REDACTED]  
18        [REDACTED]

19                     MS. McSHAIN:    Yes, your Honor.

20                     THE COURT:    That's subject to the previous ruling.

21                     MS. McSHAIN:    And then your ruling with respect to the  
22        contractors in footnote 33.

23                     THE COURT:    I sustain your position.

24                     MS. McSHAIN:    Thank you.

25                     THE COURT:    I defer to your position.



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1 MS. McSHAIN: Thank you, your Honor.

2 If we could jump ahead, your Honor, to page 41, this  
3 is another detainee name.

4 THE COURT: Same ruling. I defer to your position.

5 MS. McSHAIN: Thank you, your Honor. That's  
6 everything for the second OLC memo.

7 THE COURT: So in other words, the only point at which  
8 I overruled your position has to do with the first ruling I  
9 made.

10 MS. McSHAIN: Yes. Thank you, your Honor.

11 If we could now turn to the fourth OLC memo.

12 THE COURT: This again is from?

13 MS. McSHAIN: It is from Steven G. Bradbury again.

14 THE COURT: To Mr. Rizzo.

15 MS. McSHAIN: Yes.

16 THE COURT: Dated May 30.

17 MS. McSHAIN: This is --

18 THE COURT: 2005.

19 MS. McSHAIN: -- the 40 page May 30, 2005, memo  
20 referred to as the fourth OLC memo.

21 THE COURT: In this case the numbers are typed. Okay.

22 MS. McSHAIN: The first redaction I need to draw your  
23 attention to appears on page four. And the CIA has withheld  
24 this as intelligence methods that are currently in use and not  
25 unique to the now-discontinued program.

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1                    THE COURT:    There are three sentences. I'd like to  
2                    make rulings sentence by sentence.

3                    MS. McSHAIN:    Okay.

4                    THE COURT:    The first sentence.

5                    MS. McSHAIN:    I am going to write on this, your Honor,  
6                    if it's all right.

7                    THE COURT:    The first sentence, it would seem to me,  
8                    is the same as that which was the subject of the prior ruling  
9                    regarding [REDACTED]

10                   MS. McSHAIN:    This is the [REDACTED], your Honor, [REDACTED]  
11                   [REDACTED]

12                   THE COURT:    And the description going down to the  
13                   period on the ninth line.

14                   MS. McSHAIN:    I would draw your attention that whereas  
15                   the prior memo provided just the [REDACTED]  
16                   [REDACTED]

17                   THE COURT:    [REDACTED]  
18                   [REDACTED] as to suggest to me that there is no  
19                   purpose to any classification, and it doesn't do anything of  
20                   any compromising nature. So, that's covered by the same ruling  
21                   as before.

22                   MS. McSHAIN:    Okay, your Honor.

23                   THE COURT:    The second sentence now starts with the  
24                   ninth line and proceeds to the 11th line. And since it seems  
25                   to me of such a general and widely accepted and understood

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1        description, that there can be no potential compromise to  
2        national security, and I see no point for redaction. So I  
3        continue my previous ruling through the second sentence.

4                    Now we're dealing with the 11th line through the 15th  
5        line at the end of the paragraph.

6                    Leo, I am going to ask you to step out.

7                    (Law clerk not present)

8                    THE COURT: Mr. Kittay has left the room. Now, folks,  
9        it seems to me here that we have something different in this  
10       paragraph, in that [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14                    What is the argument for maintaining confidentiality  
15       in that respect?

16                    MR. LANE: I think, your Honor, the idea has to do  
17       with what exactly the CIA [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 [REDACTED] I grant --

22                    THE COURT: [REDACTED]  
23 [REDACTED]

24                    MR. LANE: Certainly, your Honor. I guess unlike the  
25       prior sentences, this parses it a little bit more, talking

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about [REDACTED]

THE COURT: That's why I asked Mr. Kittay to leave.

MR. LANE: We appreciate that, your Honor. I know that's certainly not optimal. I think this parses it in a more specific way in saying [REDACTED]

[REDACTED]

MS. McSHAIN: Your Honor, if I could also add, just state again what Ms. Hilton says in the classified declaration in paragraph five. [REDACTED]

[REDACTED]

THE COURT: I'm not challenging you on that. If I were being asked to defer to the CIA director with regard to [REDACTED] I would sustain your position.

MS. McSHAIN: Your Honor, then in the first sentence where it [REDACTED] this seems to be quite distinct from just [REDACTED]

[REDACTED]

THE COURT: You're correct. But again, [REDACTED]

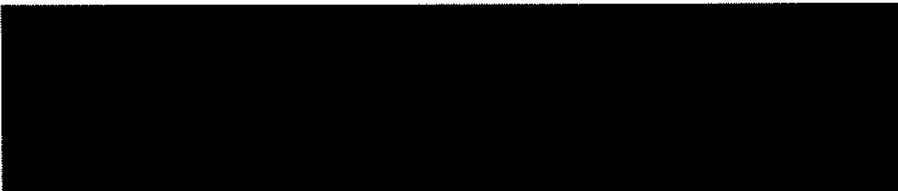
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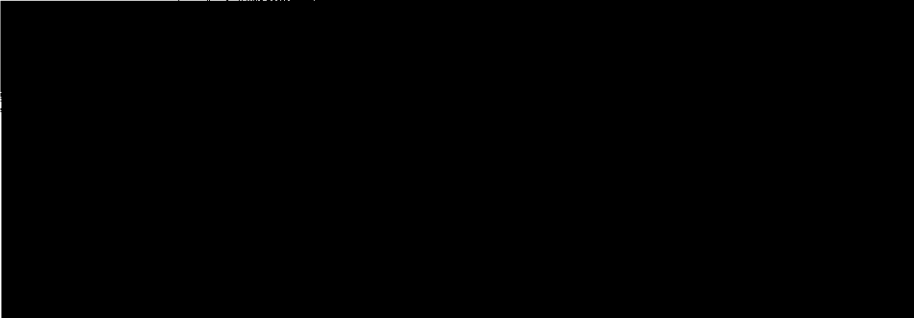
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MR. LANE: Your Honor, moving back to the last part of the paragraph that you were talking about, I think that the difficulty is this, which is I think the government has released obviously in the OLC memos as well as in the information release, August 24, a large amount of information about what the CIA does, but



So I think that raises its own sort of separate concerns as to how the government



THE COURT: It is an argument that we've been going over one way or another now for some time. The position that I'm expressing is that where descriptions are of such a general nature as to fall entirely within a general understanding of

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1 [REDACTED] that

2 redaction becomes excessive. And nothing comes out of the

3 redaction that people don't already understand and know.

4 That's my ruling.

5 Again, there's two weeks to come back with stronger

6 arguments that would show some potential for compromise of

7 national security.

8 MS. McSHAIN: Before we call your law clerk back in,

9 if I could just flag for you page five again, we are dealing

10 with the intelligence method [REDACTED]

11 THE COURT: I uphold your position with regard to page

12 five.

13 MS. McSHAIN: And also at the bottom of page five it

14 is [REDACTED]

15 THE COURT: The reference at the bottom of the page is

16 part of my ruling requiring disclosure.

17 MS. McSHAIN: Your Honor, the next --

18 THE COURT: The last line though, however, identifies

19 a particular detainee, and I uphold your redaction.

20 MS. McSHAIN: Thank you, your Honor.

21 THE COURT: And defer to it.

22 Going on to page six. Let me make a note.

23 MS. McSHAIN: Pages four and five, the intelligence

24 method, and then on page five twice where [REDACTED]

25 THE COURT: Yes. Okay.

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1 MS. McSHAIN: Then the detainee name at the bottom of  
2 page five you have upheld the government's withholding.

3 THE COURT: Got it. I'll ask Mr. Kittay to come back  
4 in.

5 MR. LANE: Before you do, to make this efficient,  
6 there is one thing we wanted to bring to your attention about  
7 detainee names that is likely to be raised in the argument that  
8 I think we can't answer publicly. So we thought that it was  
9 probably an appropriate time to address that.

10 MS. McSHAIN: I can go ahead. Your Honor, this is

11 [REDACTED]  
12 [REDACTED]

13 THE COURT: Right.

14 MS. McSHAIN: When the fourth memo was released, after  
15 it was released and the plaintiffs raised this in their papers,

16 [REDACTED]  
17 [REDACTED]

18 THE COURT: I see it.

19 MS. McSHAIN: [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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[REDACTED]

MR. LANE:

[REDACTED]

[REDACTED]

THE COURT: What do you want me to do?

MS. McSHAIN: Well, your Honor, as an initial point,

to the extent that plaintiffs want to argue that the CIA has in

any way waived the withholding of [REDACTED]

[REDACTED]

THE COURT:

[REDACTED]

[REDACTED]

MR. LANE:

[REDACTED]

[REDACTED]

The reason why I raised it now is because --

THE COURT:

[REDACTED]

[REDACTED]



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1 MS. McSHAIN: Your Honor, my concern with that, and  
2 Mr. Lane may disagree with me, we're even constrained in what  
3 we can say on the public record with respect to

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 MR. LANE: [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 THE COURT: I think we've got to be realistic in this.  
12 It is not an English word. It is obviously a proper name.  
13 Then I'll say the unwillingness of the government to expand its  
14 identification or its arguments in relationship to that should  
15 not be the subject of curiosity. I'm given to understand that  
16 this is a name that is common, therefore if it is a name, it  
17 may be the name of several people or many people or no person.

18 MR. LANE: I think that's correct. We wanted to raise  
19 this now.

20 THE COURT: But the fact that this reference appears  
21 here is not going to expand the level of disclosure.

22 MS. McSHAIN: Thank you, your Honor.

23 THE COURT: That's how I'll rule.

24 MS. McSHAIN: And it does not constitute a waiver, the  
25 [REDACTED] does not constitute a waiver.

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1 Thank you.

2 MR. LANE: We didn't want you to have this problem  
3 come up later.

4 THE COURT: Shall I get Mr. Kittay.

5 (Law clerk present)

6 THE COURT: So we've done, just to recapitulate, we've  
7 done pages four and five, which I ruled should be subject to  
8 disclosure for the same reasons as previously. Except for a  
9 reference to a name at the very bottom of page five. And there  
10 is a waiver argument at the bottom of page seven which I am  
11 going to deny.

12 MS. McSHAIN: Your Honor, I need to backtrack for a  
13 moment and go to page six of the fourth OLC memo where we have  
14 withheld names and dates of capture of certain detainees.

15 THE COURT: That's the same ruling as before.

16 MS. McSHAIN: Thank you.

17 THE COURT: Deferring to your classification.

18 MS. McSHAIN: And also on page seven, we have the same  
19 detainee names.

20 THE COURT: Same ruling.

21 MS. McSHAIN: Thank you. Your Honor, I also need to  
22 direct your attention on page seven, and you've already ruled  
23 on this, but it is the interrogation method.

24 THE COURT: I haven't ruled that, but it is [REDACTED]  
25 [REDACTED] as I described it, and that should be subject to

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1 disclosure.

2 The bottom paragraph are names which may continue to  
3 be redacted.

4 MS. McSHAIN: Thank you.

5 THE COURT: Page eight.

6 MS. McSHAIN: We have detainee names again.

7 THE COURT: And at the bottom of the page.

8 MS. McSHAIN: This is unchallenged, your Honor.

9 THE COURT: Okay.

10 MS. McSHAIN: We are going to skip ahead then to page

11 11. Your Honor, the CIA has withheld within these paragraphs

12 detainee names, and dates of capture, and then also

13 intelligence methods, as the unclassified and classified Hilton

14 declarations explain.

15 THE COURT: Have we done nine?

16 MS. McSHAIN: Nine is unchallenged, your Honor. We  
17 are on page 11.

18 Unchallenged.

19 THE COURT: Okay.

20 MS. McSHAIN: For the record, again, we are on page  
21 11, within these paragraphs that are withheld --

22 THE COURT: First you redacted the whole paragraph,  
23 three paragraphs. Let me read.

24 These paragraphs are discussions of what the CIA has  
25 learned.

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1 MS. McSHAIN: Your Honor, some of this is -- the raw  
2 intelligence, and I apologize. I should have been more  
3 explicit. The raw intelligence that's within these paragraphs  
4 plaintiffs do not challenge our withholding. What they do  
5 challenge are the detainee names in these paragraphs, and also  
6 the intelligence methods.

7 THE COURT: I defer to the CIA director.

8 MS. McSHAIN: The next redaction appears on page 29.  
9 Again, we have detainee names in the first paragraph.

10 THE COURT: Okay.

11 MS. McSHAIN: You will apply your prior ruling?

12 THE COURT: Yes. What about in this middle paragraph?

13 MS. McSHAIN: That is not challenged.

14 THE COURT: Okay.

15 MS. McSHAIN: The next challenged redaction, and this  
16 is actually the last redaction in the fourth memo, appears in  
17 footnote 29 on page 32. As an initial matter, the CIA has  
18 stated in its -- in the unclassified Hilton declaration that it  
19 does not even believe that the intelligence method that is  
20 withheld here, and the CIA has described it as standard  
21 interrogation policy, that does not relate to the interrogation  
22 of individuals who are in CIA or U.S. custody. But even if  
23 your Honor does find that it is responsive, the CIA has invoked  
24 exemptions one and three to withhold it, because it is still in  
25 use by the CIA and does not relate to the use of EITs.

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1 THE COURT: The English is very difficult to  
2 understand. I defer to your position.

3 MS. McSHAIN: Thank you, your Honor. That concludes  
4 both memos or the challenges to both memos.

5 THE COURT: Okay. Let me suggest that perhaps the  
6 best way to do that would be for either Mr. Lane or Ms. McShain  
7 to recite what we did and what rulings I made and I'll correct  
8 you along the way. Or would you rather I did it?

9 MR. LANE: We're happy to do it, your Honor.

10 MS. McSHAIN: Sure.

11 THE COURT: You kept notes?

12 MR. LANE: Yes, I have, your Honor. Detailed notes.  
13 You want us to do that now or later --

14 THE COURT: No, in open court.

15 MR. LANE: Absolutely, your Honor. So we're finished  
16 with --

17 THE COURT: So we're finished?

18 MR. LANE: We're finished with the documents that are  
19 subject to the fourth summary judgment motion. And your Honor  
20 correctly and wisely observed we are running long on time, so I  
21 don't know how the Court would like to handle that.

22 THE COURT: It's now 3 o'clock.

23 MR. LANE: These are subject to -- let me give you a  
24 little bit of a background and maybe the Court can figure out  
25 how it would like to handle that, if that would help.

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1                    There are 65 sample documents of a larger number of  
2                    580 documents, and these documents memorialize the contents of  
3                    the CIA videotapes. And there are, of those 65, 57 fall into a  
4                    particular category. They're either cables or things that are  
5                    like cables, because they are essentially operational documents  
6                    that are the result of ongoing operations. That is agents  
7                    sitting in rooms doing things or actually involved, and they  
8                    are the most contemporaneous documents.

9                    The other documents contain classified information,  
10                    and are subject to essentially the normal analysis. If you go  
11                    through line by line, word by word, you see what's classified  
12                    and not classified.

13                    We've withheld those other eight documents under a  
14                    variety of exemptions, but for the 57 that are cables or things  
15                    like cables, we withheld them on a blanket basis, and we've  
16                    done so for a couple of reasons and I can explain briefly.

17                    There are three declarations of the CIA director  
18                    addressing this issue. There is one June 8 that's  
19                    unclassified, one June 8 that's classified, and one that was  
20                    filed September 21.

21                    THE COURT:    Classified?

22                    MR. LANE:    Unclassified. I'm sorry, your Honor. What  
23                    the public declarations do is explain I think in fairly  
24                    rigorous detail is the fact that the CIA rarely releases its  
25                    operational documents, things such as cables. And that's

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1 because they are the most contemporaneous documents it has.  
2 And that it rarely does so if in fact the operations are either  
3 close in time to the events –

4 THE COURT: Are you telling me the fact that it is a  
5 cable is grounds for its withholding, or the contents of the  
6 cable?

7 MR. LANE: Both, your Honor. That the cables  
8 themselves are operational documents and contain lots of  
9 information that is classified B1, B3, it details an actual CIA  
10 operation.

11 But in addition, what the director makes clear is that  
12 his concern that releasing these kind of operational documents  
13 will do harm to national security even in any sort of redacted  
14 form.

15 THE COURT: Because it tells an enemy how controlled  
16 the agents of investigation are?

17 MR. LANE: I think it does several things. One of the  
18 things that the director pointed out is that he has serious  
19 concern that he amplifies with examples in his classified  
20 declaration which we have here, that release of these  
21 operational documents will make it so that foreign liaison  
22 partners, human intelligence sources, and allies will not want  
23 to cooperate with the CIA because they will have grave concerns  
24 about the CIA's ability to keep secret its operational  
25 documents.

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1 THE COURT: That goes to the contents of the  
2 documents, doesn't it?

3 MR. LANE: It does, but I think what it goes to is,  
4 normally, your Honor, we have looked for any reasonably  
5 segregable word, even if we don't think it might be responsive  
6 or informative, to look to see if that could be released. And  
7 here what the CIA director is saying if we start releasing  
8 things and say here is a part of a heavily redacted CIA cable,  
9 that once it is public that the CIA has released a cable  
10 dealing with these topics, that it will cause foreign  
11 governments, human sources, to not want to cooperate with the  
12 government and the CIA.

13 THE COURT: Depends how much is allowed, I guess.

14 MR. LANE: What the CIA director --

15 THE COURT: Let me give a choice. We can go into a  
16 public session now, we can discuss the four OLC memos, and then  
17 we can break out for the cables.

18 MR. LANE: That would be fine. Whatever is most  
19 convenient for the Court.

20 THE COURT: Let's do one of the 57. Who has made the  
21 samples, Mr. Lane?

22 MR. LANE: The CIA made the samples. And what it did,  
23 and Mr. Knight can correct me if I have this wrong, is it did  
24 it consistent with how we've done sampling in the case in the  
25 past, where you number everything and then you take every 10th



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1 cable.

2 THE COURT: Is that how you did it, is you took every  
3 10th cable?

4 MR. LANE: Yes. I think that's correct.

5 MR. KNIGHT: Yes.

6 MR. LANE: So what we have, your Honor --

7 THE COURT: We are now on the fifth summary judgment.

8 MR. LANE: Correct.

9 THE COURT: We have 65 documents.

10 MR. LANE: Correct.

11 THE COURT: Sampled on the basis of every, what, 10th  
12 memorandum?

13 MR. LANE: Every 10th cable.

14 THE COURT: Every 10th cable was taken out for  
15 sampling.

16 MR. LANE: As well as some other miscellaneous  
17 documents that are documents number 53 through 65.

18 THE COURT: Okay. Let's go.

19 MR. LANE: So, for the cables, your Honor, perhaps the  
20 best thing to do is they are a handful of documents in the  
21 sense that they are sizable, that they are 53 of them. There  
22 are certain ones we can refer the Court to.

23 THE COURT: Let's start and see what we get.

24 MR. LANE: The first one we'd refer the Court to is  
25 cable number 17, which just gives you an idea of the kind of

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1 information and sort of the nature of the document itself.

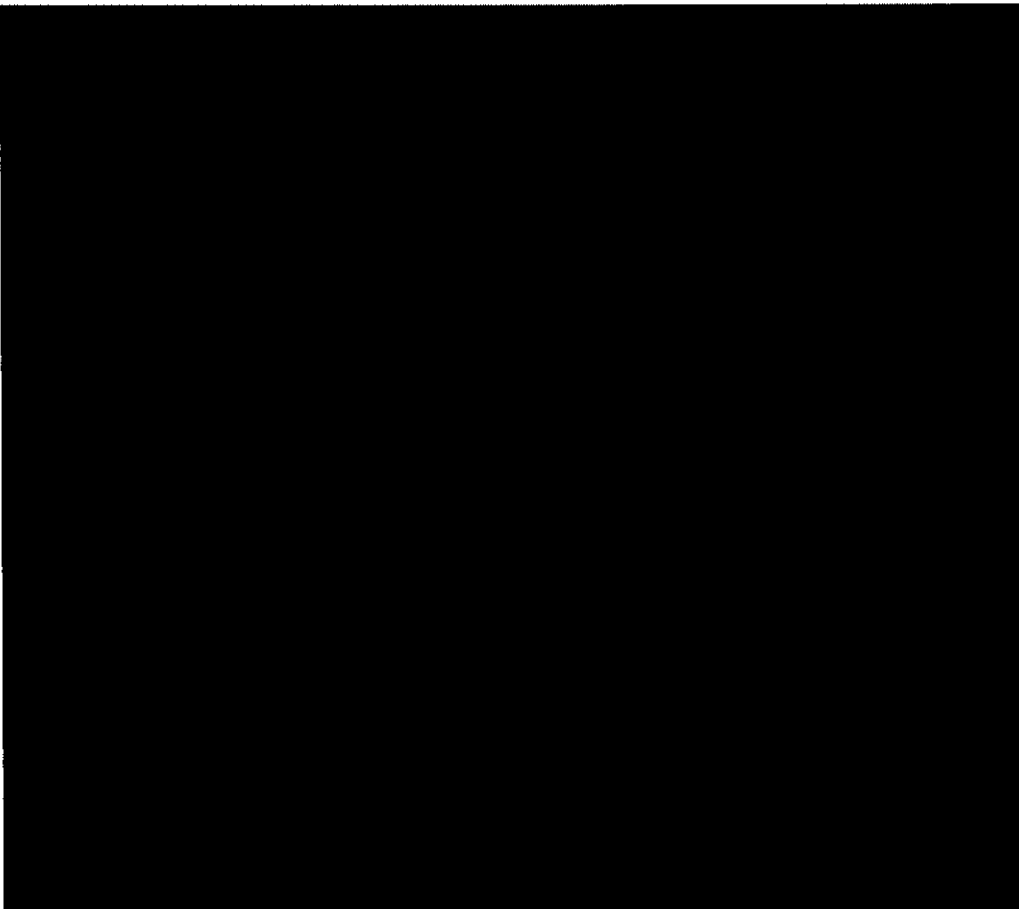
2 THE COURT: Leo, I'll ask you to step out.

3 (Law clerk not present)

4 THE COURT: I am going to describe Exhibit 57.

5 MR. LANE: I think it's 17, your Honor.

6 THE COURT: There are various references to actions  
7 and to whom it is to be sent and for what purposes and the  
8 like, all of which, all of which are subject to deference.



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23 MR. LANE: Thank you, your Honor.

24 THE COURT: Do we do this for each and every document?

25 MR. LANE: Your Honor --

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1 THE COURT: Should we try a couple more?

2 MR. LANE: Yes. I think that sort of sampling makes  
3 sense. We can give you some others to look at. That makes  
4 sense. Obviously the content in each one individually will  
5 vary.

6 THE COURT: The fact it is a cable or even a  
7 contemporaneous cable in my mind is neutral. The contents is  
8 what I'm looking at, and the contents are the reasons I  
9 mentioned deserve to be kept secret.

10 MR. LANE: In that connection, the one thing I think  
11 it makes sense to look at now, just on that issue, at the  
12 beginning of the book is the classified Panetta declaration.  
13 It has a few paragraphs --

14 MR. KNIGHT: That declaration is in the beginning of  
15 the OLC book.

16 MR. LANE: Thank you. That's why Mr. Knight is here,  
17 to make sure I'm on the straight and narrow, your Honor.

18 If you look at paragraph 11 of this, and that talks  
19 about the CIA's concern, it goes on to paragraph --

20 THE COURT: A cable is a method of reporting.

21 MR. LANE: We would agree, your Honor, clearly the CIA  
22 is most concerned about protecting information. But I think  
23 the problem is this. Is that if there are derivative  
24 documents, such as the OLC memos, that talk about these things  
25 in a certain level of generality, that the release of those

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1 kinds of documents poses, in terms of the kind of document,  
2 poses less of a problem to the CIA, because of the nature of  
3 essentially you are saying, well, here I have an agent, maybe  
4 an agent's handwritten notes which you'll see later on, and it  
5 says, well, even if it is in highly redacted form, if the  
6 agent's notes are available, it raises the specter that the CIA  
7 is going to be releasing more of the same kind of information.  
8 And that's kind of a problem.

9 And I think one of the things that the director in  
10 paragraphs 11 and 12 of the classified declaration talks about  
11 is specific examples of concerns where people have -- people or  
12 entities have come to the CIA raising that exact concern. It  
13 is not something that the CIA has based solely on --

14 THE COURT: That's because of the contents that have  
15 been disclosed. It is not the fact that there was reporting.  
16 All you're telling me, which is hard for me to accept, that the  
17 medium of communication by someone in the field to someone  
18 somewhere else deserves to be kept secret. How many media of  
19 communication are there? I can't see why the fact that it is a  
20 cable rather than an e-mail or a telex, which I assume could be  
21 a cable, or a telephone information, that doesn't say anything.

22 MR. LANE: I think for the CIA, it raises a heightened  
23 level of concern. Obviously the information is of the  
24 paramount concern. But the director basically, if you look at  
25 his unclassified declarations, September 21, says in

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1        considering my decision to withhold cables, and my concern  
2        about form, we've factored that into the decision of what the  
3        government has released.

4                      THE COURT:    Does anyone have that here?

5                      MR. LANE:    Yes, I do, your Honor. This is the  
6        September 21. Because certainly, your Honor, one of the things  
7        we wanted to do was make sure that -- and we refer you to  
8        paragraph five.

9                      THE COURT:    I'm reading it now. Well, if documents  
10       are like those that I just saw, the documents are not going to  
11       be released.

12                     MR. LANE:    Your Honor, I think that's the CIA --  
13       that's their concern is to not release the documents.  
14       Paragraph seven also addresses this.

15                     THE COURT:    I suppose the distinction is does a  
16       document that is completely redacted except perhaps just a  
17       date, get released. I'm prepared to hold that the entire  
18       document doesn't have to be released, then nothing gets  
19       released.

20                     MR. LANE:    Thank you, your Honor. I am not sure if  
21       the Court wants to look at a few other cables. We refer the  
22       Court to document number 40.

23                     THE COURT:    This is all about a person's comments on  
24       various other people identified to that person. And I defer to  
25       the CIA ruling.

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1                    MR. LANE:    And there are documents 26 and 28 are also  
2                    informative.

3                    THE COURT:    26 is totally about an evaluation of  
4                    activities that took place, and I defer to the CIA ruling.  
5                    What is the next number?

6                    MR. LANE:    28, your Honor.

7                    THE COURT:    It describes, this document describes  
8                    procedures used in interrogation. I defer to the  
9                    classification of the CIA.

10                   MR. LANE:    Your Honor, we obviously can look at as  
11                   many cables as your Honor wants. There are also eight -- I'm  
12                   sorry. Documents --

13                   THE COURT:    I'll look at two more. I'll pick them  
14                   out.

15                   Number 33 is a very short memorandum updating previous  
16                   information. And I defer to the classification.

17                   I'll look at 39. The person being questioned is asked  
18                   to comment on various individuals. And I defer to the ruling.

19                   I'll look at 44. The person questioned looks at  
20                   various photographs and makes comments. Same ruling.

21                   I'll look at number 13. It describes procedures used  
22                   in questioning, evaluation of the questioning, and comments on  
23                   various other people and places.

24                   I'm satisfied that these memoranda are properly  
25                   classified and that I should defer to the classification and

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1            not require disclosure.

2                            MR. LANE:    I want to make sure I have this clear.

3            What you were looking at were cables, so essentially you are  
4            saying the cables are properly classified?

5                            THE COURT:    Because of the contents. Not because they  
6            are cables. And the totality of those cables that there are no  
7            segregable portions.

8                            MR. LANE:    Thank you, your Honor. What we are left  
9            with is a variety of other -- well, let me back up for  
10           one second to be clear to the Court. The cables are documents  
11           one through 53, and the Court has looked at eight samples  
12           within that range.

13                           THE COURT:    Some you provided to me, and some which I  
14            picked out myself.

15                           MR. LANE:    Correct, your Honor. And the remaining  
16            documents we have fall into several different categories. Let  
17            me try to give the Court a representative sample at least of  
18            some of those.

19                           The first ones would be 57 and 58, which are both  
20            logbooks, again things done by agents during the course of an  
21            interrogation. And essentially I think they're very similar in  
22            content to the cables, but they're handwritten logbooks that  
23            perhaps would provide more in-depth detail of the actual  
24            events.

25                           THE COURT:    57 is a logbook on what appears to be

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1 8-and-a-half-by-14-inch paper, 130 pages. The sessions are  
2 numbered. There's handwritten notes on each. The same kinds  
3 of descriptions as were on cables that I previously examined.  
4 I'll thumb through them stopping from page to page to read the  
5 entries with more detail. And they are of the same quality and  
6 there seem to be no segregable portions that should be  
7 disclosed.

8 With regard to document 58, same size paper, there are  
9 32 pages separated by dates discussing the same kinds of things  
10 that were discussed in the other documents I read. I defer to  
11 the classifications and won't require disclosure.

12 MR. LANE: Moving along to other kinds of documents,  
13 your Honor. I have another say four different kinds of, four,  
14 five different kinds of documents. 59 would be one kind of  
15 document. What that is, is six pages of notes regarding,  
16 they're handwritten notes of an OIG investigator talking to a  
17 CIA attorney whose name is listed at the top right. And they  
18 also reflect the contents of the videotapes. And for this  
19 we've invoked exemptions one and three as to the content. But  
20 also because it involves the notes of an OIG investigator, it's  
21 deliberative process and attorney/client privilege and work  
22 product because it pertains to the OIG doing its investigation  
23 and looking into the issues.

24 THE COURT: This is a renewed report. I'm looking at  
25 document 59. It is dated and the time is set down. The report



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1 describes where the attorney went, what authority he had, whom  
2 he met, where he went, the number of tapes, that he packed up  
3 31 tapes, I can't read other things about this, that he read  
4 various logbooks. It seems to be that these are the kinds of  
5 things that should be disclosed, subject to potential specific  
6 items, for example, where he names various people he saw, that  
7 should be protected.

8 Mr. Lane?

9 MR. LANE: your Honor, I think that what we would  
10 protect in this document is, and it is B1 and B3 are invoked,  
11 because to the extent it pertains to things that he saw while  
12 looking at the videotapes, so for example, it is the same kind  
13 of information that's in the cables and the logbooks.

14 THE COURT: No, it's not. The cables and the logbooks  
15 report the methods used. This does not report methods used.

16 MR. LANE: There are some methods discussed in some of  
17 these.

18 THE COURT: I grant you that there are things in here  
19 that should be redacted. But the proposition I want to advance  
20 is that a large part, maybe the bulk of the document, should be  
21 produced.

22 MR. LANE: For example, I guess, your Honor --

23 THE COURT: For example, let's start with the  
24 beginning. The name of the person. Well, I guess the CIA  
25 protects its personnel.

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1                    MS. McSHAIN: Yes.

2                    THE COURT: So you protect the name. But you disclose  
3 the date and the time. First paragraph is entitled  
4 instructions. It seems to me you can produce that.

5                    The point I want to make is this is a document that  
6 you need to go over, I don't want to do this except by reacting  
7 to what you cover up.

8                    MR. LANE: What we will do is we will go through that  
9 and mark it up in terms of specific objections for each of the  
10 information at issue.

11                   THE COURT: How do we describe this document? A  
12 handwritten document.

13                   MR. LANE: It's six pages of notes, handwritten notes  
14 of the CIA employee.

15                   THE COURT: Six pages of handwritten notes of a  
16 lawyer?

17                   MR. LANE: No, we believe it is an OIG investigator.  
18 We said CIA employee discussing the CIA videos with a CIA  
19 attorney.

20                   THE COURT: So much of this will have to be produced.

21                   MR. LANE: Could we propose the same two week window  
22 to come back to you with specific --

23                   THE COURT: Yes. Right.

24                   MR. LANE: The one thing that I think when we go  
25 through that, we're also going to try -- obviously we

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1 understand the issues about fact versus opinions. But there is  
2 also some attorney work product, given he's talking to a CIA  
3 attorney with somebody else in the CIA, in terms of client  
4 confidences. And thinking about -- because obviously the CIA  
5 attorney was sent down there to do a particular thing on behalf  
6 of the CIA to give advice. Some of that --

7 THE COURT: I don't know whether the work product  
8 pertains in that respect or not. This is an investigation by  
9 the CIA. It is not the court case. To some limited degree I  
10 would go along with you, but I have to make my rulings on an  
11 item by item basis.

12 MR. LANE: Thank you, your Honor. So that's document  
13 number 59, your Honor.

14 There are a number of other documents that may make  
15 sense for the Court to look at. And obviously to the extent  
16 the Court wants to look at any of these documents. This is  
17 document number 61, which is a document prepared by a CIA -- it  
18 is a memo and it's prepared by the Office of Inspector General,  
19 and it talks in the second paragraph about the objectives for  
20 the OIG's trip and what it is trying to do. And it goes  
21 through essentially its -- it identifies what information it  
22 learned on the trip, what information it was trying to learn.  
23 We've claimed exemptions one and three for classified  
24 information, and we've also claimed exemption five for  
25 deliberative process to the extent that the OIG investigators

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1            are working on the investigation.

2                    As the Court is aware, there is a public OIG report  
3            that was published that provides the OIG's views in the  
4            resulting investigation. So this is something done personally  
5            to that.

6                    THE COURT: I defer to your position with regard to  
7            this memo.

8                    MR. LANE: I think it probably makes sense for the  
9            Court to flip to the next document.

10                   THE COURT: 62.

11                   MR. LANE: 62. Which is a --

12                   THE COURT: Contemporaneous notes of two people who  
13            reviewed tapes.

14                   MR. LANE: Right, your Honor. This in the  
15            government's view is similar to the logbook and the cables that  
16            the Court has reviewed, because it's contemporaneous notes  
17            reflecting the activities. But as it's in a slightly different  
18            format, we wanted the Court to take a look at it.

19                   THE COURT: I defer to your position on this.

20                   MR. LANE: If the Court looks one more, we believe  
21            that number 63 and 64 raise the same -- they really contain the  
22            same kind of content.

23                   THE COURT: 63 does.

24                   MR. LANE: And 64. They both are charts containing  
25            information, charts reflecting events that occurred during the

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1                      CIA interrogations.

2                      THE COURT:    Well, 64 calculates the minutes of  
3                      operation of the tapes. Why should that be --

4                      MR. LANE:    Your Honor, I think if you can back up for  
5                      just one second. I think what they're talking about is the  
6                      waterboarding sessions. So they're referencing the tape, the  
7                      waterboarding session, and then the length of the waterboard  
8                      used.

9                      THE COURT:    I understand it. And I defer to your  
10                     position. 66.

11                     65 is a photograph.

12                     MR. LANE:    Correct. That was the next one I wanted to  
13                     bring to the Court's attention. As the Court is aware, for  
14                     photographs from the Department of Defense that the Court has  
15                     considered, those photographs were not photographs taken by the  
16                     Department of Defense, but rather by third-party individuals --

17                     THE COURT:    Let me cut this short. You've given out  
18                     various names, but as I recall, nobody's picture has been given  
19                     out.

20                     MR. LANE:    Not by the U.S. government, no, that's  
21                     correct, your Honor.

22                     THE COURT:    So, on the theory that a person's picture  
23                     gives out a lot more information, in addition to knowing the  
24                     name, you want to keep that secret.

25                     MR. LANE:    Right. And because this is actually a CIA

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1           photo of a person in custody.

2                      **THE COURT:** I defer to that position. Have we done  
3 everything?

4                      **MR. LANE:** We haven't looked at every single document.  
5 We tried, there were the 53 cables, and you looked at samples  
6 from these, and these other documents from 54 to 65.

7                      **THE COURT:** We'll identify, you identify what I looked  
8 at by number. And if the plaintiff wants me to look at a few  
9 more in the public session, I will do it and describe if I can  
10 the nature of the memorandum.

11                     **MR. LANE:** What we tried to do was pick ones that were  
12 representatives for the whole, but certainly to the extent --

13                     **THE COURT:** So we can go to court. I will meet you  
14 there.

15                     **MR. LANE:** Thank you very much.

16                     **MS. McSHAIN:** Thanks for your time, your Honor.

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