

JA-219

XI1IACLC SEALED - CLASSIFIED

1 [REDACTED] They've been redacted in their entirety throughout
2 the document because if, even if [REDACTED] were to
3 be redacted, the confirmation of any information in particular
4 media reports would tend to corroborate other information in
5 the reports [REDACTED]

6 THE COURT: I don't follow that. These are public
7 newspaper accounts and they should be produced.

8 Notes 43 and 44 should be produced.

9 ASSOCIATE GENERAL COUNSEL OF CIA 1: Your Honor, this
10 does frequently become a problem for us where we have news
11 reports in the agency, and if we do confirm their veracity,
12 then we are confirming some of the classified information that
13 may be in them.

14 THE COURT: Once they're out, they're out.

15 ASSOCIATE GENERAL COUNSEL OF CIA 1: Sometimes,
16 sometimes they're inaccurate. But there are times that they
17 are accurate. And we don't confirm what is --

18 THE COURT: There is nothing in here that says you
19 have to take a position on anything.

20 ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]
21 [REDACTED]

22 [REDACTED]
23 THE COURT: I don't think it has that connotation at
24 all. That should be produced. I'm looking at the first
25 paragraph. In paragraph one, these are just summaries of

JA-220

XI1IACLC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

what's in the newspaper article, [REDACTED]
[REDACTED]
[REDACTED]

And my suggestion is that this paragraph should be produced with those three [REDACTED] [REDACTED] redacted.

MS. NORMAND: [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

THE COURT: Drop a footnote which says that the agency neither confirms nor denies the accuracy of the information reported.

MS. NORMAND: Your Honor, FOIA doesn't permit that. In the 2012 decision of the --

THE COURT: I agree. It is just a production; it is not a commentary. So you can redact the three words I mentioned and produce the paragraph.

Next page for rulings is 27. Redaction is appropriate.

28. Appropriate.
29. Redactions in the second paragraph are

JA-221

XI1IACLC SEALED - CLASSIFIED

1 appropriate. And in the top sentence of the third paragraph.

2 That's not clear which is the paragraph. It begins [REDACTED]

3 [REDACTED] Redactions are appropriate.

4 Page 30. Appropriate.

5 Appropriate.

6 Page 32. Appropriate.

7 On page 33. Appropriate.

8 34, I'm looking at footnote 68, and wondering if [REDACTED]

9 [REDACTED]

10 MS. NORMAND: Your Honor, [REDACTED]

11 [REDACTED]

12 [REDACTED] So that's why this is

13 redacted in full.

14 THE COURT: You may redact.

15 MS. NORMAND: Thank you.

16 THE COURT: Page 35. Redaction is appropriate except

17 for references to newspapers in footnote 70 to 73. No. 70,

18 71, and 72.

19 MS. NORMAND: But the text may be redacted, your

20 Honor?

21 THE COURT: Yes. Yes. The footnotes 70, 71, and 72

22 will be produced. I'm sorry. No, the text should be produced.

23 I'm sorry. It's all a summary of what's in the public --

24 ASSOCIATE GENERAL COUNSEL OF CIA 1: Your Honor, this

25 is an example though --

JA-222

XI11ACLCLC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: -- the public media.

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

[REDACTED]

THE COURT: [REDACTED] You're reporting.

You're just summarizing.

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

[REDACTED]

[REDACTED]

THE COURT: You're sensitive to what the press is reporting. It should be produced.

36. There is no ruling.

37. No ruling.

38. The redactions are proper.

39. Proper.

40. Proper.

41. No rulings.

42. No rulings.

43. The redaction in the second full paragraph is appropriate. All of footnote 87 should be produced.

44. Redactions are appropriate.

45. Appropriate.

46. No ruling required.

47. No ruling's required.

48. No ruling's required.

49. The redactions are appropriate.

JA-223

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 3 of 18
X111ACLC SEALED - CLASSIFIED

18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

50. No ruling's required.

51. No ruling's required. I'm sorry. Redactions are appropriate.

We're up to page 53.

ASSOCIATE GENERAL COUNSEL OF CIA 1: 52, your Honor.

MS. NORMAND: I believe there is one redaction on 52.

At the bottom.

THE COURT: Appropriate.

If we leave out the code names and the place name in the first redacted paragraph, starting with [REDACTED]

ASSOCIATE GENERAL COUNSEL OF CIA 1: Your Honor.

THE COURT: What would be left?

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

[REDACTED]

THE COURT: What's CTC?

ASSOCIATE GENERAL COUNSEL OF CIA 1: CIA's counterterrorism center.

THE COURT: All right.

JA-224

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 4 of 18
XI1IACLC SEALED - CLASSIFIED

19

1 ASSOCIATE GENERAL COUNSEL OF CIA 1: There were a
2 number of things.

3 THE COURT: Ms. [Associate General Counsel of CIA 1]
4 said that it was not known [REDACTED]

5 [REDACTED] Is that correct?

6 ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 THE COURT: We'll take out the place name and the
10 codes.

11 ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

12 [REDACTED]

13 THE COURT: [REDACTED]

14 [REDACTED]

15 ASSOCIATE GENERAL COUNSEL OF CIA 1: Yes.

16 THE COURT: Why?

17 ASSOCIATE GENERAL COUNSEL OF CIA 1: This is part of
18 our, this was part of the methods at the time.

19 THE COURT: It only shows you're doing the right
20 thing.

21 ASSOCIATE GENERAL COUNSEL OF CIA 1: There is still a
22 harm in releasing how we go about doing these types of --
23 conducting --

24 THE COURT: I don't see a harm with that. So you can
25 redact the place name and the code names.

JA-225

XI11ACLG SEALED - CLASSIFIED

1 ASSOCIATE GENERAL COUNSEL OF CIA 1: Then it also says

2 [REDACTED]

3 [REDACTED]

4 THE COURT: I haven't touched the second sentence.

5 The first and second and third sentences in the first paragraph
6 are properly redacted.

7 MS. NORMAND: It is just the first sentence that will
8 be released, your Honor?

9 THE COURT: Right. And a little bit of the second
10 sentence.

11 MS. NORMAND: If I could clarify, in the second
12 sentence the Court is ordering released everything except for

13 [REDACTED]?

14 THE COURT: Yes, the first sentence.

15 MS. NORMAND: If I could, the date could identify,
16 well, would identify [REDACTED]

17 THE COURT: Redact the date.

18 MS. NORMAND: Thank you.

19 THE COURT: The rest of the first paragraph is to be
20 produced.

21 MS. NORMAND: The words [REDACTED] and [REDACTED] can be
22 redacted in the --

23 THE COURT: Yes.

24 MS. NORMAND: If I could, the reference to [REDACTED]
25 [REDACTED], that would be a reference to --

JA-226

XH1ACLGC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Yes.

MS. NORMAND: Thank you.

THE COURT: We're up to where? We're up to the second paragraph. Why can't --

MS. NORMAND: [REDACTED]

[REDACTED]

THE COURT: Really?

ASSOCIATE GENERAL COUNSEL OF CIA 1: Yes.

THE COURT: What's there?

ASSOCIATE GENERAL COUNSEL OF CIA 1: This was I think, this was [REDACTED] --

THE COURT: [REDACTED]

[REDACTED]

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED]

[REDACTED]

THE COURT: All right. You can uphold redaction. And redact to the third paragraph. And the rest of the page can be redacted.

MS. NORMAND: Thank you.

(Recess)

THE COURT: Let's start with page 54.

As to the first paragraph, I would deny except allow redaction of the names and geographical location. So the that's two top sentences are to be produced, except the code name. The third sentence that should be redacted. The fourth

JA-227

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 7 of 18

22

XI11ACLC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

sentence can be redacted.

MS. NORMAND: If I could on the first two sentences, if I might ask about the date, [REDACTED], which would identify [REDACTED], as well as the reference to [REDACTED]. This is all in the first sentence.

THE COURT: It's revealed by the second sentence phrase [REDACTED]

MS. NORMAND: Yes, your Honor. So, we would respectfully request redaction of the information that would identify the date.

THE COURT: You can redact the first sentence.

MS. NORMAND: Thank you, your Honor.

THE COURT: And produce the second sentence.

Redact the second paragraph.

Redact the third paragraph.

Footnote 113 should be produced.

Footnote 114 and the first sentence of footnote 115 should be produced. The second sentence of footnote 115 may be redacted.

Page 55. Redactions are appropriate.

56. Redactions are appropriate.

57. Redactions are appropriate.

58. Redactions are appropriate.

59. Redactions are appropriate.

60. Redactions are appropriate.

JA-228

X11IACLC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

61. Appropriate.

62. Why should footnote 123 be redacted [REDACTED]

[REDACTED] [REDACTED]?

ASSOCIATE GENERAL COUNSEL OF CIA 1: [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: First sentence can be redacted starting with [REDACTED] And the rest of the footnote shall be produced. The text can be redacted.

MS. NORMAND: The sentence that begins [REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Yes. That sentence can be redacted.

MS. NORMAND: Thank you, your Honor.

THE COURT: Footnote 124 should be produced. The text may be redacted.

64. No ruling required.

On page 65, first paragraph, the sentence starting with [REDACTED] should be produced to the end of the paragraph.

In the second paragraph, the phrase [REDACTED] [REDACTED] can be redacted. The rest of the paragraph should be produced.

MS. NORMAND: Your Honor, may we redact the references

JA-229

X11IACLC SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to the code names in that paragraph?

THE COURT: Yes.

MS. NORMAND: Thank you.

THE COURT: In the bottom paragraph starting with the word [REDACTED] and referring to [REDACTED] [REDACTED] it should be produced.

MS. NORMAND: Could I ask the court reporter to read that back?

THE COURT: I'll do it again.

In the fourth line of the bottom paragraph, the word [REDACTED] That sentence, beginning with that word, shall be produced and continue on to the next page.

In the footnotes on page 65, footnote 126 may be redacted. The balance should be produced.

MS. NORMAND: Of the footnote, your Honor, footnote 126 may be redacted but the Court has ordered the others produced?

THE COURT: That's right.

MS. NORMAND: If I could.

THE COURT: Yes.

MS. NORMAND: Just going back to the middle paragraph, that begins [REDACTED]

THE COURT: Yes.

MS. NORMAND: [REDACTED]

[REDACTED]

JA-230

X111ACLG SEALED - CLASSIFIED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

MS. NORMAND: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

MS. NORMAND: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

[REDACTED]

Page 66. In the first full paragraph on page 66, you can redact the first line and the second line through the end of the parenthesis. The rest of the sentence, including the code name, should be produced.

MS. NORMAND: Your Honor, [REDACTED]

[REDACTED]

THE COURT: Redact [REDACTED]

MS. NORMAND: Thank you, your Honor.

THE COURT: The second full paragraph, beginning with

JA-231

XI1|ACLC SEALED - CLASSIFIED

1 the word [REDACTED] should be produced.

2 Except for the code reference in the bracket on the
3 next-to-the-last line. That can be redacted.

4 MS. NORMAND: It occurs to me, your Honor, both in
5 this sentence here -- I'm sorry, in this paragraph here you
6 were just referring to and in the prior page, middle paragraph,
7 the information that is in brackets is being added by the
8 author to the information that appears in the report. So,
9 therefore, if the theory of your Honor's --

10 THE COURT: I understand. Let me read.

11 I agree with you. The bracketed phrases can be
12 redacted.

13 MS. NORMAND: Thank you, your Honor.

14 THE COURT: Page 66. So the first full paragraph is
15 to be produced. I'm sorry. The ruling I made before stands.
16 I forgot that.

17 MS. NORMAND: I think we're now to the third full
18 paragraph.

19 THE COURT: Yes. The first sentence can be redacted.
20 But hold on. Let me read the rest. That paragraph can be
21 redacted starting with [REDACTED]

22 MS. NORMAND: Thank you.

23 THE COURT: The footnote should be produced.

24 Page 67. Redactions are appropriate.

25 Page 68. The first sentence shall be produced.

JA-232

XI11ACLCLC SEALED - CLASSIFIED

1 Ms. Normand, what do you say about [REDACTED]

2 [REDACTED]?

3 MS. NORMAND: Your Honor, [REDACTED]

4 [REDACTED]

5 THE COURT: That phrase may be redacted.

6 In the third line there is a reference to [REDACTED]

7 [REDACTED] Is that public?

8 ASSOCIATE GENERAL COUNSEL OF CIA 1: I would think it

9 is.

10 ASSOCIATE GENERAL COUNSEL OF CIA 2: It is.

11 MS. NORMAND: However, there is a reference to [REDACTED]

12 [REDACTED]

13 THE COURT: [REDACTED]

14 [REDACTED]

15 MS. NORMAND: Yes, your Honor.

16 THE COURT: So that's okay. That should be produced.

17 In the eighth line, there is a sentence that begins

18 [REDACTED] That sentence may be

19 redacted.

20 The next sentence may be redacted to the end of that

21 paragraph.

22 In the paragraph beginning [REDACTED]

23 [REDACTED] the first six lines may be redacted. And the

24 seventh line up to the word [REDACTED] After that, starting

25 with the word [REDACTED] the paragraph should be produced.

JA-233

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 13 of 18

28

XI11ACLC SEALED - CLASSIFIED

1 The bottom paragraph should be produced.
2 Footnote 135 should be produced.
3 Footnote 136 may be redacted. The balance of the
4 footnotes should be produced. That's 135, 137, 138 and 139.
5 MS. NORMAND: I believe 137 refers to an internal
6 document that is appended to a sentence that the Court has
7 ordered redacted.
8 THE COURT: You're correct. 137 may be redacted.
9 MS. NORMAND: Thank you.
10 THE COURT: Page 69. So the top paragraph continuing
11 the bottom paragraph on page 68 should be produced.
12 MS. NORMAND: Are you including in that the paragraph
13 beginning [REDACTED]?
14 THE COURT: No. I'm up to that now. I haven't ruled
15 on that.
16 MS. NORMAND: Very good.
17 THE COURT: That paragraph beginning with
18 [REDACTED] may be redacted.
19 Footnote 140 should be produced.
20 Page 70. No rulings are required.
21 71. No rulings required.
22 72. No rulings required.
23 73. No rulings required.
24 74. No rulings required.
25 75. No rulings required.

JA-234

XIIIIACLC SEALED - CLASSIFIED

- 1 76. No rulings required.
- 2 77. No rulings required.
- 3 78. No rulings required.
- 4 79. No rulings required.
- 5 80. No rulings required.
- 6 81. No rulings required.
- 7 Redactions on page 82 are appropriate.
- 8 Redactions on 83 are appropriate.
- 9 84 is appropriate, redactions are appropriate.
- 10 85. Appropriate.
- 11 86. No rulings required.
- 12 87. Redactions are appropriate.
- 13 88. No ruling required.
- 14 That finishes the document.
- 15 I would propose that we issue a simple public order
- 16 that would simply say that we have examined Document No. 66
- 17 pursuant to the order granting reconsideration, and made
- 18 rulings, sometimes upholding redactions and sometimes requiring
- 19 disclosure as indicated on the transcript.
- 20 MS. NORMAND: Very well, your Honor. There is one
- 21 further matter raised in our --
- 22 THE COURT: Before we go on to one further matter.
- 23 How is it going to proceed now? You have to go back and figure
- 24 out if you're going to appeal.
- 25 MS. NORMAND: Exactly, your Honor.

JA-235

XI11ACLC SEALED - CLASSIFIED

1 THE COURT: From all the orders.
2 MS. NORMAND: That's right, your Honor.
3 THE COURT: And you have 60 days to do that?
4 MS. NORMAND: Yes, your Honor.
5 THE COURT: So the effect of this is automatically
6 stayed or do I have to order a stay?
7 MS. NORMAND: I think if the Court hasn't ordered it
8 disclosed by a date certain, then there wouldn't be anything to
9 stay.
10 THE COURT: I wouldn't do anything more than what I
11 said.
12 MS. NORMAND: I think based on the record as it
13 currently exists, we would have 60 days to appeal.
14 THE COURT: Okay.
15 MS. NORMAND: Or to make a determination.
16 The one further matter, your Honor, was just to seek
17 clarification on the redactions that the Court had ordered
18 disclosed from Document 8, which was a cable. This is my hand
19 marked-up version.
20 THE COURT: Do you mind if we look at it?
21 MS. NORMAND: Not at all. It is just my effort to
22 understand what the Court's rulings were. And I can explain
23 the confusion on our part.
24 THE COURT: Let me just look at it first.
25 You're arguing that the sentence begins with the

JA-236

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 16 of 18

31

XI11ACLC SEALED - CLASSIFIED

1 phrase on page four, [REDACTED] that appears at the bottom
2 of page four I ordered to be produced as not being covered by
3 the deliberative process privilege. And you indicated to me
4 that I already had upheld a privilege with regard to that
5 paragraph in which this line is located.

6 MS. NORMAND: Actually, your Honor --

7 THE COURT: And you're right. So, reconsideration is
8 granted. And that particular ruling will be deleted.

9 MS. NORMAND: I just want to be clear, when you say
10 the particular ruling will be deleted, which piece of the
11 ruling.

12 THE COURT: The sentence that begins [REDACTED]
13 that appears at the bottom of page four will not have to be
14 produced. It can be redacted.

15 MS. NORMAND: This may be arguing against myself, your
16 Honor, but I believe, if we understood it, the Court had
17 ordered in the prior bullet point that the entirety of section
18 4(f) was to be released. And then it then also said that the
19 sentence that begins with the phrase [REDACTED] at the
20 bottom of page four would be released. But that sentence was
21 part of section 4(f), so, I believe that the Court has ordered
22 the entirety of section 4(f) released, but --

23 THE COURT: I follow you.

24 Ms. Normand, am I correct that the shaded area you
25 argued was to be redacted, and the unshaded area was to be

JA-237

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 17 of 18

32

XIIIIACLC SEALED - CLASSIFIED

1 produced?

2 MS. NORMAND: The unshaded area has already been
3 produced. That was part of the original production.

4 THE COURT: Okay.

5 MS. NORMAND: So what remains shaded is what is still
6 in dispute.

7 THE COURT: I think you're right as to paragraph 4(f)
8 and it should be redacted.

9 MS. NORMAND: Thank you, your Honor.

10 THE COURT: Except for that which has already been
11 produced.

12 MS. NORMAND: So, just so my --

13 THE COURT: I will amend the order and hold that
14 section 4(f) -- I amend these rulings and I'll order that the
15 last two bullet points of the top of page 20 are to be deleted
16 from this order, and the government will be entitled to redact
17 that entire paragraph, section 4(f) on page four, with the
18 exception of that which has already been produced.

19 MS. NORMAND: Thank you, your Honor.

20 THE COURT: That will be the ruling. That concludes
21 our discussion, right?

22 MS. NORMAND: It does, your Honor.

23 THE COURT: Thank you very much.

24 We'll provide in the order that the motion number,
25 whatever is appropriate, is terminated.

JA-238

Case 1:15-cv-09317-AKH Document 96-2 Filed 05/10/18 Page 18 of 18

33

XI11ACLCLC SEALED - CLASSIFIED

1 MS. NORMAND: Yes, your Honor. And I believe the
2 Court has already entered judgment in the case.

3 THE COURT: Yes.

4 MS. NORMAND: But for the reconsideration.

5 THE COURT: We have to amend the judgment. We have to
6 say something like after reconsideration, the rulings as to
7 Document 66 have been changed as indicated on the transcript.
8 And the rulings with regard to section 4(f) of Exhibit 8 have
9 been changed, also as indicated on the transcript.

10 MS. NORMAND: Very good.

11 THE COURT: We've had a very brief discussion as to
12 what to do to the Court's working papers. I adopt
13 Ms. Normand's suggestion that they be put into a sealed folder,
14 and given to you.

15 MS. NORMAND: Yes, your Honor. We will keep them with
16 the record.

17 THE COURT: For retention in the files.

18 MS. NORMAND: Thank you, your Honor.

19 THE COURT: Thank you.

20 (Adjourned)

21

22

23

24

25

JA-239

Case 1:15-cv-09317-AKH Document 98 Filed 06/19/18 Page 1 of 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
AMERICAN CIVIL LIBERTIES UNION and
THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

15 CIVIL 9317 (AKH)

-v-

AMENDED JUDGMENT

DEPARTMENT OF DEFENSE, DEPARTMENT
OF JUSTICE, including its components the
OFFICE OF LEGAL COUNSEL and OFFICE OF
INFORMATION POLICY, DEPARTMENT OF
STATE, and CENTRAL INTELLIGENCE
AGENCY,

Defendants.

-----X

Whereas by order dated September 27, 2017, the Court granted in part and denied in part the Government's motion for summary judgment, ordering the government to timely produce various documents, including versions of Document 66 and Document 8. *See* Dkt. No. 77. That order concluded the Court's review of the documents submitted for its review. Judgment was entered and the case was marked closed. The Government subsequently having moved, pursuant to Fed. R. Civ. P. 59(e) to alter or amend the judgment and to reconsider the Court's September 27 opinion and order, and the matter having come before the Honorable Alvin K. Hellerstein, United States District Judge, and the Court, on May 1, 2018, having issued its Order ordering the Government to produce, consistent with these rulings, Document 66, Document 8, the redacted January 18 transcript, and the other documents ordered to be produced in the Court's prior rulings, and directing the Clerk to amend the final judgment, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated May 1, 2018, the Government shall produce, consistent with these rulings, Document 66, Document 8, the redacted January 18 transcript, and other documents ordered to be produced in the Court's prior rulings; the Government's disclosure obligations are stayed for 60 days, or 10 days following the filing of a notice of appeal, whichever is later; in the interim, the Government shall file the redacted transcript provided to the Court on April 11, 2018.

JA-240

Case 1:15-cv-09317-AKH Document 98 Filed 06/19/18 Page 2 of 2

Dated: New York, New York
June 19, 2018

RUBY J. KRAJICK

Clerk of Court

BY:

Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 6/19/2018

JA-241

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 1 of 10



**United States District Court
Southern District of New York**

Ruby J. Krajick
Clerk of Court

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150**

JA-242

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 2 of 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____ CV _____ () ()

-against-

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the judgment order entered on: _____
(date that judgment or order was entered on docket)

that:

(If the appeal is from an order, provide a brief description above of the decision in the order.)

Dated _____

Signature *

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

JA-243

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 3 of 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

_____ CV _____ () ()

-against-

**MOTION FOR EXTENSION
OF TIME TO FILE NOTICE
OF APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on _____ but did not file a notice of appeal within the required time period because:

date

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

Dated: _____ Signature _____

Name (Last, First, MI) _____

Address _____ City _____ State _____ Zip Code _____

Telephone Number _____ E-mail Address (if available) _____

JA-244

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 4 of 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____ CV _____ () ()

-against-

**MOTION FOR LEAVE TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

Dated

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

JA-245

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 5 of 10

Application to Appeal In Forma Pauperis

_____ v. _____ Appeal No. _____
 District Court or Agency No. _____

<p>Affidavit in Support of Motion</p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
---	---

My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

JA-246

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 6 of 10

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

JA-247

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 7 of 10

4. How much cash do you and your spouse have? \$_____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

JA-248

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 8 of 10

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [] Yes [] No Is property insurance included? [] Yes [] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

JA-249

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 9 of 10

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
Total monthly expenses:	\$	\$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* Yes No

If yes, how much? \$ _____

JA-250

Case 1:15-cv-09317-AKH Document 98-1 Filed 06/19/18 Page 10 of 10

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City _____ State _____

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____

JA-251

Case 1:15-cv-09317-AKH Document 99 Filed 06/20/18 Page 1 of 3

Case 1:15-cv-09317-AKH Document 97 Filed 06/15/18 Page 1 of 2



USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DATE FILED: 6/20/18

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

June 15, 2018

BY ECF

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007

1. The clerk will issue an amended judgment.
2. The motion for an extension of the stay of execution from 7/2/18 to Aug. 1, 2018 is granted.
3. The stay request following the filing of an appeal by the govt is beyond 10 days is related to the Court of Appeals.

Re: *ACLU et al. v. Department of Defense et al.*, No. 15 Civ. 9317 (AKH)

Dear Judge Hellerstein:

I write respectfully on behalf of defendants (the "government") in the above-named FOIA case to request that the Court again direct the Clerk of Court to enter an amended judgment in this matter, in accordance with this Court's Order dated May 1, 2018 ("May 1 Order"). The government also requests that (1) the Court extend the stay of the government's disclosure obligations for an additional 30 days, from July 2, 2018, until August 1, 2018, to permit the Solicitor General additional time to consider whether to appeal, and (2) the Court further order that, if a notice of appeal is filed on or before August 1, 2018, the stay will remain in place for the duration of the appeal.

In the May 1 Order, upon the government's application, the Court directed the Clerk of Court to enter an amended judgment in accordance with the May 1 Order and stayed the government's disclosure obligations "for 60 days, or 10 days after the filing of a notice of appeal, whichever is later." To date, however, the Clerk of Court has not entered an amended judgment. Accordingly, as the record stands, it is unclear whether the Court's May 1 Order serves to amend the judgment or whether (as suggested by the May 1 Order) a separate amended judgment will be entered. The government respectfully requests that the Court again direct the Clerk of Court to issue an amended judgment.

The government further requests that the Court extend the stay of the government's disclosure obligations for an additional 30 days, from July 2 to August 1, 2018. As the Court is aware, only the Solicitor General can authorize an appeal by the government. The government's process for consideration of appeal—which involves recommendations from multiple Department of Justice components as well as the Central Intelligence Agency—is well under way. Nevertheless, the government respectfully requests additional time to complete that process. The government had expected the Clerk of Court to enter an amended judgment, as directed in the May 1 Order. Consideration of appeal in this case is also complicated by the fact that the documents at issue are classified and subject to stringent handling controls. Moreover, the ACLU will not be substantially prejudiced if the stay is extended by 30 days to allow additional time for the Solicitor General to consider this matter.

To order
6/19/18
[Signature]

JA-252

Case 1:15-cv-09317-AKH Document 99 Filed 06/20/18 Page 2 of 3
Case 1:15-cv-09317-AKH Document 97 Filed 06/15/18 Page 2 of 2

Page 2

In addition, to obviate the need for an additional stay application in the event the government appeals, the government respectfully requests that the Court order that the stay remain in place if a notice of appeal is filed on or before August 1, 2018. As the government explained in its initial application for a stay, ECF No. 93, the relevant factors strongly favor a stay pending appeal. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). In particular, if the government elects to appeal and its disclosure obligations are not stayed pending appeal, the government would be irreparably harmed because disclosure would moot the appeal.

I have conferred with plaintiffs' counsel regarding this application. Plaintiffs do not consent to an extension of the stay until August 1, 2018; they consent only to an extension of the stay until July 16, 2018 (thirty days from today). Plaintiffs consent to a stay pending appeal in the event the government files a notice of appeal.

We thank the Court for its consideration of this request.

Respectfully,

GEOFFREY S. BERMAN
Acting United States Attorney

By: /s/ Sarah S. Normand
SARAH S. NORMAND
Assistant United States Attorney
Telephone: (212) 637-2709
sarah.normand@usdoj.gov

cc: Counsel of record

JA-253

Case 1:15-cv-09317-AKH Document 99 Filed 06/20/18 Page 3 of 3

Judge wrote:

- “1. The Clerk will issue an amended judgment.
2. The motion for an extension of the stay of execution, from 7/2/18 to Aug. 1, 2018 is granted.
3. The stay request following the filing of an appeal by the gov’t beyond 10 days is denied, without prejudice to an application to the Court of Appeals.

So ordered.

6/19/18

Alvin K. Hellerstein”

JA-254

Case 1:15-cv-09317-AKH Document 101 Filed 06/29/18 Page 1 of 2
Case 1:15-cv-09317-AKH Document 100 Filed 06/29/18 Page 1 of 2



USDC SDNY
DOCUMENT
ELECTRONICALLY FILED

U.S. Department of Justice
United States Attorney
Southern District of New York

DOC #:
DATE FILED: 7/9/18

86 Chambers Street
New York, New York 10007

June 29, 2018

BY ECF

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007

The stay will expire August 1, 2018 and, if the gov't appeals, 10 days thereafter.
7/9/18
[Signature]

Re: *ACLU et al. v. Department of Defense et al.*, No. 15 Civ. 9317 (AKH)

Dear Judge Hellerstein:

I write respectfully on behalf of defendants (the "government") in the above-named Freedom of Information Act case to request clarification of the date on which the Court's stay of the government's disclosure obligations will expire.

On June 19, 2018, the Court issued an Order granting the government's letter motion to (1) direct the Clerk of Court to issue an amended judgment, and (2) extend the stay of the government's disclosure obligations from July 2, 2018, until August 1, 2018. ECF No. 99. The Court denied the government's motion for a further stay (beyond ten days) in the event the government files a notice of appeal, without prejudice to an application to the Court of Appeals. ECF No. 99. The Clerk of Court entered an Amended Judgment on June 19, 2018. The Amended Judgment provides that "the Government's disclosure obligations are stayed for 60 days, or 10 days following the filing of a notice of appeal, whichever is later." ECF No. 98.

There appears to be a conflict between the Order and the Amended Judgment with regard to when the stay expires. Under the Order, the stay will expire on August 1, 2018 (or on August 13, 2018,¹ if the government files a notice of appeal). Under the Amended Judgment, however, the stay will expire on August 20, 2018² (or on August 30, 2018, if the government files a notice of appeal). We respectfully request clarification of whether the stay expires on August 1, 2018, as set forth in the Order, or August 20, 2018, as set forth in the Amended Judgment. In either event, we understand that the stay would extend an additional ten days if the government files a notice of appeal, to allow the government to apply to the Court of Appeals for a stay pending appeal.

¹ The tenth day after August 1 falls on Saturday, August 11, 2018. Accordingly, the stay would expire on Monday, August 13, 2018.

² The sixtieth day after June 19 falls on Saturday, August 18, 2018. Accordingly, the stay would expire on Monday, August 20, 2018.

JA-255

Case 1:15-cv-09317-AKH Document 101 Filed 07/09/18 Page 2 of 2
Case 1:15-cv-09317-AKH Document 100 Filed 06/29/18 Page 2 of 2

Page 2

We thank the Court for its consideration of this request.

Respectfully,

GEOFFREY S. BERMAN
Acting United States Attorney

By: /s/ Sarah S. Normand
SARAH S. NORMAND
Assistant United States Attorney
Telephone: (212) 637-2709
sarah.normand@usdoj.gov

cc: Counsel of record

JA-256

Case 1:15-cv-09317-AKH Document 102 Filed 08/01/18 Page 1 of 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE,
DEPARTMENT OF STATE, DEPARTMENT
OF JUSTICE, CENTRAL INTELLIGENCE
AGENCY,

Defendants.
-----X

15 Civ. 9317 (AKH)

NOTICE OF APPEAL

Notice is hereby given that the Central Intelligence Agency, defendant in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from the amended final judgment entered in this action on June 19, 2018, and from all interlocutory orders merged into that judgment.

Dated: New York, New York
August 1, 2018

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Defendant CIA

By: /s/ Sarah S. Normand
SARAH S. NORMAND
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: 212.637.2709
Fax: 212.637.2730
E-mail: sarah.normand@usdoj.gov

TO: Clerk of Court, United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Lawrence S. Lustberg, Esq., *Counsel for Plaintiffs* (via ECF)

JA-257

C06541727

Approved for Release: 2018/08/14 C06541727

**Summary and Reflections of Chief of Medical Services on OMS
Participation in the RDI Program**

Approved for Release: 2018/08/14 C06541727

JA-258

C06541727

Approved for Release: 2018/08/14 C06541727

~~TOP SECRET~~ / (b)(1) (b)(3) NatSecAct / ~~NOFORN~~

AL QA'IDA DETAINEES: the OMS Role

Press attention to the Agency's interrogation and detention program began with the 2002 capture of Abu Zubaydah, sparked again with the 2003 capture of Khalid Shaykh Muhammed, accelerated in 2004 in the wake of Abu Ghraib, and then exploded in 2005 following a number of significant leaks. By 2007 hundreds—perhaps thousands—of articles and editorials had been published on what arguably has become the most controversial program in Agency history. Viewed from within, the resulting public picture remains as much caricature as fact. If the past is any guide, however, this distorted picture will become the accepted public history of an important chapter in Agency history, with both present and future implications for those within the Office of Medical Services. These implications warrant a more informed internal account of how OMS understood and experienced this program at the time.

- Introduction and Contents [p. 1]*
- The Context [p. 2] [2001-2002]*
- Saving the life of a High Value Target (HVT) [p. 6] [2002]*
- Embracing SERE (Survival, Evasion, Resistance, Escape) [p. 10] [2002]*
- Initiation of "Enhanced Interrogation Techniques" (EIT's) [p. 18] [2002]*
- The question of drug-assisted interrogation [p. 23] [2002]*
- The Role of Psychologists and Psychiatrists [p. 26] [2002-2003]*
- Early Mistakes [p. 31] [2002-2003]*
- KSM and the Waterboard [p. 36] [2003]*
- HVDs, EITs, and OMS Guidelines [p. 48] [2003-2004]*
- Problems of Detention [p. 57] [2003-2006]*
- Exposés [p. 63] [2004-2006]*
- Ethics [p. 68] [2004-2007]*
- An Unfinished Chapter [p. 77] [2005-2007]*
- Interim Afterthoughts [p. 84]*

¹ Of necessity, some broader program information is included in this chapter, to place the OMS role in perspective. Agency rendition, interrogation, and detention efforts were much more complicated than these glimpses suggest.

(b)(3) CIAAct
(b)(3) NatSecAct

(b)(3) NatSecAct
~~TOP SECRET~~ / ~~NOFORN~~ // MR

JA-259

C06541727

Approved for Release: 2018/08/14 C06541727
(b)(3) NatSecAct

~~TOP SECRET~~ / [] / ~~NOFORN~~ // MR

[]
(b)(3) NatSecAct

The Context

(b)(1)
(b)(3) NatSecAct

September 11, 2001 began unremarkably. C/Medical Services arrived in [] where OMS was providing temporary medical coverage, []

(b)(1)
(b)(3) NatSecAct

[] Oddly, no one would answer the door at the station even though officers could be seen inside tightly gathered around a television. The World Trade Center's South Tower just had collapsed; a few minutes later the North Tower came down.² The Pentagon was hit. All were targets of hijacked commercial jetliners, so U.S. domestic flights were being ordered to ground and international flights turned away.

At Headquarters that Tuesday, [] morning activities were sharply interrupted by news of these attacks. Ominously, a fourth hijacked plane was headed toward Washington. The Capitol and C.I.A. Headquarters were believed prime targets. With less than 30 minutes until ETA, an immediate evacuation of the buildings was announced, excepting (at CIA) emergency personnel such as those in medical. As the minutes passed, most emergency personnel relocated to below ground floors while [] and a few others remained in the first floor clinical spaces.

(b)(3)
CIAAct
(b)(6)

(b)(3) CIAAct
(b)(6)

In retrospect, the Capitol appears to have been the final 9/11 target, though this was averted when passengers forced Flight 93 to crash in Pennsylvania. Nonetheless the events that day were the most galvanizing since Pearl Harbor. Within a week, the President signed a Memorandum of Notification (MON) []

(b)(1)
(b)(3) NatSecAct

[] including "operations designed to capture and detain persons who pose a continuing, serious threat of violence or death to U.S. persons and interests or who are planning terrorist activities."³

The perpetrators of the 9/11 attacks were identified as al-Qa'ida terrorists, and there was immediate concern about a "follow-on" attack. As then DCI Tenet later recalled, "I've got reports of nuclear weapons in New York City, apartment buildings that are gonna be blown up, planes that are gonna fly into airports all over again, plot lines that I don't know. I don't know what's going on inside the United States, and I'm struggling to find out where the next disaster is going to occur. Everybody forgets one central context of what we lived through: the palpable fear that we felt on the basis of the fact that there was so much we did not know."⁴ Lacking concrete intelligence, extensive lists of potential targets were drawn up, including the country's physical infrastructure (power plants, bridges, subway systems), symbolically important buildings, theme parks,

(b)(1)
(b)(3) NatSecAct

³ Office of the Inspector General, "Counterterrorism Detention and Interrogation Activities (September 2001 - October 2003)," 7 May 2004, p. 1. The MON was signed 17 September 2001.

⁴ "60 MINUTES" -- Tenet Defends High Value Detainee Program," CBS News.com, 25 April 2007. Tenet laid out the context somewhat more fully in George Tenet, *At the Center of the Storm: My Years at the CIA* (New York City: HarperCollins, 2007), Chapter 13, pp. 229-258.

~~TOP SECRET~~ / (b)(1) [] / ~~NOFORN~~
(b)(3) NatSecAct

JA-260

C06541727

Approved for Release: 2018/08/14 C06541727
(b)(3) NatSecAct

~~TOP SECRET~~ / [redacted] / ~~NOFORN~~ // ~~MR~~
[redacted] (b)(3) NatSecAct

malls, and major forthcoming events such as the World Series (which was postponed a week), Super Bowl, and the Salt Lake City Winter Olympics.

While the possibility of a nuclear attack initially could not be ruled out,⁵ the greatest emotion surrounded potential chemical or biological attacks. Anthrax was the single most likely biological threat, so OMS quickly acquired a large supply of ciprofloxacin (Cipro); and, in case of chemical attack, a stockpile of atropine auto-injectors.⁶ OMS also arranged briefings on the Agency's best judgment on potential threats for senior medical personnel from State Department, NSA, FBI, HHS, the White House, and Congress, and compared emergency medical response plans.

In late October concerns elevated sharply when letters containing anthrax spores were delivered to Capitol Hill, fatally infecting some postal workers en route. Government agencies, including CIA, began specialized screening in their mail facilities and CIA was one of several to find trace amounts of anthrax. Given the tiny amount discovered, OMS judged that only a handful of potentially exposed employees needed to be offered Cipro prophylaxis, but DCI Tenet announced it would be made available to any concerned employee. Emergency distribution was arranged for the following day—a Saturday—and involved most of the OMS headquarters staff. Several hundred anxious Agency employees came in for individual evaluations and counseling, and were issued medication. Tenet visited during this operation and mentioned to C/MS that he thought it "a slam dunk" that al-Qa'ida was behind this attack.

Anthrax-contaminated mail also passed through a State Department distribution center, potentially contaminating outgoing diplomatic pouches. This threat, combined with the incidental "dust" found in old pouches and hoax powders mailed to many embassies, spawned local crises around the world [redacted]

(b)(1)
(b)(3) NatSecAct

At Agency headquarters, all incoming mail was halted until a method for decontamination could be identified. OMS's Environmental Safety Group took the lead in this project and soon was directly running a heat-based treatment program for all incoming mail. OMS also was at the forefront of an effort to identify suitable perimeter, portal and building CBRN screening devices, which eventually led to an extensive headquarters monitoring program.

Later analysis concluded that the October anthrax attack probably was the work of a disgruntled domestic scientist, rather than international terrorists; and that all detected anthrax could be traced back to distribution centers contaminated by leakage from the

⁵ Maps, probably dating from the 1950s, were provided to OMS outlining the potential effects of a weapon detonated on the Mall

⁶ Some auto-injectors were issued to the Security Protective Officers, believed most likely to be exposed to a chemical attack. The only actual use of an auto-injector came when an officer inadvertently discharged one into his own leg, thinking it was a demonstration dummy.

~~TOP SECRET~~ / (b)(1) [redacted] / ~~NOFORN~~
(b)(3) NatSecAct [redacted]

JA-261

C06541727

Approved for Release: 2018/08/14 C06541727
(b)(3) NatSecAct

~~TOP SECRET~~ / [redacted] / ~~NOFORN~~ // MR

(b)(3) NatSecAct

two spore-containing letters mailed to Capitol Hill. Nonetheless, the extensive press coverage highlighted U.S. vulnerability to this type of attack and the high cost of responding.

Concurrent with these developments and with the Presidential MON in hand, the Agency moved aggressively abroad. Intense efforts were mounted jointly with foreign intelligence services to round up al-Qa'ida operatives worldwide. [redacted]

(b)(1)
(b)(3) NatSecAct

[redacted] Over the next five years, OMS PAs or physicians accompanied at least 120 of these rendition flights—most either to or between newly established CIA facilities.⁷

The pre-rendition medical exam included a body cavity search (a component of which was a rectal exam), which in later years led to an occasional charge that CIA administered drugs rectally during the rendition process. The PA (or occasionally an OMS physician) did carry medical supplies for emergency use, but only once was a dangerously agitated detainee sedated during flight.⁸ Eventually a few of those being transferred—mostly long-term detainees—were medicated voluntarily for conventional medical reasons (e.g., one requested a sleeping pill for the flight). No one ever was medicated rectally.

At the time of the 9/11 attacks the Taliban government of Afghanistan was hosting the al-Qa'ida leadership, its training camps, and several potential chemical/biological/radiological/nuclear sites. In mid-October 2001 (concurrent with the anthrax scare) the U.S. launched a combined attack against the Taliban. The offensive brought together small independently operating joint CIA-Special Forces teams (which included OMS PA's), [redacted]

(b)(1)
(b)(3) NatSecAct

and U.S. air power. By mid-December all major Afghan cities had been taken.⁹

A week after the last major Afghan city fell, al-Qa'ida "shoe bomber" Richard Reid attempted to blow up a commercial jet en route from Paris to Miami. A month later *Wall Street Journal* reporter Daniel Pearl was kidnapped in Karachi and demands were issued by his captors; a few weeks later his decapitated, dismembered body was found,

(b)(1)
(b)(3) NatSecAct

⁸ Valium was administered on [redacted] flight

(b)(1)
(b)(3)
NatSecAct
NatSecAct
NatSecAct

4

~~TOP SECRET~~ / (b)(1) [redacted] / ~~NOFORN~~
(b)(3) NatSecAct [redacted]

JA-262

C06541727

Approved for Release: 2018/08/14 C06541727
(b)(3) NatSecAct

~~TOP SECRET~~ / [redacted] / ~~NOFORN~~ // MR
[redacted] (b)(3) NatSecAct

and a week after that a video of his execution was released. Although more than 2,900 al-Qa'ida operatives and associates were in custody, in 90 countries,¹⁰ only one senior al-Qa'ida leader (Atef) had been killed (by an airstrike in November), and none had been captured. The U.S. remained braced for the next terrorist attack.

In March 2002 the newly created Department of Homeland Security established color-codes to quantify the estimated level of threat. These ranged from green (low), through blue (guarded), yellow (elevated), orange (high), to red (severe). With little hard intelligence, these levels were based largely on unconfirmed reports, non-specific terrorist "chatter," and intelligence supposition. The first announced-level that March was yellow, or "elevated."

DRAFT

¹⁰ The first 20 military detainees to be sent to Guantánamo Bay arrived at Camp X-ray, on January 11, 2002; by the end of February about 300 had arrived, and by the end of the year, over 600.

~~TOP SECRET~~ // (b)(1) [redacted] / ~~NOFORN~~
(b)(3) NatSecAct [redacted]