

# **EXHIBIT BB**

**Querns, Ann E.**

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**From:** Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>  
**Sent:** Tuesday, January 31, 2017 5:04 PM  
**To:** Chris Tompkins  
**Cc:** Paszamant, Brian; Shane Kangas; Shaina Johnson; Querns, Ann E.  
**Subject:** RE: Document production and redaction issues  
**Attachments:** Unclassified Summaries of Selected CIA Privilege Log Documents.pdf; CIA #162 - reprocessed.pdf

Chris:

Following up on our email discussion below, and in an effort to further narrow the areas of dispute, we have prepared more detailed unclassified summaries of the 35 documents you have identified as mostly likely material to your defense. See attached. I have also attached a re-processed version of the document #162 on the CIA privilege log that rolls back redactions to several paragraphs, as noted in our summary.

We are hopeful that our effort to describe these documents in more detail will remove them from scope of the motion to compel by satisfying your questions about whether the withheld information is privileged or material to the case. After you've had an opportunity to review the summaries, please let me know which of the documents you intend challenge in your motion.

Thanks,  
Andrew

Andrew I. Warden  
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Civil Division, Federal Programs Branch  
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**From:** Chris Tompkins [mailto:ctompkins@bpmlaw.com]  
**Sent:** Saturday, January 07, 2017 4:05 PM  
**To:** Warden, Andrew (CIV) <AWarden@CIV.USDOJ.GOV>  
**Cc:** Paszamant, Brian <Paszamant@BlankRome.com>; Chris Tompkins <ctompkins@bpmlaw.com>; Shane Kangas <skangas@bpmlaw.com>; Shaina Johnson <sjohnson@bpmlaw.com>; Querns, Ann E. <AQuerns@blankrome.com>  
**Subject:** Document production and redaction issues

Andrew,

We appreciate your offer to re-review a reasonable number of documents, and we also agree that it is unproductive for us to quibble over immaterial redactions. However, you can certainly appreciate the difficulty we are faced with to identify those redacted (or withheld) documents that are material to our defense, given that we have no way to know what information was redacted—and thus whether the withheld information would be material, or even helpful. Still, as you requested, we have endeavored to identify those documents we think are most likely to be material to our defense. We did this through the imperfect system of using context clues from the limited information that you have provided to us.

We believe the following documents that you have withheld in full are likely to provide the most information that is material to our defense:

- Document Number 34, "Cable regarding detainee interview"
- Document Number 102, "Memorandum for Counterterrorist Center Legal Staff (January 2003) [From Senior Agency Officer to Chief Counterterrorist Center Legal; Topic: Resistance Techniques Used by Abu Zubaydah]"
- Document Number 103, "Initial Draft Plan (March 16, 2002) [Outline for Interrogation Program]"
- Document Number 125, "CIA Cable, Subject: Eyes Only – Psychological Fine Tuning [regarding Abu Zubaydah interrogation]"
- Document Number 128, "Note from CTC/LGL re: Interrogation Techniques (7/23/2002)"
- Document 129, "Memorandum from CTC/LGL to the field Re: AZ Techniques"
- Document 137, "Origins of the Program"
- Document 166, "Email, Re: Jim and Bruce"
- Document 168, "Eyes Only – Setting the Stage for the Ratcheting Up Phase Concerning Abu Zubaydah Interrogations, 12 July 2002"
- Document 171, "Email from CIA attorneys soliciting empirical data from client components (July 2002)"
- Document 191, "Waterboarding Sessions Abu Zubaydah (undated)"
- Document 195, "Interrogation Summary (undated)"
- Document 217, "Communications between CIA Officers discussing interrogation program"
- Document 228, "Draft CIA Cable, Eyes Only: HQS [Headquarters] Feedback on pending Issues re the Abu Zubaydah Interrogations (July 2002)"
- Document 229, "Note, June 2002, Subject: Interrogation Plan Input [relating to Abu Zubaydah]"
- Document 235, "Draft, Re: Support to an Enhanced Interrogation Strategy in the War on Terrorism (2002)"
- Document 236, "Memorandum of Understanding (undated) [draft internal Agency MOU defining roles of officer in interrogation programs]"
- Document 237, "Draft Memorandum Re: Interrogation Support (2002) [including legal guidance]"
- Document 247, "July 2002 Emails between and among CIA officers and CIA lawyers Re: Status of Interrogations"

At this time, we also believe that the material under the redactions made in the following documents is likely to be material to our defense. Please note that we may need to supplement this list as we continue to gain more information:

- Document 40, "Recognizing and Developing Countermeasures to Al Qaeda resistance to Interrogation Techniques A Resistance Training Perspective by James E. Mitchell & John B. Jessen" US Bates 001148-57
- Document 33, "Rahman Death Investigation, Interview of [NAME REDACTED] (December 2002)" US Bates 001081-98
- Document 135, "Email, Subject; Fw: DCIA tasking on origin of taping" US Bates 001779-87
- Document 149, "Eyes Only – Request to Ratchet Up Psychological and Behavioral Interrogations Process, 20 April 2002" US Bates 001821-22
- Document 157, "Eyes Only – Next Phase of Abu Zubaydah Interrogations, 26 July 2002" US Bates 001839-40
- Document 158, "Eyes Only – Additional Operational and Security Considerations for the Next Phase of Abu Zubaydah Interrogation, 15 July 2002" US Bates 001841-45
- Document 161, "CIA Interrogation Techniques: Abu Zubaydah" US Bates 001850-58
- Document 162, "Eyes Only – Legal Background, 12 April 2002" US Bates 001859-62
- Document 167, "Eyes Only – HQS Feedback on issues Pending for Interrogations of Abu Zubaydah, 18 July 2002" US Bates 001871-74"
- Document 181, "MJA" US Bates 1908-10
- Document 187, "Eyes Only – Interrogation Strategy for Abu Zubaydah, 03 April 2002" US Bates 001923-25
- Document 192, "Eyes Only – Adjustment to the Abu Zubaydah Interrogation Strategy, 08 May 2002" US Bates 001931-34
- Document 193, "Email, subject Re: Immediate – Cable for Coord" US Bates 001935-37
- Document 231, "Memorandum, Subject: Proposal for An Enhanced Interrogation Strategy in the War on Terror" US Bates 001975-90
- Document 244, "CIA Cable, Eyes Only – HVT Behavioral Management Operational Guide" US Bates 002139-43

In addition, we raise a concern that a number of cables, emails and/or lotus notes may have been omitted from the production and/or the privilege log. To date, you produced cables that report on the interrogation of Abu Zubaydah each day from August 4, 2002 – August 12, 2002, then on August 15, 2002,

August 18, 2002, and August 20, 2002. We have no cables related to Zubaydah's interrogation on August 13, 14, 16, 17, or 19. Our clients have indicated that they believe important cables and/or emails were transmitted around this time period. Specifically around this time, Drs. Mitchell and Jessen refused to use the waterboard on Zubaydah, and this was apparently conveyed to HQS through cable, email and/or lotus note. In response, HQS apparently sent or arranged for a delegation to observe the application of the waterboard, and shortly thereafter Drs. Mitchell and Jessen were authorized to discontinue use of the waterboard. Please let us know if you were able to locate any cables, emails and/or lotus notes from the foregoing dates, and produce any such documents to us as soon as possible.

Finally, while we appreciate your "second look", we continue to think that the issues of reliance on the NSA Act and the state secret privilege when that privilege has not been formally invoked, and the procedures for its invocation have not been followed (at least to our knowledge), are both conducive to and will require a global determination rather than a document by document determination. We are reviewing a motion on that issue, which I believe you and I fully discussed last week. In addition, as we discussed, we are running out of time; the Court clearly contemplated that any discovery motions be filed, and perhaps resolved, before the discovery cutoff. If you believe there is more progress to be made on these issues by way of meet and confer, please advise as soon as possible.

**Christopher W. Tompkins**

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**UNCLASSIFIED SUMMARIES OF SELECTED DOCUMENTS  
WITHHELD IN PART OR IN FULL ON CIA PRIVILEGE LOG**

**A. Documents Withheld In Part**

**DOCUMENT #33**

Redacted information on the first page includes nonresponsive information that was not part of interview, which begins on the middle of the first page. Names of CIA personnel, page numbers, exact dates, and location information are redacted throughout. Other redacted information includes information about the interviewee's background, family, and travel; information regarding communications with a foreign government; information about the structure of a CIA facility; information concerning guards and other facility staff; and details regarding how renditions are conducted.

**DOCUMENT #40**

Redacted information consists primarily of various al-Qaida strategies for resisting interrogation, including some details about how such strategies should be employed to frustrate interrogation. Redacted information also included references to the origin of the referenced manual and to other sources of information regarding al-Qaida resistance strategies.

**DOCUMENT #135**

Redacted information includes administrative heading information; classification markings and information; names of CIA personnel; travel information for government personnel; exact dates; logistical facility information including site security, communication resources, and staff housing; names and locations of computer files; recommendations regarding how best to monitor Abu Zubaydah; and various recommended strategies for interrogating Abu Zubaydah. Waterboarding is not discussed. The redactions on pages 1 and 2, prior to the beginning of the cable, consist of an email exchange among CIA officers about the origins regarding the video taping of Abu Zubaydah's interrogations in response to a tasking from the CIA director. The two relevant cables discussed in this email exchange are copied below on pages 2-8. Page 9 contains part of the aforementioned email exchange, in which the incoming tasking from the CIA director is discussed.

**DOCUMENT #149**

Information redacted before body of cable consists of non-substantive information, including classification markings, CIA internal administrative information, and recipient information. Information redacted from the body of cable consists of a summary of information obtained from Abu Zubaydah by interrogators, recommended strategies for additional Abu Zubaydah interrogations, and classification information. Waterboarding is not discussed. There are no specific references to Dr. Mitchell or Jessen, although the cable discusses the views of the Abu Zubaydah "interrogation team."

**DOCUMENT #157**

Information redacted before body of cable consists of non-substantive information, including classification markings, CIA internal administrative information, and recipient information. The cable recipients include lawyers for the CIA Counterterrorist Center. Information redacted from body of cable consists of recommended strategies for interrogating Abu Zubaydah, including proposed use of the waterboarding and contingencies if use of the waterboard is not approved. The cable's only reference to Dr. Mitchell and Dr. Jessen (referred to as IC SERE Psychologists) is unredacted.

**DOCUMENT #158**

Information redacted before the body of cable consists of non-substantive information, including classification markings, CIA internal administrative information, and recipient information. Information redacted from the body of cable consists of recommended strategies for interrogating Abu Zubaydah, including relevant operational and security considerations. Redacted information in the body also includes classification information, discussion of site security and personnel, including recommendations regarding changes in site staffing, as well as information regarding proposed communications with a foreign government.

**DOCUMENT #161**

Redacted information includes classification markings, details of Abu Zubaydah's injuries, comments and questions handwritten in the margins, a summary of information provided by Abu Zubaydah, a legal conclusion, activities of CIA attorneys, recommendations of CIA attorneys (redactions at page 5- top of page 7), information regarding a CIA facility, and CIA regulations regarding certain types of interrogations.

**DOCUMENT #162:**

The information redacted on page 1 is non-substantive information, including classification markings, CIA internal administrative information, and recipient information.

The substance of the cable begins on page 2. Paragraphs 3-6 on page 2 contain legal advice from a CIA attorney to the Abu Zubaydah interrogation team members regarding several different legal issues unrelated to the use or application of interrogation methods. The legal advice regarding interrogation methods is unredacted in paragraphs 7-13 on pages 2-4, with the exception of minor redactions in paragraph 11 to protect the name of a CIA officer and an internal CIA document reference. The information redacted at the end of the document after paragraph 13 is non-substantive, including CIA internal administrative information and recipient information.

Note: This document has been reprocessed to lift redactions in paragraphs 1-2, 7-8, 13.



**DOCUMENT #167:**

The information redacted on page 1 above the word “text” is non-substantive information, including classification markings, CIA internal administrative information, and recipient information.

The substance of the cable provides feedback from CIA Headquarters to the Abu Zubaydah interrogation team members regarding several issues. Paragraphs 1-2 discuss the timing of future cables from CIA Headquarters regarding authorizations for the use of enhanced interrogation techniques on Abu Zubaydah. Paragraph 3 discusses preparations for the use of enhanced interrogation techniques on Abu Zubaydah. Paragraph 4.A. is unredacted. Paragraphs 4.B (unredacted in part) & 4.C address medical treatment and care of Abu Zubaydah. Paragraphs 4.D and 4.E address security and communication procedures. Paragraph 4.F. discusses options for the future disposition of Abu Zubaydah. Paragraph 5 discusses a non-substantive issue related to a detention facility. The information redacted at the end of the document after paragraph 5 is non-substantive, including CIA internal administrative information and recipient information.

**DOCUMENT #181:**

Paragraph 1 - redactions to name of specific sub-component within the CIA’s Counterterrorist Center.

Paragraph 2, second bullet point - redactions to name of specific sub-component within the CIA’s Counterterrorist Center and description of its operational duties.

Paragraph 2, third bullet point - redactions to specific taskings related to obtaining intelligence information. No reference to enhanced interrogation techniques or specific detainees.

Paragraph 2, sixth bullet point - redactions to specific taskings related to intelligence collection and covert action. No reference to enhanced interrogation techniques or specific detainees.

Paragraph 3 - redactions to name of specific sub-component within the CIA’s Counterterrorist Center.

Paragraph, bullet 1- specific number

Paragraph 3, bullets 2-4, 6 - redactions to specific taskings related to intelligence collection, foreign activities, and covert action.



**DOCUMENT #187**

The information redacted on page 1 above paragraph 1 is non-substantive information, including classification markings, CIA internal administrative information, recipient information.

Paragraph 2 redacts the names and identifying information of CIA personnel, operational duties of CIA personnel, identifying information about the locations of CIA stations, and dates of specific activities.

Paragraphs 3-4 discuss how the interrogation strategy will be formulated and options for the configuration of the detention facility.

Paragraph 6-8 discusses options, considerations, and proposed plans for the detention facility, conditions of confinement, and interrogation of Abu Zubaydah

The information redacted at the end of the document after paragraph 8 is non-substantive, including CIA internal administrative information and recipient information.

**DOCUMENT #192**

The information redacted on page 1 above paragraph 1 is non-substantive information, including classification markings, CIA internal administrative information, recipient information.

Paragraph 1 redacts names and identifying information of members of the Abu Zubaydah interrogation team who consulted on the drafting of the cable and the names of individuals who are suggested to receive a copy of the cable.

Paragraphs 2-3 redact information concerning the strategy and timeframe for the interrogation of Abu Zubaydah.

Paragraph 4 contains an assessment of Abu Zubaydah's skills and ability to resist interrogation.

Paragraph 5 contains an assessment of Abu Zubaydah's medical condition and the impact of his medical condition on the interrogation strategy.

Paragraph 6 contains recommended adjustments to the interrogation strategy in light of Abu Zubaydah's resistance.

The information redacted at the end of the document after paragraph 8 is non-substantive, including CIA internal administrative information and recipient information.

**DOCUMENT #193**

The redacted information above the word “subject” lists the sender and recipients of the email, all of whom are CIA officers.

The redacted information immediately below the word subject lists the date and time the email was sent.

The body of the email redacts the names of CIA officers and officials with other Government agencies.

The redacted information below the word “briefed?” on page 1 and above the word “subject” on page 2 is non-substantive information, including classification markings, CIA internal administrative information, recipient and dissemination information.

The redacted information in the subject line on page 2 contains references to classified codewords for intelligence programs.

Paragraph 1 of the cable is redacted in full and discusses the travel plans and availability of a CIA officer other than Dr. Mitchell or Dr. Jessen.

Paragraph 2 redacts the name and identifying information of a CIA officers, classified cryptoyms and codewords for intelligence programs, and a specific number of “officers”. This is the only paragraph of the cable that discusses Dr. Mitchell. Dr. Jessen is not referenced in the cable.

Paragraphs 3-5 discuss the travel plans and availability of a CIA officer other than Dr. Mitchell or Dr. Jessen

Paragraph 6 discusses the CIA’s internal security and communication procedures

The information redacted at the end of the document after paragraph 6 is non-substantive, including CIA internal administrative information and recipient information.

**DOCUMENT #231**

This document is the final version of the draft memorandum logged as #235. The draft memorandum provides suggestions for ways that the CIA’s Office of Technical Services can assist in developing the CIA’s interrogation capability. It contains recommendations for staffing, budget, organization, training, and project initiatives.

**DOCUMENT #244**

The information redacted on page 1 above paragraph 1 is non-substantive information, including classification markings, CIA internal administrative information, recipient information.

Paragraph 2 redacts references to classified cryptoyms and codewords.

The remaining paragraphs of the cable consist of Dr. Jessen's recommendations for a handbook governing detainee interrogation and management. There are no references to the Plaintiffs, Abu Zubaydah, or any other detainee. The recommendations are general and not detainee specific.

**B. Documents Withheld in Full**

**DOCUMENT #34**

Four-page cable describing an interview session with a non-plaintiff detainee conducted in November 2002, during which the detainee was asked to identify Gul Rahman. The cable identifies the interviewers and makes no reference to Mitchell or Jessen having been present or otherwise involved. The cable also makes no reference to EITs being used at this interview.

**DOCUMENT #102**

Two-page memorandum dated January 10, 2003 from a Senior CIA officer in the Office of Technical Services to the Chief of the CIA Counterterrorist Center Legal Staff briefly summarizing the resistance strategies used by Abu Zubaydah during interrogation sessions from April to August 2002, provided in response to a request for this information from Counterterrorist Center Legal Staff and the CIA General Counsel. The memorandum notes that it is based on analysis provided by Dr. Mitchell and Dr. Jessen. The memorandum does not discuss the use of EITs with Abu Zubaydah, only the strategies he used to resist questioning.

**DOCUMENT #103**

Three-page document dated March 16, 2002 written by Dr. Mitchell and Dr. Jessen summarizing, in broad terms, their thoughts on the logistical and personnel requirements for an interrogation program to elicit information from highly uncooperative detainees. Interrogation strategy itself is only briefly and generally described. No specific detainees or EITs are addressed.

**DOCUMENT #125**

Three-page October 2002 cable from CIA personnel located at the detention facility where Abu Zubaydah was being detained to various CIA components, including the CIA Counterterrorist Center Legal Staff. The Cable summarizes Dr. Jessen's recommendation regarding steps that might be taken to prevent Abu Zubaydah from becoming depressed or withdrawn during his ongoing detention. EITs are not discussed.

**DOCUMENT #128**

Three-page email dated July 23, 2002 from a CIA attorney to other CIA personnel, including other CIA attorneys, summarizing Abu Zubaydah's status, Mitchell's and Jessen's recommendations regarding possible interrogation techniques (including water boarding), and the pros and cons of such techniques. The email also makes recommendations as to how this information should be further disseminated and included in future memoranda for other Government agencies.

**DOCUMENT #129**

One-page memorandum dated July 12, 2002 from a CIA attorney to CIA personnel located at the detention facility where Abu Zubaydah was being detained. The email briefly summarizes the status of then-ongoing interagency legal discussions regarding what interrogation techniques to authorize.

**DOCUMENT #137**

Undated twenty-three-page draft memorandum by an unidentified author. Various topics about the CIA's former detention and interrogation program are addressed, with significant discussion of government deliberations regarding what interrogation techniques to authorize for use with Abu Zubaydah. The role of Dr. Mitchell and Dr. Jessen is not a focus of this discussion, although they are referenced. The draft is incomplete and contains various notes and suggestions interlineated in the text regarding how the draft should be revised.

**DOCUMENT #166**

August 2002 email thread slightly over one page (containing two short emails) with the subject "Re: Jim and Bruce." The emails are between a CIA Officer and CIA personnel located at the detention facility where Abu Zubaydah was being detained. In addition to nonresponsive matters, the emails contain a brief discussion of the practical differences between using waterboarding in SERE training and using it with Abu Zubaydah.

**DOCUMENT #168**

Two-page cable dated July 2002 from CIA personnel located at the detention facility where Abu Zubaydah was being detained to various CIA components, including the CIA Counterterrorist Center Legal Staff. The cable summarizes Abu Zubaydah interrogation team's recommendations regarding what Abu Zubaydah should be told while team is waiting for approval to use EITs to maximize effectiveness of any subsequent approved EITs in obtaining useful information.

**DOCUMENT #171**

One-page email communication written by a CIA attorney to other CIA officers on July 23, 2002. The email responds to questions about the CIA efforts to collect information to provide to the Department of Justice in connection with the preparation of the Department of Justice's memoranda regarding the legality of the proposed enhanced interrogation techniques.

**DOCUMENT #191**

Undated four-page summary of Abu Zubaydah's waterboarding sessions. The document lists the dates of waterboarding sessions in August 2002, the names of the CIA personnel who administered the waterboarding, and the names of other CIA officers present. The document does not contain any description of the manner in which the waterboarding technique was applied.

**DOCUMENT #195**

Undated five-page summary of the interrogations of Abu Zubaydah. The summary lists the dates of interrogations from August 4 to August 24, 2002, the duration of the interrogation session, the names of the interrogators who participated in the session, and the enhanced interrogation techniques used during the interrogation. The summary also contains background information about Abu Zubaydah. The document does not contain any description of the manner in which the waterboarding technique was applied.

**DOCUMENT #217**

No additional unclassified information can be provided beyond the privilege log description

**DOCUMENT #228**

Four-page email dated July 29, 2002, from a CIA officer to another CIA officer requesting coordination and review of a draft cable from CIA headquarters addressing several issues in the Abu Zubaydah interrogations, including medical care, use of the confinement box, and the status of interagency discussions regarding authorizations to use proposed enhanced interrogation techniques. The email includes a copy the proposed draft cable.

**DOCUMENT #229**

One-page email dated June 21, 2002, written by a CIA officer to other CIA officer providing comments and suggestions on a draft document proposing a general interrogation plan and strategy for use by the CIA in the war against Al-Qaida. The email includes a copy the proposed plan (seven pages) containing the author's comments. The plan does not contain any references to enhanced interrogation techniques.

**DOCUMENT #235**

Three-page draft memorandum dated 2002 from the CIA's Office of Technical Services. The draft memorandum provides suggestions for ways that the Office of Technical Services can assist in developing the CIA's interrogation capability. The document references the use of SERE psychologists generally and does not specifically reference Dr. Mitchell or Dr. Jessen.

**DOCUMENT #236**

Six-page undated draft document titled "memorandum of understanding." The draft document summarizes the roles and responsibilities for psychologists in the CIA's Office of Technical Services who are serving as members of the CIA Counter-Terrorist Center interrogation team. The document contains handwritten comments in the margins of the document.

**DOCUMENT #237**

Six-page draft memorandum dated 2002 from a senior CIA officer in the Office of Technical Services to another senior CIA officer in the Office of Technical Services. The draft memorandum proposes the establishment of a new office within the Office of Technical Services to handle counterterrorism interrogation matters. The draft document contains handwritten comments in the margins and on the typewritten text of the document. The document references the use of SERE psychologists generally, but does not specifically reference Dr. Mitchell or Dr.



Jessen. The draft also includes a two page attachment to the memorandum titled “legal and policy guidance” that contains legal analysis of the proposed office’s legal authorities.

**DOCUMENT #244**

This document is consists of two separate email chains from July 2002. The first email chain is dated July 26, 2002, and contains communications between CIA attorneys and other CIA officers regarding information they are collecting about the interrogation techniques used in the Department of Defense SERE program. This document contains handwritten notes at the top of the document. The second email consists of communications to and from CIA officers regarding information they are collecting about interrogation techniques used in the Department of Defense SERE program.