

# **EXHIBIT 20**

**Warden, Andrew (CIV)**

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**From:** Chris Tompkins <ctompkins@bpmlaw.com>  
**Sent:** Saturday, January 07, 2017 4:05 PM  
**To:** Warden, Andrew (CIV)  
**Cc:** Paszamant, Brian; Chris Tompkins; Shane Kangas; Shaina Johnson; Querns, Ann E.  
**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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