

# CIA REFUSES TO TURN OVER TORTURE TAPE LIBRARY

The CIA has been making an inventory of its torture tape library. It is supposed to hand over an inventory of the library for the judge to review next Thursday, March 26, including:

- A list of any summaries or transcripts describing the destroyed records' content.
- A list of any witnesses who may have viewed the videotapes or retained custody before their destruction.

Only, the CIA says the ACLU can't have any of these lists.

Here's the letter DOJ gave Judge Hellerstein explaining the CIA's reasons why ACLU can't have the torture library.

The CIA has generated the lists contemplated by Points 2 and 3 of the Order. As instructed by the Court, the CIA will provide the unredacted lists for the Court's ex parte, in camera review on March 26, 2009 at 2:30 p.m. There is no meaningful non-exempt information from the list of documents covered by Point 2, which identifies roughly 3,000 documents, including cables, memoranda, notes and emails, that can be produced at this time. All of the information on the list of witnesses covered by Point 3 is either classified or otherwise protected by statute. Accordingly, the CIA is not producing either list to Plaintiffs in redacted form.

In spite of the fact they've given us a hugely redacted copy of the CIA OIG report on torture and a torture tape inventory itself, they claim they can't reveal any of the 3,000 documents discussing the torture tapes. None of them. We'll see whether Judge Hellerstein agrees with them...

What I'm most fascinated by, though, is the explanation that CIA can't turn over the list of those who watched or retained the torture tapes because the list "is either classified or **otherwise protected by statute.**" That suggests they're invoking FOIA exemptions other than classification to withhold the identities of people who watched those tapes.

Take a look at this list of FOIA exemptions, and you'll see why that may be rather interesting. For example, trade secrets might protect the identities of contractors who had viewed or retained the torture tapes. There's the physical safety exemption that they earlier cited in regards to their destruction of the tapes—but if they invoked this exemption, it might reveal that they're worried about the identities of non-CIA employees being released. There are law enforcement exemptions they might invoke if DOJ had reviewed these torture tapes in 2004 in response to a criminal referral by CIA's Inspector General.

Or the truly interesting possibility—that CIA might claim some identities are exempt from FOIA because they are presidential records more generally exempt from FOIA, which would come into play if someone at the White House had watched the torture tapes.