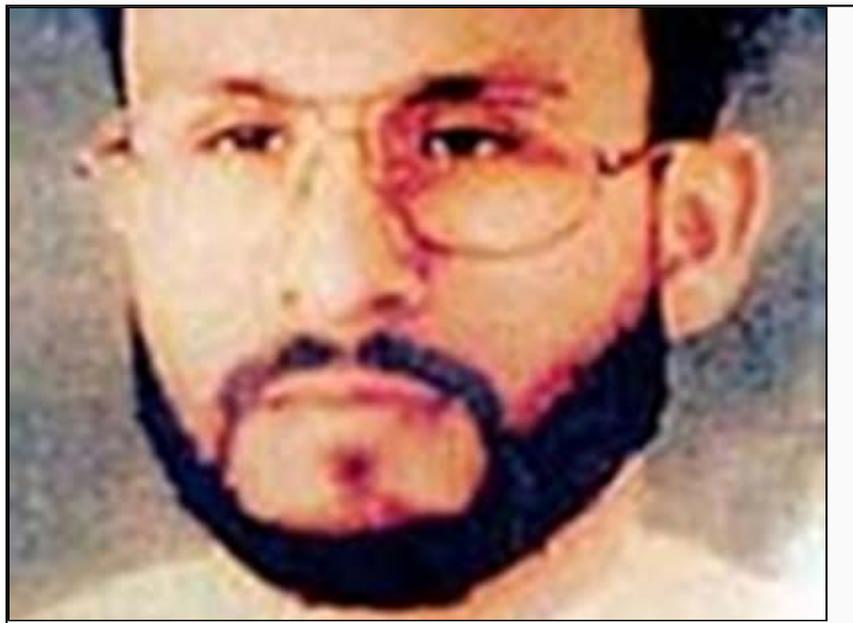


# **EXHIBIT 25**

# CIA Faces Second Probe Over Tape Destruction

By [MICHAEL ISIKOFF](#)

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AP

The legal inquiries into the CIA's destruction of videotapes showing the brutal interrogation of terror suspects may not be over after all.

A day after the [Justice Department](#) announced that a special counsel had concluded his investigation into the matter without bringing criminal charges, officials of the National Archives and Records Administration signaled Wednesday that they plan to reopen their own long delayed probe into whether the agency's actions constituted an improper destruction of federal records.

"We're not going to let this drop," Susan Cooper, a spokeswoman for the National Archives told [NBC](#).

On Dec. 10, 2007, [a top National Archives official had written the CIA](#) asking it to explain the tapes destruction in light of the Federal Records Act, which states that "no federal records may be destroyed" without agencies getting prior approval from the National Archives to dispose of the material.

That law defines federal "records" broadly to include all "documentary" material "regardless of physical form or characteristics." [Douglas Cox](#), a law professor who has researched the issue, said that definition unquestionably encompasses videotapes.

A [CIA](#) official wrote back to the National Archives in January 2008, saying the agency was "unable to respond" to the inquiry in view of the pending

General Michael Mukasey.

Now that the criminal probe is over, “the matter is back on our radar screen,” the Archives’ Cooper said. If the Archives does not hear back from the CIA shortly with an explanation, the Archives plans to follow up and seek the agency’s justification for destroying “documentary” material without getting prior approval. It will then determine if any further action is warranted, she said.

Agency officials have acknowledged that the tapes destroyed in November 2005 involved hundreds of hours of material showing the interrogations, including waterboarding, of two “high value” detainees, alleged al-Qaida operatives Abu Zubaydah, and Abd Al Rahim al-Nashiri. CIA officials have said the tapes were destroyed because they were concerned that, if they were ever released, they could subject CIA interrogators to reprisals. But internal emails released earlier this year under a Freedom of Information Act request show that the agency official who ordered the destruction had expressed concerns that if the images were disclosed “out of context, they would make us look terrible; it would be devastating to us.”

As a practical matter, the National Archives may not have much leverage over the CIA. If it finds a violation, it could refer the issue back to the Justice Department for the possible imposition of civil fines against the individuals responsible.

But Cox, an associate professor of the City University of New York School of Law, said the issue is enormously important as a precedent. He told NBC that failure by the Archives to enforce the Federal Records Act in this case could “embolden the CIA” and “open the door” for the destruction of far more material.

In a [48-page article](#) titled “Burn After Viewing: The CIA’s Destruction of the Abu Zubaydah Tapes and the Law of Federal Records,” to be published this spring by the Journal of National Security Law & Policy, Cox writes that internal CIA emails indicate that agency lawyers originally viewed the tapes as official records and even admonished officers to preserve and catalogue them. But by September 2002, agency lawyers reversed their position after agency officials expressed concern that their existence could pose a “security risk” for the officers involved in the interrogations, Cox wrote.

“The end of the DOJ’s criminal investigation should not be the end, but the beginning of the inquiry into the CIA’s destruction of the ... tapes,” Cox writes in the article, which he shared with NBC News.

When first questioned about the issue in December 2007, an agency spokesman said the CIA did not view the tapes as federal records “as defined by the Federal Records Act” without offering an explanation.

Asked for comment Wednesday about the matter, CIA spokeswoman Marie Harf said, “Since the Department of Justice has not yet fully completed its investigation into the former detention program, it would be inappropriate at this point to comment on the NARA request.” (Harf was referring to a broader investigation by the same Justice Department special counsel, John Durham, into allegations of CIA abuse of terror suspects.)

The National Archives move to revive the matter is one of only a number of

arenas where the tapes destruction may still prove troublesome for the agency. A top ACLU lawyer told NBC that the organization will soon urge a federal judge to [hold the CIA in contempt](#) for destroying records sought by a Freedom of Information Act lawsuit seeking material about abuse of detainees.

In addition, Stephen Reyes, the military lawyer for one of the waterboarded detainees, [al Nashiri](#), said the issue will be a central part of any defense of his client. Al Nashiri potentially faces the death penalty in a trial before a military commission and his claims of brutal treatment by government interrogators could be a central part of his defense. The CIA's actions constituted "the intentional destruction of exculpatory evidence," said Reyes.

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