

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
AMERICAN CIVIL LIBERTIES UNION, et al., :  
 :  
 : Plaintiffs, :  
 :  
 : -against- :  
 :  
 : DEPARTMENT OF DEFENSE, et al., :  
 :  
 : Defendants. :  
----- X  
ALVIN K. HELLERSTEIN, U.S.D.J.:

**ORDER REGULATING  
GOVERNMENT'S PROPOSED  
WORK PLAN**

04 Civ. 4151 (AKH)

On March 27, 2009, I ordered the Government to create a work plan for production to Plaintiffs of documents relating to the destruction by the CIA of certain videotapes. The Government proposed such a work plan by its letter of April 9, 2009, and Plaintiffs complained of substantial deficiencies by their letter of April 10, 2009. I rule as follows:

1. I accept the dates proposed by the Government for production, but not the limitations proposed by the Government.
2. The Government shall produce a Vaughn index, not a "Vaughn-like" index as the Government proposes. If the Government seeks to do less than that required by a Vaughn index, it shall seek leave so to do.
3. The Government shall produce records relating to the content of the tapes not merely from August 2002, but from the entire period of the tapes that were destroyed. The Government represents this period to be April through December 2002. In addition to the current plan for production from a sample month, the Government shall propose a schedule for production of documents from the entire period.
4. The Government shall produce documents relating to the destruction of the tapes, which describe the persons and reasons behind their destruction, from a period reasonably

MICROFILMED  
APR 21 2009 - 3 00 PM

longer than April through December 2002. I find that the period for such production should be April 1, 2002 through June 30, 2003. If this longer period imposes an unreasonable burden, the Government should show why, and whether a reasonably shorter period would provide sufficient disclosure. Production of these documents shall be subject to a Vaughn index.


5. On March 26, 2009, the Government presented for my in camera review representative documents relating to the destroyed videotapes, in response to my order of August 20, 2008. These documents contained redactions. The Government shall reconsider the extent and value of any redactions in documents produced pursuant to its work plan, in light of its recent release of Office of Legal Counsel memoranda in this litigation.

6. The Government shall advise whether the Durham investigation continues, and whether contempt proceedings before this Court may conflict or interfere with proceedings flowing from that investigation and any consequent report.

7. By April 29, 2009, the parties shall propose a schedule to accomplish all of the above, by joint letter describing their agreements and differences.

SO ORDERED.

Dated: April 20, 2009  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge