

EITHER TORTURE IS ONGOING OR THE ADMINISTRATION IS HIDING SOMETHING ELSE

I don't mean to be ungrateful that the NYT wrote an editorial about the 2nd Circuit's decision to help the CIA hide its torture documents from FOIA. I'm not! I'm glad they're noting how the courts are collaborating in hiding our government's crimes from us.

But I'm going to be a bit pedantic about it.

As almost every outlet has when covering the 2nd Circuit decision, the editorial focuses primarily on the picture of Abu Zubaydah after he was tortured. That makes sense. A picture is so concrete, so easy to understand.

It does, however, also mention the court's ruling hiding what the government has all-but confirmed is mention of the Gloves Come Off Memorandum of Notification. But it interprets those references to "concern the origins" of the torture program (I'm also grateful that NYT used the word "torture," btw).

The court also said the C.I.A. was justified in withholding two passages in Justice Department memos that appear to concern the origins of the Bush torture program.

Now, I don't blame the NYT for not saying this is the Gloves Come Off MON—while both Judge Alvin Hellerstein and DOJ have all-but confirmed that, that's not adequate proof for the NYT. But these passages either represent more than "the origins of the torture program," or we're still in the torture business.

That's because in his opinion, Judge Richard

Wesley makes it clear that the references are to an ongoing activity.

We give substantial weight to the Government's declarations, which establish that disclosing the redacted portions of the OLC memoranda would reveal the existence and scope of a highly classified, active intelligence activity.

In the middle of an opinion discussing torture, Wesley said **some activity relating to torture is still active**.

Now, I'm not saying I think torture (well, waterboarding, anyway) is still ongoing. As I have noted, all the evidence suggests the government is hiding this very short reference to the Gloves Come Off MON because releasing it might amount to admission of all the other covert programs either explicitly or implicitly included in it—including the drone program, but also including things like buying the services of the Egyptian intelligence services.

Furthermore, we reject the district court's suggestion that certain portions of the redacted information are so general in relation to previously disclosed activities of the CIA that their disclosure would not compromise national security. It is true that the Government has disclosed significant aspects of the CIA's discontinued detention and interrogation program, but its declarations explain in great detail how the withheld information pertains to intelligence activities unrelated to the discontinued program.

But until the Administration explains all this, what we've got is a Circuit Court judge saying that he can't release a half sentence phrase—one appearing in the title of Torture Guidelines—because that half sentence phrase

relates to an activity that is still ongoing.

Which is it folks? Torture? Or simply a whole bunch of equally terrible things?