

COLLEEN MCMAHON KICKS THE ADMINISTRATION'S ASS

Back when we last saw Judge Colleen McMahon in the ACLU/NYT drone killing FOIA, she reluctantly shut down those FOIA bids. Since then, of course, the government kept blathering about its drone programs – including releasing a white paper so John Brennan could become CIA Director – leading the 2nd Circuit to order the government to release the drone killing memo and have McMahon review the others for release.

The government tried to welch on that part of the order though, twice asking McMahon to let them file a motion for summary judgment regarding what it should and should not have to disclose. The ACLU and NYT were not amused with the government's attempts to rewrite the 2nd Circuit's order.

You know who was even less amused? Judge McMahon.

This court will not be entertaining arguments about the applicability of FOIA exemptions to the legal memoranda that the Government must produce before complying with the mandate. Instead, it will follow the mandate to the letter: I will analyze the legal memoranda that were not previously produced (either to this court or to the Second Circuit) to see if the Government has waived its right to invoke any FOIA exemptions. I will do that before I do anything else, and I will do it on the schedule I set.

There is no need to conduct any "careful review," let alone any "inter-agency review" before producing the documents in accordance with the mandate. The Circuit's order that they be produced for in camera inspection is clear and admits of no argument or exception.

Frankly, the Government's bald assertion, in its letter of July 7, 2014, that *it* gets to decide "whether any of those documents, or particular portions thereof, fall within the scope of the waiver found by the Second Circuit" would be offensive if it were not so laughable. The Second Circuit directed *this court* to make that determination, in light of the rulings it has made. And so I shall. [emphasis original]

Remember, McMahon made it clear that before the government kills someone for treason, they're supposed to make their case before an Article III Judge.

She seems to be getting weary of the government's usurpation of her job.

In very much related news, the 2nd Circuit just told the government it actually has to provide a functional Vaughn Index. It, too, appears to be weary, this time of the government's repeated efforts to expand the universe of titles of documents it doesn't have to disclose.

It is far too late in the day to fail to identify by specific numbers the "other" listings. The Government's claim that "space constraints" in the rehearing petition preclude the requisite specificity, see Petition 15, is without merit. Any additional numbers could have been included in one or two lines of type in the blank bottom one-third of the last page of the petition.

Imagine that. The government might actually have to release more details of how it uses drones to kill US citizens.