

WHAT IF TRIALS PROVE TORTURE WASN'T NECESSARY?

Cynthia Kouril and Adam Serwer and both have really good smackdowns of Mukasey's op-ed against civilian trials. Cynthia writes,

The thing that bothers me most about this article though, comes near the end:

Nevertheless, critics of Guantanamo seem to believe that if we put our vaunted civilian justice system on display in these cases, then we will reap benefits in the coin of world opinion, and perhaps even in that part of the world that wishes us ill. Of course, we did just that after the first World Trade Center bombing, after the plot to blow up airliners over the Pacific, and after the embassy bombings in Kenya and Tanzania.

This twisted notion that we would only observe our own laws, our own Constitution, our own Enlightenment Age ideals—if there was something in it for us, if we could somehow profit by it—appalls me.

NO, No, no, no, no. We observe our own laws, we follow our own constitution, we hew to our own Founding Father's ideals, because it is the RIGHT THING TO DO.

And Adam, responding as well to Michael Isikoff's report that 25 detainees will soon be shipped to the US for trial, speculates,

I'm skeptical that the Classified Information Procedures Act, the statute

governing the disclosure of classified information in federal court, is inadequate to prevent whatever national security information might be disclosed in any of these trials. But remember, if you look at the more declassified version of the 2006 CIA Inspector General's report that was recently released, there are 24 straight pages of redacted information describing what was done to KSM. If you're wondering what Mukasey and the others are worried about a civilian trial disclosing, it's a good bet that some of it is probably in there.

Perhaps, Adam argues, Mukasey (and Lindsey Graham and John McCain) don't want civilian trials because they would provide Khalid Sheikh Mohammed opportunity to detail the torture done to him.

There's one other possibility, though.

If DOJ decides KSM can get a civilian trial, that means there's enough information to try him and his alleged co-conspirators independent of any evidence tainted by torture. It means the government learned sufficient information about the 9/11 plot via people they did not torture, pocket litter, or in sessions that they believe they can segregate off from the torture they did to KSM.

And that—along with what will surely be extensive litigation about what is admissible—will make it clear how much information was available via means other than torture.

Granted, they'll be trying KSM just for 9/11 and not, presumably, for the Liberty Tower Plot (though they have information about that, too, via other sources than KSM). But a civilian trial will expose some of what was available without using torture.

And that may be why the apologists are afraid of

civilian trials.