JUDGE: GOVERNMENT CAN SHIELD ITS CONVERSATIONS ABOUT ENGAGING IN TORTURE

Josh Gerstein reports that a Federal Judge has rejected ACLU's effort to get the government to remove more of the redactions in the OPR Report on the torture memos. Judge Rosemary Collyer basically argued that the President's need to get candid advice on how to make torture legal trumps citizens' right to know about such illegal activity.

> Rather than arguing that exemptions (b)(1) and (3) are inapplicable under the Executive Order or the proffered statutes, Plaintiffs argue that the substance of the redactions: (1) the names of the detainees; and (2) the "actual and potential implementation" of "enhanced interrogation techniques," including "conditions of confinement" that functioned as part of the "enhanced interrogation techniques," are unlawful, and therefore fall outside the protection of "intelligence sources and methods" granted by those exemptions. Pls.' Mem. at 11–24. But, as recently stated by the D.C. Circuit, the illegality of information is immaterial to the classification of such information under exemptions (b)(1) and (3) as intelligent sources or methods.
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> [snip]
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> While the Court recognizes the public's interest, this interest does not overcome the need for frank discussions on serious issues that confront a President. Without a free and candid dialectic, the President cannot be properly armed with the tools required

> to make difficult decisions on consequential issues. Because the declaration sufficiently details its rationale for redaction, and because the public's interest does not overcome the privilege in this case, the Court finds that Defendant has satisfied its burden as to the limited redactions withheld pursuant to the presidential communications privilege.

Mind you, the Judge is reading broadly here. For at least one of the meetings, we have evidence a decision was made without the input of the President. Yet she has interpreted meetings of Administration officials where Bush was absent as Presidential communications.

So in reality, she's not just shielding Bush's decisions, she's shielding Cheney's and Alberto Gonzales' decisions as well. Eh, I guess she thinks Cheney was really in charge?

Where Judge Collyer's opinion gets really crazy is where she accepts the government's argument that, having left its discussion about "mock burial" unredacted in one instance, it does not have to reveal the other instances.

> Plaintiffs next argue that the name of the interrogation technique that the CIA considered using, i.e. "mock burial," has already been unclassifed and thus should be disclosed. It is true that when the government has officially acknowledged information, a FOIA plaintiff may compel disclosure of that information even over an agency's otherwise valid exemption claim. See Wolf, 473 F.3d at 378; Fitzgibbon, 911 F.2d at 765. For information to qualify as "officially acknowledged," however, it must satisfy three criteria: (1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously

> disclosed; and (3) the information requested must already have been made public through an official and documented disclosure. Id. After reviewing additional information in camera, the Court finds that the redacted information does not match the very broad information previously disclosed. Due to the specificity and context of the redacted information, coupled with the agency affidavit that affirmatively states that: "notwithstanding these prior disclosures (which I took into account when reviewing the Report), many details of the detention and interrogation program and the intelligence activities undertaken in support of it remain classified," Payne Decl. ¶ 28, the Court is satisfied that this redacted information has not been already "officially acknowledged," and thus is appropriately redacted pursuant to exemptions (b)(1) and (3) as "intelligent sources or methods."

Maybe this is particularly sensitive because they actually did use mock burial and mock executions with detainees but didn't prosecute? Or maybe the CIA just asked her, on the basis that they sometimes referred to mock execution and other times referred to mock burial and other times referred to death threats, these are different specifics?

It gets worse. If you want to ruin your appetite, click through and see how she justified sustaining the redactions of Jennifer Koester's name.