

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY,  
CHARLIE SAVAGE, and SCOTT SHANE

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

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AMERICAN CIVIL LIBERTIES UNION and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

-against-

U.S. DEPARTMENT OF JUSTICE, including its  
component the Office of Legal Counsel, U.S.  
DEPARTMENT OF DEFENSE, including its  
Component U.S. Special Operations Command,  
and CENTRAL INTELLIGENCE AGENCY,

Defendants.

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ORDER DIRECTING RELEASE OF UNREDACTED VERSION OF  
REMAND OPINION #1 (RELATING TO ITEM 3)

McMahon, J.:

I have received and reviewed the October 17, 2014 ex parte submission from the Department of Justice following its classification review of the court's first decision on remand from the United State Court of Appeals for the Second Circuit. The decision was submitted to the Government on September 30, 2014.

I disagree with the Government's redaction of the bulk of the first full paragraph and the second and third paragraphs on page 9, which as drafted by this court contain not a whit of classified material (the Government does not suggest otherwise), and which I do not believe would tend to reveal any classified information. In order to preserve that issue for appellate review, I will release on the public docket the opinion with all the Government's proposed redactions today, along with this cover note indicating my

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11 Civ. 9336 (CM)

12 Civ. 794 (CM)

conclusion about this material. Should the Second Circuit agree with the Government that the material was properly redacted, nothing will be lost; should it agree with my view that nothing the Government has redacted on page 9 should be redacted, it will so indicate.

The full opinion will remain under seal.

Looking to the future: I have before me the ACLU's letter of September 19, 2014, in which it indicates what additional documents from the OLC Vaughn Index it wishes disclosed, as well as the Government's sealed, *ex parte* response to that request and its motion for summary judgment with respect to the OLC documents. (Item 2 on Remand; Court's Order of September 5, 2014, Docket # 75; Motion for Summary Judgment dated October 3, 2014, Docket #79). Consistent with the parties' briefing schedule, I hope to have that decision out before Christmas.

Finally, I will not be able to address Remand, Item 5, the Vaughn Indices from the Department of Defense and the CIA, until early next year, as briefing will not be complete until January 9. I had hoped to get all of this work done this year, as I have a heavy trial calendar for the first half of 2015. I will, therefore, not grant any extensions of the already generous briefing schedule with respect to these long-overdue Vaughn Indices.

Dated: October 31, 2014



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U.S.D.J.

BY ECF TO ALL COUNSEL