

WHAT IS THE SECRET ITEM THE GOVERNMENT WANTS WITHHELD FROM ABDULMUTALLAB?

As I tweeted earlier, I find the timing of the Anwar al-Awlaki assassination to be rather curious. The first time we might hear real evidence supporting the government's claim that Awlaki was operational, and not just producing propaganda, will be in Umar Farouk Abdulmutallab's trial, which starts next week.

Which is why I'm curious about the government's motion for a protective order submitted last Friday, seeking to have one item withheld from Abdulmutallab (who, remember, is technically defending himself; Judge Edmunds granted the motion on Monday).

The United States of America respectfully moves pursuant to [Criminal Procedure and CIPA] for a second protective order precluding the discovery of a particular item which contains classified information. The classified information is not exculpatory, is privileged, and is otherwise not discoverable.

A page and a half of the seven page filing (which includes a half page redacted description of the item in question) is background which I don't believe to be boilerplate; that is, I think it is background specific to this filing. And that background includes a close focus on Abdulmutallab's ties to Awlaki.

The defendant told the [FBI] agents that he was inspired to commit jihad against the United States as a result of regular visits to the web sites of Anwar Awlaki, a member and leader of Al Qaeda in the Arabian Peninsula ("AQAP"), which has

been designated by the United States government as a foreign terrorist organization. The defendant stated that while in Yemen, he was able to make contact with members of Al Qaeda, who subsequently provided the defendant with the bomb and gave him training on its components. The defendant and other members of Al Qaeda discussed plans to attack the United States.

Now, I have no real suspicions about what this item is and I'm not suggesting the government is withholding it improperly.

But I find it curious that the government is, at this late date (and at a time when they were already watching Awlaki for their opportunity to kill him) finding items that must be withheld from Abdulmutallab. And I find the particular focus in this filing on his time with Awlaki—precisely the stuff that supports the claim Awlaki had given Abdulmutallab operational instructions—to be interesting.

Is there any reason why the government might be obliged to protect the assassination approval, which we know to be based in part on Abdulmutallab's own testimony, from him?

Update: I've got just a few more major filings left, and thus far, I haven't found one that mentions Awlaki. This is how the superseding indictment referred to Abdulmutallab's time in Yemen, which is some of the most detail given on this front.

Defendant Umar Farouk Abdulmutallab is a Nigerian national. In August 2009, defendant Abdulmutallab traveled to Yemen for the purpose of becoming involved in violent "jihad" on behalf of Al Qaeda.

[snip]

In preparation for a suicide attack, defendant Abdulmutallab practiced

detonating explosive devices similar to one which he later received for an attack on a U.S. airliner.

The government moved for an earlier protective order in August. That motion doesn't mention Yemen at all.

Update: This request for expert testimony again mentions Yemen.

The First Superseding Indictment, on which defendant will be tried, alleges that he traveled to Yemen to become involved in violent jihad on behalf of Al Qaeda, a designated terrorist organization, as part of a conspiracy to commit an act of terrorism transcending national boundaries.

And it describes the importance of English-language propaganda.

Finally, the government seeks to admit three minutes and forty two seconds of the Al Qaeda produced video, America and the Final Trap¹ and portions of the Al Qaeda in the Arabian Peninsula publication Inspire. Through testimony by the Al Qaeda expert, see Argument A, supra, the government will establish that America and the Final Trap and Inspire are produced by Al Malahem media, an Al Qaeda production company, that products of Al Malahem media serve as official statements by Al Qaeda, and thus are unquestionably authentic. The Al Qaeda expert will explain the reasons Al Qaeda produces Arabic language videos with accurate English language subtitles, as is the case with America and the Final Trap. The expert also will establish that such productions are created by terrorist organizations as part of and in furtherance of their criminal conspiracies, for a number of

reasons. Those reasons include the goals of terrorizing their targets into fearing that additional attacks will be forthcoming, and to convince their own supporters and possible recruits that the terrorists are successful and are gaining the upper hand.

And it mentions the toner cartridge plot.

The conspiracy to commit aircraft attacks against the United States had not ended, as demonstrated, at a minimum, by the contents of America And the Final Trap and the 2010 toner cartridge conspiracy by Al Qaeda in the Arabian Peninsula.

Yet in none of these discussions—all of which involve actions in which Awlaki was central—does the filing mention the cleric.