

THE AL-HARAMAIN DATES

Before you read this post, go read this post and this post for background about Judge Vaughn Walker's order yesterday that the government must give him a document accidentally given to al-Haramain years ago that the Muslim charity claims proves they were wiretapped using the illegal wiretap program. Those posts explain that Walker will finally assess the warrantless wiretap program itself to determine whether it violated FISA. The second post goes on to suggest that this decision will likely impact Walker's pending decision on whether or not the retroactive immunity passed by Congress is legal.

In this post I'm going to wallow in some delightful weeds, because they show that al-Haramain is going after Bush personally.

Recall that, back in July, Walker told al-Haramain that, before he would review the document itself to determine whether or not the program was illegal, they would have to use unclassified material to prove they are aggrieved persons—that they had been wiretapped. A central part of their response to that direction was a description of a series of phone calls which they assert the government used to classify al-Haramain as a super-duper terrorist group, one with direct ties to Al Qaeda. Walker cites those calls in his opinion.

Soon after the blocking of plaintiff Al-Haramain Oregon's assets on February 19, 2004, plaintiff Belew spoke by telephone with Soliman al-Buthi (alleged to be one of Al-Haramain Oregon's directors) on the following dates: March 10, 11 and 25, April 16, May 13, 22 and 26, and June 1, 2 and 10, 2004. Belew was located in Washington DC; al-Buthi was located in Riyadh, Saudi Arabia. During the same period, plaintiff Ghafoor spoke

by telephone with al-Buthi approximately daily from February 19 through February 29, 2004 and approximately weekly thereafter. Ghafoor was located in Washington DC; al-Buthi was located in Riyadh, Saudi Arabia. (The FAC includes the telephone numbers used in the telephone calls referred to in this paragraph.)

In the telephone conversations between Belew and al-Buthi, the parties discussed issues relating to the legal representation of defendants, including Al-Haramain Oregon, named in a lawsuit brought by victims of the September 11, 2001 attacks. Names al-Buthi mentioned in the telephone conversations with Ghafoor included Mohammad Jamal Khalifa, who was married to one of Osama bin-Laden's sisters, and Safar al-Hawali and Salman al-Auda, clerics whom Osama bin-Laden claimed had inspired him. In the telephone conversations between Ghafoor and al-Buthi, the parties also discussed logistical issues relating to payment of Ghafoor's legal fees as defense counsel in the lawsuit.

Remember, these lawyers have seen the document indicating they were tapped—which was probably a summary of taps and contents of those taps.

I'm guessing, then, it is not a mistake that the lawyers are honing in on these dates. That is, I'm guessing that these specific conversations were among those described in the document that al-Haramain once had in hand. Which means that when Walker reviews the document, it'll be affirmation of precisely the argument al-Haramain makes here.

It's easier writing these things, I guess, when you've seen the answers to the test.

But that's not the really delectable part of the description of these calls. Look at this

sentence.

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Hahahahahahaha!!!

On March 11, 2004, remember, the warrantless wiretap program was operating without the approval of the Acting Attorney General. After Jim Comey refused to recertify the program on March 9, after Andy Card and Alberto Gonzales tried to get John Ashcroft to overrule Comey from his ICU bed on March 10, Bush reauthorized the program using only the legal sanction of then-White House Counsel Alberto Gonzales on March 11.

Thus, even if the rest of the program were somehow deemed legal (which it wouldn't be, because it violated FISA, which is the question at hand), it would be not be deemed legal on March 11, 2004, because the program didn't have sanction from the Attorney General.

Al-Haramain has reason to believe, you see, that one of the conversations wiretapped was tapped on the day they know the program was illegal under any interpretation of the law. And, if I'm guessing correctly on why they honed in on these conversations, Judge Walker will have proof to that fact in two weeks time.