OBAMA ADMINISTRATION HELD IN CONTEMPT FOR HIDING GITMO TESTIMONY

Yesterday, I pointed to this language from the Government's amicus brief in the Mohawk case.

> The Executive cannot be expected to persist in withholding information that a court has ordered to be disclosed; to suggest otherwise would be to invite the "unseemly" interbranch conflict that this Court declined to let unfold in Nixon.

The government would never withhold information after a Court ordered it to hand over the information. Oh no, it would never do that!!!

Only, it would do that.

Just today, in fact, Judge Gladys Kessler just held the government in contempt for totally ignoring one of her orders: to video tape the habeas testimony of Gitmo detainee Mohammed Al-Adahi.

> This Court heard Petitioner's case at a four-day Merits Hearing from June 22-26, 2009. Id. at *2. Because classified information needed to be presented at the Hearing, proceedings had to be closed to the public. To afford the public and the press an opportunity to observe the greatest possible portion of Petitioner's testimony, the Court instructed "the Government, through the appropriate agency, [to] videotape [Petitioner's] testimony and maintain copies of the complete testimony as given, as well as a redacted version of

> that testimony." Order at 1 (June 19, 2009). Petitioner testified via video-conference on June 23, 2009.
>
> On July 23, 2009, the Government filed notice with the Court that the Petitioner's testimony had not been videotaped.
>
> [snip]
>
> By requiring the Government to videotape Petitioner's direct testimony and crossexamination, and then make it public after classification review, the Court sought to ensure that the public would have an opportunity to observe as much of the testimony as possible. Thus, there are two other justifications for imposing sanctions against the Government: to minimize the damages to the public's lost opportunity to observe an actual Guantanamo Bay trial (or "Merits Hearing," as it is referred to), and to deter further noncompliance with court orders.
>
> [snip]
>
> ORDERED, that the United States Department of Defense is hereby adjudged and decreed to be in civil contempt of Court for failing to comply with this Court's Order of June 19, 2009, directing Respondents to videotape Petitioner's testimony at the Merits Hearing in this case, and then to redact and maintain a copy of that recording; and it is further
>
> ORDERED, that the Clerk of Court shall post a transcript of Petitioner's testimony on the United States District Court Public Information Page for Guantanamo Bay Cases; and it is further
>
> ORDERED, that Respondents shall submit, within 30 days of the date of this Order, a detailed explanation of all

> steps taken to ensure that such errors not occur in the future;

Mind you, this is effectively just a slap on the wrist. This is just civil, not criminal, contempt. And the government does not have to make a new videotape of al-Adahi's testimony. And Kessler did not order the government to release al-Adahi, even though she earlier ruled in his favor on the habeas petition (the government is appealing).

So, once again, the government has played games with a detainee videotape (this time, by not making it) and gotten away with it. While Kessler ruled that al-Adahi's lawyers had not proven the government had done this intentionally, there's a very well established pattern here of the government repeatedly ensuring that no videotape evidence from detainees exists—at least publicly.