

WHAT THE GOVERNMENT CLAIMS DIDN'T GET VIDEOTAPED

Earlier, I reported that Judge Gladys Kessler had held the government in contempt for failing to follow her order that they videotape the *habeas* testimony of Mohammed al-Adahi. As part of her contempt order, she ordered the government to make the transcripts more readily available. Eventually those documents should be here. But in the meantime, I've liberated them from PACER (part one, part two).

The Visual Aspects Not Videotaped

The transcripts are interesting for two reasons. First, they show that the defense counsel and the Judge highlighted the filming that was supposed to be going on. Kessler emphasizes that when the hearing starts.

THE COURT: Good afternoon, ladies and gentlemen. This is the case of Mohammed Al-Adahi versus Barack Obama, CA 05-280. All counsel are present. We are going to have videotaped testimony this afternoon I do believe from the petitioner, Mr. Al-Adahi. He will be testifying from Guantanamo.

Then, al-Adahi's defense counsel in DC warned that those in Gitmo might be sweating on account of the lack of air conditioning.

MR. CHANDLER: A couple of minor items, Your Honor.

First, in the room in Guantanamo there is no air conditioning. Ms. Wilhelm said that may speed up her questioning. But if you see people perspiring profusely, it is because they are in the Caribbean with no air conditioning.

Then there's an exchange between Chandler and Kessler in which the Chandler warns Kessler that al-Adahi is chained to the floor, which appears to frazzle Kessler.

MR. CHANDLER: There was a third thing I meant to call to the court's attention, and that is that Mr. AI-Adahi is chained to the floor in Guantanamo.

THE COURT: I see. All right. Mr. AI-Adahi is now going to testify, and he does need to be sworn in. I know that he is using his religious book, the Koran, and of course that is acceptable to the court. Mr. AI-Adahi, would you please—oh, he cannot stand. I am sorry. Excuse me.

MR. CHANDLER: He can stand, he just can't move around.

MS. WILHELM: Yes, Your Honor he can stand.

THE COURT: Oh, he can. All right. Would you please stand up.

In other words, Kessler and the defense counsel were all taking heightened note of the visual aspects of the scene, and al-Adahi's own lawyer was arguably playing aspects of that image—the perspiration, the manacles—up for the videotape. Of course, had they actually released a videotape, that would heighten the focus on visual cues like a human chained to the floor in a sweltering room. But as it happens, the government claims that no such videotape exists.

The Bad Government Lawyering

The other notable thing about the transcripts is they reveal how weak the government's argument is. In response to questioning from his lawyer, al-Adahi explained that he traveled in July 2001 with his sister from Yemen to Afghanistan to deliver her—she had had an arranged marriage to someone in Kandahar—to her new husband. At the wedding celebration, al-Adahi met Osama bin

Laden. And then, bin Laden contacted al-Adahi to learn details of affairs in Yemen. From these two meetings and al-Adahi's failed attempt to get weapons training in the al-Farouq camp (as well as pretty suspect evidence from another detainee at Gitmo), the government claimed that al-Adahi was a guard for bin Laden and a trainer (rather than a failed trainee) of extremists.

When the government cross-examines al-Adahi, DOJ lawyer Hunter Bennett tries hard to push al-Adahi to state two things: that he was happy that his sister's wedding ceremony was attended by bin Laden, and that he believed in jihad generally—meaning he believed in bin Laden's jihad. Al-Adahi draws a parallel between Congress declaring a war—thus making that war just—and a scholar issuing a fatwa.

MR. BENNETT: Q. Mr. Al-Adahi, yesterday when you were testifying you said:
“Anybody who fights people in a country that they want to invade other countries, that is jihad, according to religion, not to desire.” Is that correct, sir?

A. Yes. A fatwa has to be issued from the scholar working in the same country or other country. As you call it, war against another country, we call it jihad. Your Congress will decide, but our scholar will decide. With approval of the president it is legitimate.

And when Bennett presses al-Adahi on whether his now brother-in-law, Riyadh, fought against the Russians, al-Adahi notes that the US supported that jihad.

Q. You mentioned yesterday, sir, that your brother-in-law, that your brother-in-law, Riyadh, fought in Afghanistan against the Soviets, correct?

A. I believe that. He did not tell me that.

Q. Do you know other people who fought

in Afghanistan against the Soviets?

A. When I was asked yesterday on the definition of mujahidin, I said I heard that there were men that fought against the Soviet Union, and they fought against the alliance after the departure of the Soviets. And the war was legitimate, and the international and American -everything was legitimate to America up until September incidents.

Bennett tries to change the subject from American approval for "jihad" to a belief that occupation justifies jihad. Very quickly, however, al-Adahi brings the conversation back to wars the US approved—in this case, the Yemenese Civil War in 1994, the only war al-Adahi claims he ever trained for.

Q. To go back, the fight against Russia or against the Soviets was legitimate because the Soviet military was stationed in Afghanistan, correct?

A. These people —this question should be answered by the scholar who said that jihad is legitimate.

Q. But you also said, sir, that jihad was legitimate when you testified yesterday, correct?

A. It is not me who is going to decide that jihad is legitimate by the country. It is not for me to decide. The scholar will decide. I did not participate in the Russian war or any other war. I prepared myself in the war in 1994 in Yemen. The Yemeni people were ready for war. The whole international community saw and heard. The victory was blessed by all of the European countries, and America, and our country.

I have no idea whether al-Adahi is telling the

truth or not. But the effect is clear: either out of sincere truth or superior intellect, al-Adahi (not his lawyer) kicked the shit out of Bennett's attempts to implicate him, always bringing the question of jihad back to the wars the US supported.

Now, I have no reason to believe the government's really weak lawyering explains why they didn't take—or chose not to produce—the videotape Kessler ordered.

But I can see why they wouldn't want such videotapes floating around.