

COURT DOCKETS ARE BECOMING THE 21ST CENTURY MEMORY HOLE

Dafna Linzer has two important pieces on the habeas petition of Abdul Rahim Mohammed Uthman which should both be read in full. This one describes how the government's case against Uthman, which alleges that he was one of Osama bin Laden's guards, relies on the following testimony:

- A statement from Hakim Abd Al Karim Amin Bukhari describing him as a member of OBL's security detail. In his opinion on the case, Judge Henry Kennedy Jr treated that statement with skepticism because he believed it may have come second-hand from information Bukhari learned at Gitmo, and because Bukhari had become psychotic while at Gitmo, which rendered his statements about other detainees—according to a military psychologist—unreliable.
- A witness statement from Abdul Rahman Ma'ath Thafir al Amri, based on a photograph, identifying Uthman as "Yasser Al-Madani." As Linzer points out, calling him "al-Madani" would label him as a Saudi,

not as the Yemeni he is. Al Amri killed himself three years ago after a hunger strike at Gitmo.

- A statement from Salim Hamdan identifying Uthman as "Hudayfah al-Adani," which is one of the few things Kennedy accepted as credible.
- A statement from Yemeni detainee Sharqawi Abdul Ali al Hajj identifying Uthman as an OBL bodyguard. Before making that statement at Gitmo, Hajj was tortured in Jordan over a period of 19 months in Jordan. Kennedy ruled that Hajj's statement was too closely tied to the torture he experienced in Jordan to be considered reliable.
- A statement from Yemeni detainee Sanad Yislam al Kazimi saying a photo of Uthman looked like Hadayfah al-Yemeni, whom Kazimi claims to have seen in Kabul several months before Uthman arrived in Afghanistan. Kazimi claims to have been severely tortured in Dubai and Kabul in 2003. As a result, Kennedy deemed his statement, like Hajj's, to be too closely tied to

torture to be treated as credible.

Go read Linzer's piece for much more on the thin case against Uthman. And note, Uthman is one of the 48 men the government claims it has reason to hold indefinitely.

The other piece provides background on how Linzer was able to piece together all those details from Kennedy's opinion. As she describes, DOJ accidentally submitted Kennedy's opinion without redacting it. Only after she pulled a copy of it did DOJ remove it from PACER entirely and—a day later—replace the opinion with a significantly altered version.

A day after his March 16 order was filed on the court's electronic docket, Kennedy's opinion vanished. Weeks later, a new ruling appeared in its place. While it reached the same conclusion, eight pages of material had been removed, including key passages in which Kennedy dismantled the government's case against Uthman.

[snip]

The alterations are extensive. Sentences were rewritten. Footnotes that described disputes and discrepancies in the government's case were deleted. Even the date and circumstances of Uthman's arrest were changed. In the first version, the judge said Uthman was detained on Dec. 15, 2001, in Pakistan by Pakistani authorities. Rewritten, Kennedy said in the public opinion that Uthman admitted being captured "in late 2001 in the general vicinity of Tora Bora," the cave complex where bin Laden was thought to be hiding at that time.

Linzer's story provides a detailed background of what happened with this opinion: how DOJ tried to reclaim all the copies of it, how Kennedy had

to insist on an opinion being published at all, how they forced Kennedy to write another version, how DOJ has since released the government's appeal of Kennedy's order with information redacted in his opinion left unredacted in their appeal.

Particularly troubling is Linzer's description of how the completely altered opinion falsely suggests Uthman was present at Tora Bora with Osama bin Laden, even while it hides evidence that he was turned over by Pakistanis implicated in turning over Arabs for bounty.

Kennedy's original opinion noted that Uthman was seized in Parachinar; that he reached the town after an eight-day trek from the Afghan town of Khost, nowhere near Tora Bora; and that his journey to Pakistan began around Dec. 8, 2001. Those facts make it difficult to portray Uthman as a fighter in a battle that took place between Dec. 12 and Dec. 17 at Tora Bora. Two footnotes in the original opinion note that the government does not contest that Uthman was taken into custody in Parachinar.

Both were removed in the second opinion and Kennedy substituted wording to write instead that Uthman admitted he was seized "in late 2001 in the general vicinity of Tora Bora, Afghanistan."

The intent of this editing may have been to conceal the role of the Pakistanis in capturing al-Qaida fighters although those details were long ago declassified. But the effect was to link Uthman more closely to the retreat of bin Laden and his inner circle through Tora Bora.

Now all of this is disturbing enough. But I'm particularly interested in the way DOJ tried to hide the fact that the opinion had been altered.

Even the court docket was altered. When the opinion was originally posted on March 16, the docket noted Kennedy's grant of the writ of habeas corpus to the petitioner. Today, the entry for March 16 simply reads: "Document Entered In Error Erroneously."

That is, the government is using classification to conduct legal spin, and then it is hiding all evidence they have done so. This is the same DOJ, of course, that is disappearing all evidence of the proceedings against high level Colombian terrorists extradited for drug-related infractions (but not terrorism), and in the process, removing them from Colombia's reconciliation process. While it's not clear whether the government is doing the latter just to protect an ongoing investigation or doing it to protect the members of the Colombian government with ties to these right wing terrorists, the way in which the government has turned the court docket into a memory hole seems to be playing a central role in completely arbitrary designations of who is and who is not a terrorist.

The war on terror has become capricious enough. But as the docket increasingly gets treated like Orwell's memory hole, it plays a key role in the government's ability to sustain its arbitrary claims about what makes a person a terrorist.