

See No Evil, Hear No Evil, Speak No Evil: The case of Ahmed Abu Ali

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I am going to speak about the case of Ahmed Abu Ali, a US citizen currently on trial in the United States on a variety of terrorism related charges. This is an unusual case in the annals of the US outsourcing of torture in that it involves a US citizen detained and interrogated abroad (in this case in Saudi Arabia) and then brought back for trial in the US. [The case went to the jury on Friday, November 18, and a verdict could be issued at any time.] First, some background.

Ahmed Abu Ali was born in Houston Texas, on March 19, 1981; he graduated as class valedictorian from the Islamic Saudi Academy in Virginia in 1999. He lived all his life in Texas and Virginia until going to study abroad at the Islamic University in Medina, Saudi Arabia.

On May 12, 2003, bombs killed dozens of civilians in Riyadh, Saudi Arabia, and the Saudi Arabian authorities aggressively rounded up suspects all across the country. One of those they interrogated pointed out Ahmed's photo in a university yearbook, and on June 8 Ahmed was arrested in Medina while taking a final exam, and his interrogation began almost immediately. According to Ahmed's testimony in court, which Saudi officials have denied, after the 4th or 5th session he asked for a lawyer, and was punched, kicked in the stomach, handcuffed squatting, and struck with a foreign object more than 10 times with his shirt both on and off; he was also threatened with amputation or beheading; and he was whipped, he estimated 20 or more times, while chained to the floor in a crouching position with full back and neck exposed.

After three days of interrogation, Ahmed began to tell his interrogators what they wanted. He was transferred to al-Ha'ir prison in Riyadh, and began to make self-incriminating statements under interrogation there.

On June 15, the US FBI first observed his interrogation, and it was here that Ahmed was allegedly observed confessing to joining al-Qaeda. That same day FBI agents obtained a search warrant and the next day raided the Abu Ali family home in Falls Church, Virginia.

It was not until July 8 -- a full month after he was arrested -- that Ahmed received his first visit from an official from the US Embassy. All such visits were supervised by Saudi officials, and Ahmed testified that he did not feel free to mention his mistreatment in their presence.

On July 24, after 47 straight days of interrogation, Ahmed read aloud a statement that was videotaped, and this is the cornerstone of the prosecution's case in the trial that is currently underway in Virginia.

A week later, on July 31, he was allowed to call his family for the first time.

On September 14, 2003, the FBI interrogated Ahmed directly for the first time. Ahmed testified that on this day he told FBI Agent Barry Cole that he wanted a lawyer and had been mistreated, and that Cole responded "I'll go ask the General" and left the room. Ahmed testified that afterwards that Saudis accused him of "making them look bad" and shackled his hands to a chain hanging from the ceiling for several hours. He testified that he then asked for a lawyer and was punched and kicked. At this time he was also moved to solitary confinement where he would remain for the rest of the year. Two days later, on September 16, the FBI agents interviewing him told him he could be declared an "enemy combatant" and possibly jailed for the rest of his life without trial.

The FBI conducted two more interrogations on September 17 and 18, and then a period of relative quiet followed. Ahmed's family worked tirelessly to find out what was going on, the US government continued to stonewall their efforts, and the Saudis continued to hold him in al-Ha'ir prison, without charge.

On May 14, 2004, the family finally met with a US State Department official named Matthew Gillen who showed them documents from the Saudis that stated Ahmed might be returned to the US at any time, once the US sent a formal request. Gillen told the family that there was no active investigation against Ahmed and that such a request would be sent. A month later no request had been sent because there now apparently was an investigation into Ahmed by the US Department of Justice. Frustrated, the family filed a habeas corpus petition on July 28, 2004, arguing that the US had effective custody of Ahmed and therefore had to either explain the reasons for his continued detention or see to it that he was released. Right after this petition was filed, FBI officials informed the family that Ahmed would be tried in Saudi Arabia soon, a development that the Saudis denied and which never took place.

On December 16, 2004, Judge John Bates ruled that the family had provided substantial evidence that Ahmed was in fact in US custody, and that the US had to provide the court with evidence of their activities around Ahmed's arrest, detention and interrogation. The US appealed this ruling and on February 3, 2005, behind the scenes, convinced a Grand Jury to issue a 5-count indictment against Ahmed. On February 21, Ahmed was suddenly returned to the US and formally charged with terrorism related offenses, mostly on the basis of the videotaped confession he had made back in July of 2003.

Needless to say, Ahmed's defense challenged the confession, but after two weeks of testimony, on October 24, Judge Gerald Bruce Lee ruled that the confession had been voluntary. In a 113-page memorandum issued two days later, the Judge argued that the US had proved that nothing shocking to the conscience had taken place during his interrogation; in effect, that torture had simply not occurred.

In a classic example of see-no-evil, hear-no-evil, speak-no-evil, what may have been a confession extracted by torture in the Summer of 2003, is now being debated by a 12-person jury in Virginia in the Fall of 2005. How did this happen?

First came the see-no-evil phase: the failure of US authorities to investigate claims of torture. If torture was happening, they did not want to see it. Ahmed's family complained to the consul and other US officials that they feared he had been mistreated, but there was no attempt to launch a serious investigation. And, as I already mentioned, Ahmed testified that he himself complained to an FBI Agent about his mistreatment, and received nothing but further abuse at the hands of the Saudis, as well as over three months in solitary confinement. Finally, doctors who examined Ahmed upon his release from Saudi Arabia and in prison in Virginia were not told that he had complained of torture. They testified that they noticed marks on his back but did not think they were significant. If these doctors had known what they were looking for, they might have drawn different conclusions.

Second came the hear-no-evil phase, when Judge Lee barred general expert testimony about Saudi Arabia, about human rights in Saudi Arabia, or from survivors of torture in Saudi Arabia. If torture is commonplace in Saudi Arabia (and it is), the Judge did not want to hear it. The lack of expert testimony left the Judge to reason and make judgments on events without any kind of guidance. For instance, the Judge was very skeptical of Ahmed's claim that documentation of his interrogation in Medina did not make it to Riyadh when he was transferred. The Judge argued that this seemed highly unlikely. More knowledge about Saudi Arabia's criminal justice system would probably have led the Judge to a very different conclusion. The Judge further questioned Ahmed's credibility when Ahmed could not describe what he was flogged with; testimony from a victim of this kind of torture would have been most helpful here. And finally, the Judge put a lot of faith in the testimony of the Saudi Arabian interrogators (who testified in an unusual remote pre-

recorded video-taped session from Saudi Arabia); here, with more knowledge about the regular use of torture in Saudi Arabia (which is available among other places in the US State Department Human Rights report, which the Judge also barred from the hearing), the Judge would almost certainly have viewed this testimony with much greater skepticism. In a decision that basically came down to a battle of credibility between Ahmed and his Saudi jailers, the Judge refused to hear vital information that would have significantly undermined the latter's credibility.

As a result of this failure to look into allegations of torture, and this refusal to hear information about the country in which the torture is alleged to have occurred (the see-no-evil and hear-no-evil phases), the Judge issued his speak-no-evil ruling: that torture did not happen. Now the case is in the hands of a jury, who are free to come to a different conclusion, and it is to be hoped that at least some members of this jury will not be so willing to remain blind, deaf and mute.

Brian Evans
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