

Byron York on those embarrassing oral arguments re Trump travel ban

Byron York writes in the *Washington Examiner*:



Perhaps the most remarkable thing about the 9th Circuit oral argument over [President Trump's](#) executive order was that lawyers for both sides seemed to know nothing about some of the most basic real-world issues surrounding the case. Two examples:

First, the question of terror-related crimes committed by people who come from the seven nations covered by the Trump order. Many of the president's adversaries have claimed that no terror-related crimes have been committed by nationals of the affected countries – Libya, Somalia, Sudan, Yemen, Syria, Iraq, and Iran. “The various people who have, in fact, committed terrorist acts in this country, from 9/11 on, none of them came from any of the seven countries that are the subject of the president’s executive order,” New York

Democratic Rep. Jerrold Nadler said on CNN Jan. 28.

Even James Robart, the judge on the U.S. District Court for the Western District of Washington State who temporarily stopped the Trump order, believed the talking point.

“How many arrests have there been of foreign nationals for those seven countries since 9/11?” Robart asked a Justice Department lawyer in court on Feb. 3. When the lawyer said she didn’t know, Robart said, “Let me tell you. The answer to that is none, as best I can tell.”

It turns out the judge, and Nadler, and everybody else repeating the talking point [Immigration](#) and the National Interest [according to Pew Research](#).]

“I have not done that math, your honor,” Purcell said.

“I have trouble understanding why we’re supposed to infer religious animus when in fact the vast majority of Muslims would not be affected as residents of those nations,” Clifton said. “And where the concern for terrorism with those connected with radical Islamic sects are sort of hard to deny.”

Purcell argued that, according to the law, Washington State does not need to prove that the Trump order would harm every Muslim. “We just need to prove that it was motivated in part by a desire to harm Muslims,” he said.

“How do you infer that desire if in fact the vast majority of Muslims are unaffected?” Clifton asked.

“No type of discrimination claim requires you to show that every single person of that category was harmed by the action,” Purcell countered. “You just have to show that the action was motivated in part by a desire to harm that group.”

“Point me to the situation where the proportion affected were less than fifteen percent,” Clifton said.

“Your honor, I’m sorry, I haven’t thought of, as I said I have not done that math for the argument. I have not thought about the case in that, in those terms.”

Just like Flentje, Purcell had no idea about some key information in the case. Both data points – the number of people from the affected countries who have been involved in terror-related activities and the percentage of Muslims worldwide who would be covered by Trump’s order – tended to favor the government’s side. Yet Justice Department lawyers did not put them in their brief.

Regardless of the quality of the oral arguments – and both lawyers turned in weak performances –