NASHIRI ASKS FOR THE TARGETING PACKAGE ON THE OTHER USS COLE MASTERMIND

Things just got interesting in the pre-trial hearing for Abd al Rahim al-Nashiri in Gitmo. According to Charlie Savage and Carol Rosenberg, he has asked for the targeting package used to kill Abu Ali al-Harithi in Yemen in November 2002.

While I have no confidence he'll get the package, he has very good reason to demand it. Here's what I wrote about the al-Harithi killing two and half years ago.

> I find it rather interesting that that 2002 assassination was rationalized in the name of killing al-Harithi, accused of organizing the USS Cole bombing. That strike happened not long after the US started torturing a guy—Rahim al-Nashiri—whom we're about to try in military commission for organizing the USS Cole bombing. **[10/24/12: Correction, we actually started torturing Nashiri in earnest 13 days later]** (And remember, al-Nashiri had been in custody in Dubai for a month by the time the US took custody.) Who was the mastermind of the Cole bombing, then? al-Harithi, who doesn't even merit a mention in the 9/11 Commission report (though reports from when he was killed said he was among the 12 most senior al Qaeda figures), or al-Nashiri, who does, and is about to be tried for it? Note, too, that the Bush Administration did not announce it had custody of al-Nashiri until several weeks laterin November.
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> Now compare al-Harithi, with his loosely accused role in the Cole, with Kamal

> Derwish, whom the US accused of recruiting a number of Lackawanna youth into al Qaeda. Not only was Derwish accused of being an ongoing threat—the standard purportedly used to put Americans on kill lists now. But he was accused of training Americans in al Qaeda. Which is not all that different than what the government is accusing al-Awlaki of now.
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> And note, too, that Priest and maybe Miller [ed. changed per MD's comment] both now report that the CIA knew Derwish was in the car when they targeted (they say) al-Harithi. When Miller first reported this in 2002, he didn't mention Derwish's presence (nor did Pincus). When Priest broke the story of Derwish's presence in the car, she stated it was unclear whether CIA knew he was there or not.
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>> It was unclear whether the CIA operatives who fired the missile from hundreds of miles away knew that an American citizen was among their targets. It also was unclear whether that would have made any difference.
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> I guess I'm suggesting that, first of all, it would seem unnecessary to kill a guy for planning the Cole bombing if you knew you had the guy who—you say—planned the Cole bombing in custody. But that claiming a tie between him and the Cole bombing might provide the excuse to target a car carrying your real target, Derwish.

Basically, one of two things is likely true: al-Harithi is the mastermind of the Cole strike, and we knew that before we started torturing Nashiri, in the name of his role as the USS Cole mastermind, in earnest. Or, Nashiri is the real

mastermind of the Cole bombing, in which case the al-Harithi story was probably a cover story so we could kill an American citizen, Kamal Derwish, with no due process.

I suspect the second is true (though Nashiri has also asked for the FBI investigative file on the attack; it’s rather stunning he hasn’t gotten it yet—maybe this is the reason he’s being inappropriately tried in a military commission?). In which case this is a kind of graymail, the knowledge that the US can’t turn over the targeting package for al-Harithi because it would show Derwish was the real target.

In any case, it was an interesting legal move.