

SOMEHOW DOD KEPT MISSING ANWAR AL-AWLAKI

I was going to leave well enough alone with this NYT article on Anwar al-Awlaki, having criticized both its legal editorializing and its selective presentation of evidence against Awlaki. But since I suspect it is intended to prepare the ground for an Obama speech on targeted killing, I want to look at how assiduously the article hides Yemeni former President Ali Abdullah Saleh's questionable commitment to our war on terror.

Let's start by comparing this description of the May 25, 2010 drone strike that killed Saleh rival Jabir Shabwani from the WSJ:

On May 25, 2010, a U.S. missile attack killed at least six people including Jabir Shabwani, the 31-year-old deputy governor of Yemen's central Mareb province. The Yemeni government provided intelligence used in the strike but didn't say Mr. Shabwani would be among those there, say several current and former U.S. military officials.

These people say they believe the information from the Yemenis may have been intended to result in Mr. Shabwani's death. "We think we got played," said one participant in high-level administration discussions.

The government of President Ali Abdullah Saleh denies it used the U.S. campaign to eliminate a political rival or provided misleading intelligence. They say the president and other officials were furious when they learned of Mr. Shabwani's death. Not all U.S. officials believe the U.S. was set up.

With the version the NYT gave us:

A disastrous American missile strike in May 2010 accidentally killed a deputy provincial governor in Yemen and infuriated President Saleh, effectively suspending the clandestine war.

While even the WSJ pays lip service to Saleh's claim to be "furious," the NYT not only completely ignores the widely held understanding that Saleh was not furious at all because he set up the attack, but claims Shabwani was only accidentally targeted.

The event is one of the signature examples of how our reliance on unreliable partners has contributed to counterproductive drone deaths. And yet the NYT doesn't explain that part of the tragedy.

Likewise, the NYT expresses little curiosity as it describes one after another near misses of Awlaki (and Nasir Wuhayshi in the December 2009 attack), at least two led by Joint Special Operations Command, the part of DOD that was hunting Awlaki before the CIA took over the fight (I would also add the al-Majala killing to this, in which the US thought it was killing just militants but ended up killing a Bedouin tribe).

On Dec. 24, 2009, in the second American strike in Yemen in eight days, missiles hit a meeting of leaders of the affiliate group. News accounts said one target was Mr. Awlaki, who was falsely reported to have been killed.

[snip]

Mr. Awlaki appears to have hidden most of the time in Shabwa Province, several hours' drive southeast of the capital, turf for Al Qaeda and also the traditional territory of his family's powerful tribe, the Awaliq. Yemen's cagey longtime president, Ali Abdullah

Saleh, negotiated with tribal leaders, who offered to hold Mr. Awlaki under house arrest, according to a Yemeni official. The talks were inconclusive.

[snip]

In late 2010 or early 2011, Yemeni security troops surrounded a village in Shabwa Province where Mr. Awlaki was reported to be hiding, said Gregory Johnsen, a Princeton scholar and author of “The Last Refuge: Yemen, al-Qaeda, and America’s War in Arabia.” But a house-to-house search did not find him.

[snip]

In May 2011, days after the American commando raid in Pakistan that killed Bin Laden, the Pentagon’s Joint Special Operations Command, the hub for classified Army and Navy commando units, had its best chance to kill Mr. Awlaki as he moved around Shabwa Province. Drones and Marine Harrier jets fired at his truck, but he managed to escape and took refuge in a cave.

Golly, those JSOC teams sure were unlucky, with Awlaki escaping time after time! You don’t suppose someone tipped him off, do you?

Because, as the WSJ notes, JSOC usually shared any attack information with Saleh’s government.

Since December 2009, the U.S. military’s Joint Special Operations Command, or JSOC, had launched a handful of attacks on suspected al Qaeda gatherings in Yemen. Intelligence for such strikes was largely provided by Mr. Saleh’s government, U.S. officials say, which was consulted by the U.S. military before each counterterrorism operation.

After Awlaki died, Saleh sent word to Awlaki’s father swearing he had had no role in the attack

on his son. I would suggest it is likely that Saleh may have, however, had a role in Awlaki evading at least two JSOC attacks.

Now, the NYT is not entirely silent about Saleh's questionable commitment to targeting Awlaki. It does note that Arab Spring unrest and the June 2011 attack on Saleh gave the US more freedom in pursuing Awlaki.

That June, a barrage of rockets struck the room of the presidential palace where Mr. Saleh was hiding, severely injuring him and effectively ending his rule.

The weakening of Mr. Saleh gave the Americans more latitude for the Awlaki manhunt.

But it doesn't explain why the US might have greater leeway as Saleh struggled to hold on to power (I suspect some of that will appear in Mark Mazzetti's book, due out next month). One likely possibility is that Saleh's physical and political incapacitation gave the US an excuse to bypass the Yemeni President.

The Obama Administration repeats over and over this formula for how its drone strikes are legal under international law.

... the use of force in foreign territory would be consistent with these international legal principles if conducted, for example, with the consent of the nation involved – or after a determination that the nation is unable or unwilling to deal effectively with a threat to the United States.

The government envisions two possibilities: Either a government permits us to conduct drone strikes as part of a cooperation agreement; this usually involves DOD partnering with the host country's military.

Or we decide a nation is unable or unwilling to

deal with a threat. This qualifies as self-defense and may (though doesn't necessarily) involve covert operations. Or, as happens with Pakistan, it pretends not to consent and we operate covertly with its approval (potentially up to and including the Osama bin Laden raid).

The NYT piece provides one new explanation for the CIA base in Saudi Arabia: the government of Djibouti imposed certain rules on us that the Saudis were not going to impose.

And, very quietly, the C.I.A. began to build its own drone base in Saudi Arabia. Saudi officials had given the C.I.A. permission to build the base on the condition that the kingdom's role was masked. And the base took care of a separate problem: the government of Djibouti, where the military was basing its drone operations in the region, put tight restrictions on any lethal operations carried out from its soil. The Saudi government made no similar demands.

I look forward to Mazzetti's further explanation of what those rules were (in his book), but I wonder whether one of them is that the targeted country consent to the strike. (Update: The report from this weekend suggesting the Brits have a role in the Djibouti targeting may also be a factor in making a Saudi base more appropriate for a covert op.)

That is, it seems that two things happened that set up the Awlaki strike: the Saudis let us build a CIA base that would allow us to conduct technically covert operations without the consent of the government, and Saleh's struggle to stay in power gave us an excuse to say he was unable to target Awlaki (so we didn't have to admit he was also unwilling to).

So why would pitching this story as one of Saleh's incapacitation rather than his unwillingness to cooperate and our subsequent

decision to bypass him set up a Presidential speech?

As you'll recall, the National Journal reported that one of the main reasons the Administration didn't want to release the OLC memos to Congress is because they spell out the terms of understanding between the US and those governments who let us drone their country.

A key reason for that reticence, according to two sources who have read the memos or are aware of their contents, is that the documents contain secret protocols with foreign governments, including Pakistan and Yemen, as well as "case-specific" details of strikes.

A legal expert outside the government who is intimately familiar with the contents of the memos said the government-to-government accords on the conduct of drone strikes are an important element not contained in the Justice Department "white paper" revealed recently by NBC News. He said it is largely in order to protect this information that the targeted-killing memos drafted by Justice's Office of Legal Counsel are not being released, and that even the Senate and House Intelligence committees have been allowed to examine only four of the nine OLC memos.

While I suspect there probably are memos – two different memos – that lay the ground rules for signature strikes with both Pakistan and Yemen, this NJ story is meant to explain the Administration's reluctance to share the OLC memos on Awlaki as well. In the Awlaki memos (both of which, according to the NYT, allow for the involvement of the CIA and therefore covert status), sensitive details about the Yemeni arrangement are just as likely to explain why the US might choose to use CIA to conduct a

strike rather than JSOC. And that would probably have everything to do with the remarkable problems we had in pursuing Awlaki while partnering with the Yemeni government.

If Obama's going to make a speech, up to and including admitting we killed Awlaki, it's going to be a speech that not only obscures both the evidentiary and legal problems with the killing, but also obscures the degree to which the Obama Administration's counterterrorism efforts in Yemen have been counterproductive, largely because we let Saleh play us for years.

If Obama's going to give a speech, it's going to be a triumphant narrative about nailing a baddie with the help of our international partners whose particular contributions (or obstructionism) shall remain unexplained. And to make that speech, Obama's going to need to bury a whole lot of evidence that Ali Abdullah Saleh was as much part of the problem as he was any part of the solution.