THE UNDIE BOMBER, UMAR FAROUK ABDULMUTALLAB, LIFE COACHED "WHO MOVED MY CHEESE" WEEKS BEFORE JIHAD

Two months before setting off to Yemen to pursue jihad, the undie-bomber was still trying to coach an associate back in Nigeria the principles laid out in the pop-business book, Who Moved My Cheese.

PRE-EMPTING THE ABDULMUTALLAB "CONFESSION" WITH A DRONE KILLING DECISION

Make sure to read the update below: It's possible McMahon's estimate is off and this whole review process has gotten hopeless screwed up.

Update: yes, this memo is actually the February 19, 2010 memo, not an earlier one. The referenced pages refer to the discussion from the February 19 memo. I'm marking out this post, because it appears to be incorrect.

~~If I'm understanding~~ this heavily redacted memo ~~from Colleen McMahon correctly, the government was reviewing whether it was legal to kill Anwar al-Awlaki before Umar Farouk Abdulmutallab implicated him in his High Value Interrogation~~

Group obtained "confession."

That's because, in her discussion of what she, at times, calls "the first Barron memo," she says this:

> Bies Exhibits B, which is responsive to both FOIA requests, is a memorandum prepared by OLC six months prior to its preparation of the OLC-DoD memorandum and the Draft White Paper. It pertains specifically to the proposed al-Aulaqi operation that was the subject of the Draft White Paper and the OLC-DoD Memorandum. Written by David J. Barron, it is entitled "Lethal Operation Against Shaykh Anwar Aulaqi." I will refer to it hereafter as the Bies Exhibit B or as "The First Barron Memorandum."

The "OLC-DoD" memo is the July 16, 2010 memo. McMahon justifies the partial release of "the First Barron Memo" because the July 16, 2010 memo cites it specifically. Apparently, the reference "As we explained in our earlier memorandum, Barron Memorandum at 5-7" (page 94) refers to that memo, and further discussions on the Fourth and Fifth Amendment and EO 12333 rely on that memo.

But McMahon tells us this earlier memo — the first Barron memo considering the drone killing of Anwar al-Awlaki — was "prepared by OLC six months prior" to the July 16, 2010 one.

That would date it around January 16, 2010. Before Umar Farouk Abdulmutallab could have implicated Awlaki in his plot. We know that's true because:

- In the opening at Abdulmutallab's trial, prosecutor Jonathan Tukel made it clear that Abdulmutallab's Christmas Day confession attributed

everything to “Abu Tarak.”

- After that confession, Abdulmutallab stopped cooperating for almost a month.
- According to the sentencing documents turned over, Abdulmutallab did not start “cooperating” until January 29, which accords with public claims as well.

That is, unless McMahon’s estimate is off by 2 weeks, there’s no way they could be relying on Abdulmutallab’s confession in their case against Awlaki. And yet that is the one thing the government points to to explain its changed view – from December 24, 2009 – that Awlaki was not operational.

The government appears to be aware of this problem. In trying to claim this document was still secret, they claimed “the date, title, and recipient of the analysis provided in the document relate to “entirely separate deliberative processes.” Indeed, it seems likely this was one of the memos the government was trying to bury after the Second Circuit ruled.

Because, when this memo gets released with a mid-January release date, it will be clear that the entire story they’ve been telling about Awlaki doesn’t hold up.

In any case, McMahon is having none of that claim.

> The Government’s arguments are demonstrably untrue. There were no “separate deliberative processes” here; rather, the Government deliberated about whether or not it could and should kill al-Aulaqi over the course of many months, during which time it asked OLC to render advice on a number of

> occasions.

The deliberation process is the same process. And it started before such time as the government had what it claims is first-hand evidence against Awlaki.

Update: There is one more possibility. That this memo—released in August and dated February 19, 2010—is the memo in question. That would mean 1) That McMahon was off in her estimate by a month and 2) that she's very confused about what she's reviewing, given that her opinion dates to a month and a half after the memo was released. But the content and the title would match up. So it seems possible that's the memo, at which point they had their first "confession" implicating Awlaki.

LAWFARE USES INCOMPLETE FACTS ABOUT ABDULMUTALLAB TRIAL TO ATTACK DIRTY WARS

I'm going to take a break from noting how Lawfare ignores the public record on NSA spying — both of past failures to inform Congress, and of Intelligence Community lies about having done so — to note how Lawfare ignores the public record on drone killing.

On Sunday, Lawfare posted a long review of Jeremy Scahill's book Dirty Wars. While it is not entirely negative, it stakes a claim on what the public record shows to argue that Scahill glossed over what a dangerous man Anwar al-Awlaki was. Yet the review itself ignores key details in the public record.

First, full disclosure. I'm friends with Scahill, and he acknowledged me in the book. But given that I'm not quoted, I suspect he acknowledged me because I've followed certain aspects of the narrative he covered — especially the evidence in the Umar Farouk Abdulmutallab case and the shoddy OLC case to support Awlaki's killing — in more detail than most other reporters.

It's for that reason that I find the review to be so problematic.

After spending two paragraphs praising the on-the-ground reporting Scahill did, Lawfare reviewer Nick Basciano complains,

> Scahill simply skips over facts that don't promote his narrative of Awlaki. One such example comes in Awlaki's relationship with Umar Farouk Abdulmutallab, the "Christmas Day Bomber" who attempted to detonate almost three ounces of PETN aboard Northwest flight 253 on its descent to Detroit. A publically-available and widely-cited sentencing memorandum for Abdulmutallab describes how Awlaki housed Abdulmutallab in Yemen and took him to AQAP's primary bomb-maker, Ibrahim Al Asiri. There, they "discussed a plan for martyrdom mission" and Awlaki himself gave the bombing plot "final approval and instructed Defendant Abdulmutallab on it." Awlaki's "last instructions," the memorandum continues, "were to wait until the airplane was over the United States and then to take the plane down." Without dealing with this evidence from the Abdulmutallab trial, Scahill admits that Awlaki was only "in touch" with Abdulmutallab, insisting that "no conclusive evidence [was] presented, at least not publicly, that Awlaki had played an operational role in any attacks." Why such a relevant piece of evidence isn't included in Scahill's

> retelling of the Abdulmuttallab plot is unclear, but it isn't the only instance of turning a blind eye to evidence linking Awlaki's directly to terrorism.

~~The trial, of course, took place several weeks after the final event of Scahill's narrative, the killing of Abdulrahman al-Awlaki~~
[Correction: The trial took place on October 11 and 12, 2009, before Abdulrahman's death. But as I note, the narrative presented there differs in key ways from the one Basciano adopts]. The sentencing took place several months later. That doesn't mean Scahill couldn't have included the evidence from "the trial." But it was not part of the narrative arc Scahill told in the book.

Moreover, Basciano's description ignores the reporting Scahill did do on Awlaki's role in Abdulmutallab's attempted attack, reporting based on talking to people who knew of Abdulmutallab's movements in Yemen.

> A local trial leader from Shabwah, Mullah Zabara, later told me he had seen the young Nigerian at the farm of Fahd al-Quso, the alleged USS Cole bombing conspirator. "He was watering trees," Zabara told me. "When I saw [Abdulmutallab], I asked Fahd, 'Who is he?'" Quso told Zabara the young man was from a different part of Yemen, which Zabara knew was a lie. "When I saw him on TV, then Fahd told me the truth."
>
> Awlaki's role in the "underwear plot" was unclear. Awlaki later claimed that Abdulmutallab was one of his "students." Tribal sources in Shabwah told me that al Qaeda operatives reached out to Awlaki to give religious counseling to Abdulmutallab, but that Awlaki was not involved in the plot. While praising the plot, Awlaki said he had not been involved with its conception of planning. (318)

After having complimented Scahill's efforts to speak to people on the ground, Basciano did not mention that he had done so, too, in regards to the Abdulmutallab attack.

Moreover, if Scahill had used the material released in relation to the trial, the evidence would be much muddier than Basciano lays out. After all, the narrative Basciano finds centrally important is just one of three confessions Abdulmutallab made:

- On December 25, 2009, Abdulmutallab claimed "Abu Tarak" prepared all aspects of the attack. A DOJ source has since said that Abu Tarak "was" Awlaki, but that claim conflicts with DOJ's own sentencing memo, which attributes at least one activity Abdulmutallab attributed to Abu Tarak to Ibrahim al-Asiri.
- Sometime after Dana Priest reported, on January 27, 2010, that Awlaki had already been placed on JSOC's kill list, and April 15, 2010 Abdulmutallab said Awlaki had a central role, both in directing him to target the US specifically, but also in making his martyrdom video. This confession was made during an interrogation directed in part by the High Value Interrogation Group, after some time in solitary

confinement, and was offered in conjunction with a plea negotations that never reached agreement. This narrative is the one Basciano presents as “fact.”

- At his guilty plea, Abdulmutallab said Awlaki had inspired his attack, but he did not say Awlaki had prepared it (he did not name his co-conspirators, and he also insisted that Awlaki was still alive).

Basciano, in short, commits the same error he accuses Scahill of, ignoring the parts of the case record that don’t help his argument.

And there are a whole slew of reasons the sentencing memo narrative should not be accepted as fact unquestioningly. Dr. Simon Perry, who read Abdulmutallab’s interrogation reports, treated Abu Tarak and Awlaki as different people, indicating the reports never include a clear claim that Tarak was Awlaki. The sentencing memo narrative claims that AQAP’s greatest English language propagandist would make a martyrdom video with someone formally schooled in English and still learning Arabic, but make that video in Arabic, even while other English speaking terrorists made their videos in English for the greater propaganda value. It ignores Fahd al-Quso’s role in working with Abdulmutallab, which is especially interesting given his apparent central role in training UndieBomb 2.0. Oddly, Abulmutallab’s interrogators discussed Awlaki’s possible death during interrogations.

In addition, prosecutors planned the actual trial, during which Abdulmutallab would have had the opportunity to challenge this statement, so as not to rely on it. (Abdulmutallab objected to

its use because it was only a proffer, and the prosecutors readily agreed to that demand.) I would suggest they were not confident the narrative would go unchallenged. Their failure to indict Awlaki, either in Abdulmutallab's conspiracy charge or on his own, further supports that.

So Basciano's claim Scahill should have presented the sentencing memorandum needs far more context than he gives it, because it not a "fact," but just one version of the "facts," which conflicts with other versions. We don't know which version is correct, because the government chose not to present this narrative in the normal venue for assessing conflicting claims, a trial.

But there's a detail in the public record — and important new reporting from Scahill's book — that I find Basciano's silence on just as troubling.

As I have noted, the WikiLeaks cable of the January 2, 2010 meeting between Ali Abdullah Saleh and David Petraeus, in which Saleh blithely notes both Nasir al-Wuhayshi and Awlaki escaped death in a US strike on Christmas Eve 2009, strongly suggests Awlaki was a named target of that attack. Scahill doesn't cite the cable, which would have helped his case. Instead, Scahill relays that, on December 20, Saleh told Awlaki's father his son had been killed in a strike on that day.

> He said, 'Nasser, have you heard the news?' I said, 'What news?' He said, 'Four hours ago, your son was killed by an American airplane.' I said, 'What American airplane? Where?'" Saleh told him the location, a mountainous area of Shabwah. Nasser hung up and started calling tribal leaders in the area, desperate for any information. There had been no air strikes reported. "I don't know why the president told me that," Nasser later told me, adding that he believes the Americans had told Saleh

> they were going to hit Anwar on that day but that the operation had been called off for some reason. Regardless of the reason, it was now clear: "The Americans really wanted to kill Anwar." (314)

Nasser al-Awlaki is obviously not an unbiased observer (though if he had wanted to lie, he might have crafted a less convoluted story). But Nasser's story, the WikiLeaks cable, and a number of contemporary reports all support the case that Anwar al-Awlaki was targeted by name, not just incidentally, the day before the UndieBomb plot.

That's important because — another public record not cited by either Basciano or Scahill — according to the William Webster report, Anwar al-Awlaki was not considered to be operational until the UndieBomb attack, a day after (increasing amounts of evidence suggest) Awlaki may have been targeted based solely on Presidential authority. Significantly, FBI sources immediately started leaking that Abdulmutallab had implicated Awlaki in his Christmas day confession, which we now know to be false (he implicated "Abu Tarak.") Thus, over a month before Abdulmutallab **did** implicate Awlaki in a plea proffer at the hands of HIG, FBI was already anonymously claiming he had. All just days after the government had apparently tried to kill Awlaki before they had definitive evidence he was operational.

Mind you, Abdulmutallab's confessions are not the only piece of evidence implicating Awlaki (or not) in his attack. The sentencing memo also refers to electronic communications Abdulmutallab wrote to Awlaki. Though curiously, no one has ever questioned why FBI's two Agents spending several hours a day monitoring Awlaki's wiretap missed that particular dot in advance of the attack.

The public record shows two things. A good deal of conflicting information about Awlaki's role in Abdulmutallab's attack (as well as evidence

that he grew even closer to Al Qaeda after that point, which Scahill shows too, though even some of that doesn't support the claim he played a leadership role). And solid — but unconfirmed — evidence that the government tried to kill Awlaki before they had evidence he was operational, the key criterion that would (according to DOJ's white paper) make such killing legal. I would suggest those two details must be presented together to understand both the incentives driving the plea deal DOJ tried to get Abdulmutallab to take and the circumstances under which DOJ decided it could kill an American citizen with no recognizable due process.

Basciano is absolutely entitled to attack Scahill's book if he chooses. But for a guy claiming Scahill ignored key facts, he seems to be claiming a mighty selective set of "facts" himself.

Update: In related news, the 6th Circuit has scheduled a hearing for Abdulmutallab's appeal of his conviction and sentence on December 5. Here's a post describing the appeal; the most interesting claim is that 15 months in solitary confinement made Abdulmutallab incompetent to represent himself.

IN GUILTY PLEA, ABDULMUTALLAB NAMED AWLAKI AS INSPIRATION, NOT AS CO-CONSPIRATOR

In Eric Holder's letter on drone killing today, he used Umar Farouk Abdulmutallab's UndieBomb attack as the most extensive evidence justifying

the assassination of Anwar al-Awlaki.

> For example, when Umar Farouk Abdulmutallab — the individual who attempted to blow up an airplane bound for Detroit on Christmas Day 2009 — went to Yemen in 2009, al-Aulaqi arranged an introduction via text message. Abdulmutallab told U.S. officials that he stayed at al-Aulaqi's house for three days, and then spent two weeks at an AQAP training camp. Al-Aulaqi planned a suicide operation for Abdulmutallab, helped Abdulmutallab draft a statement for a martyrdom video to be shown after the attack, and directed him to take down a U.S. airline. Al-Aulaqi's last instructions were to blow up the airplane when it was over American soil. [Emphasis original]

That version of what Abdulmutallab said about his attack draws on Abdulmutallab's confession to the High Value Interrogation Group at Milan Correctional Facility, last presented in a narrative submitted at Abdulmutallab's sentencing. I commented on some oddities in that narrative here and will likely return to it.

Contrast that with how Abdulmutallab pled guilty to conspiracy to commit terrorism in court in October 2011.

> In the name of Allah, the most merciful, if I were to say I the father did not do it, but my son did it and he conspired with the holy spirit to do it, or if I said I did it but the American people are guilty of the sin, and Obama should pay for the crime, the Court wouldn't accept that from me or anyone else.
>
> In late 2009, in fulfillment of a religious obligation, I decided to participate in jihad against the United States. The Koran obliges every able Muslim to participate in jihad and fight

> in the way of Allah, those who fight you, and kill them wherever you find them, some parts of the Koran say, an eye for an eye, a tooth for a tooth.
>
> **I had an agreement with at least one person to attack the United States** in retaliation for U.S. support of Israel and in retaliation of the killing of innocent and civilian Muslim populations in Palestine, especially in the blockade of Gaza, and in retaliation for the killing of innocent and civilian Muslim populations in Yemen, Iraq, Somalia, Afghanistan and beyond, most of them women, children, and noncombatants.
>
> As a result, I traveled to Yemen and eventually to the United States, and **I agreed with at least one person to carry an explosive device onto an aircraft** and attempt to kill those onboard and wreck the aircraft as an act of jihad against the United States for the U.S. killing of my Muslim brothers and sisters around the world.
>
> **I was greatly inspired to participate in jihad by the lectures of the great and rightly guided mujahideen who is alive, Sheikh Anwar al-Awlaki**, may Allah preserve him and his family and give them victory, Amin, and Allah knows best. [my emphasis]

He pleads to a conspiracy (the first crime he was charged with), but he doesn't name the person or people with whom he conspired.

Then, immediately after not naming his co-conspirators, he says he was **inspired** to conduct this act by Anwar al-Awlaki. But even there, he doesn't attribute Awlaki's influence to conversations he had with Awlaki in Yemen — even Awlaki acknowledged to having contact with Abdulmutallab, though he maintained he did not order the attack. Rather, Abdulmutallab points

to speeches Awlaki published, speeches which, according to other court documents, he listened to as early as 2005.

Thus, at a moment when Abdulmutallab controlled his own speech, when there was no question of coercion (though his current lawyer now challenges his competence at the time), in a speech in which he boasted of Awlaki's role in inspiring his terror attack, he did not name Awlaki as his co-conspirator.

You could argue, I suppose, that Abdulmutallab did so out of some belief the government or news had lied about Awlaki's death almost two weeks before (as he makes clear, he refused to believe Awlaki was dead), in an attempt to get him to implicate Awlaki, and that his tribute to Awlaki's influence but not co-conspiracy was an attempt to push back. The FBI appears to have badgered Abdulmutallab about the likelihood Awlaki would be killed after he got put on a kill list, so it is possible he worried that if he implicated Awlaki he might lead to his death (which had already happened).

Whatever the explanation, these two narratives present two of the three confessions Abdulmutallab gave (the other being the one he gave just after he had been captured, as presented by AUSA Jonathan Tukel at trial, in which Abdulmutallab did not name Awlaki at all). And as the Administration's newfound transparency rolls out tomorrow, it's worth keeping in mind that the confession that implicates Awlaki is just one of three Abdulmutallab made, and not even the most recent known one.

TWO YEARS AFTER

MISSING ABDULMUTALLAB BECAUSE OF A SPELLING VARIANCE, GOVERNMENT MISSED TSARNAEV BECAUSE OF A SPELLING VARIANCE

On the Sunday shows yesterday, House Intelligence Chair Mike Rogers suggested that the government missed Tamerlan Tsarnaev's trip to Russia in 2012 because he used an alias. This morning, Lindsey Graham explained that the problem was slightly different. Tamerlan's travel documents misspelled his name.

> "He went over to Russia, but apparently, when he got on the Aeroflot plane, they misspelled his name," Graham, a South Carolina Republican said on Fox television this morning. "So it never went into the system that he actually went to Russia."
>
> Graham, a member of the Armed Services Committee, said in answer to a follow-up question that he did not know whether Tsarnaev, the 26-year-old terrorist suspect who died early Friday following a shootout with law enforcement, had misspelled his name on purpose.
>
> The FBI "said Aeroflot gave us the information" that Tsarnaev had traveled there, Graham said, though he did not specify when that occurred.

Now, Lindsey doesn't appear to know whether misspelling was the government's or Aeroflot's fault or Tamerlan's deceit. Assuming Lindsey's right about the larger point, whatever the

source, a misspelling suggests a very different issue than an outright alibi (which would raise questions about the documents Tamerlan used, rather than the tracking of those documents).

Update: At the very end of the Senate Judiciary Committee Immigration hearing, Chuck Schumer said the error arose from Aeroflot typing in Tamerlan's name incorrectly, so it appears it was not an attempt to deceive by Tamerlan.

Two years before Tsarnaev departed for Russia in January 2012, the government spent a good deal of time reviewing what prevented the government from responding to the several warnings about Umar Farouk Abdulmutallab, the UndieBomber, to prevent him from traveling to the country. One of the problems (though by no means the most serious one), was that the cable conveying warnings from Abdulmutallab's father spelled his name wrong.

> As was widely reported within hours of the failed bombing attempt, Abdulmutallab's father—a former Nigerian government minister and prominent banker—went to the US embassy in Abuja in November to warn that his son was involved with radical Islamists in Yemen and had broken off contact with his family. The family said they had given US officials extensive information about their son in the expectation that they would "find and return him home."
>
> In his prepared statement to the House Committee on Homeland Security on January 27, State Department Under-Secretary for Management Patrick Kennedy said: "In the case of Umar Farouk Abdulmutallab, on the day following his father's November 19 visit to the Embassy, we sent a cable to the Washington intelligence and law enforcement community through proper channels (the Visas Viper system) that 'Information at post suggests [Farouk] may be involved in Yemeni-based

> extremists.’”
>
> Kennedy confirmed that all US intelligence agencies received warnings that Abdulmutallab was training with terrorists in Yemen. He noted that the initial diplomatic cable from Abuja misspelled Abdulmutallab’s name.

As I said, that was not the most important problem leading to missed warnings. But it was one identified in the lessons learned period.

Yet it appears likely that one of the potential (if Tamarlan’s trip ends up showing any contact with extremists, which it hasn’t yet) lessons learned here will be one we purportedly learned 3 years ago: that our software needs to be better at using wildcards to identify close but not exact spellings.

We’re already seeing hints that facial recognition may not have served as the miracle solution it often gets sold as. It now appears we might not even have the databases running our watchlist system working as well as it needs to.

Update: Swapped out the Politico version of this report for the BoGlo one, which was more informative and changed the language to reflect the additional information.

IT’S NOT JUST WHETHER NIDAL HASAN’S EMAILS STUCK OUT, IT’S WHETHER

ABDULMUTALLAB'S DID

I've been meaning to return to the Webster report on Nidal Hasan's conversations with Anwar al-Awlaki. This conversation between Gunpowder & Lead and Intelwire about how alarming those emails were will be a start provides a good place to start.

Hasan's emails should have raised more concern—but probably didn't because of the sheer volume of Awlaki intercepts

G&L notes that certain details from the emails—such as his invocation of Hasan Akbar, a Muslim-American soldier who killed two officers in Kuwait—as an example that should have raised more concern than it did.

> But more significant, his question to Awlaki didn't actually deal with the valid question that he raised, the feeling of inner conflict between one's faith and serving in the U.S. military. Instead, he leaped right to a question that should rightly trigger alarm: *if Hasan Akbar died while attacking fellow soldiers, would he be a martyr*? Hasan skipped over questions about whether serving in the U.S. military is religiously acceptable; whether going to war against fellow Muslims is a violation of religious principles. Instead, in addressing "some" soldiers who felt conflicted about fighting fellow Muslims, Hasan right away asked whether it was permissible to kill other U.S. soldiers in the way Hasan Akbar.

After a close analysis of a number of the emails, G&L refutes the representation of these emails as "fairly benign."

I agree with that assessment (and would add that the suggestion, in a February 22, 2009 email, that Hasan was donating to entities that his mosque would not is another troubling detail).

But I also agree with Intelwire. These emails, from an Army officer, surely merited more attention. But these emails, as they likely appeared among the stream of Anwar al-Awlaki communications, probably did not stick out.

> Based on who Hasan was (a military officer), who he was talking to (a suspected 9/11 accomplice), and the fact he repeatedly tried to get Awlaki's attention using a variety of stratagems, the case should have been escalated and Hasan's superiors should have been informed.
>
> But when you place the *content* of Hasan's messages alongside all the other raw intelligence that counterterrorism investigations generate, it's extremely hard to argue from a subjective, non-psychoanalytical reading that they represented a red flag.

Which is why this report has seemed poorly scoped to me. Because not only did Nidal Hasan's emails fail to trigger further attention, but Umar Farouk Abdulmutallab's contacts with Awlaki before Fort Hood did too.

In spite of the fact that the FBI had two people spending a significant chunk of each day (they claimed it took 40% or 3 hours of their work day; 88) reviewing communications tied to Awlaki, in spite of the fact that two men about to attack the US were in contact with Awlaki, "the FBI's full understanding of Aulaqi's operational ambitions developed only after the attempted bombing of Northwest Airlines Flight 253 on Christmas Day 2009." (72)

The government also failed to respond to Abdulmutallab intercepts leading up to the Fort Hood attack

Consider: according to the report itself, Robert Mueller formally asked William Webster to conduct this inquiry on December 17, 2009 (though Webster's appointment was reported over

a week before then). Just 8 days later, another terrorist who had been in contact with Awlaki struck the US. Just 5 days after that, sources started leaking details of NSA intercepts from 4 months earlier (so around August) that might have warned about the attack.

> Intelligence intercepts from Yemen beginning in early August, when Abdulmutallab arrived in that country, contained "bits and pieces about where he was, what his plans were, what he was telling people his plans were," as well as information about planning by the al-Qaeda branch in Yemen, a senior administration official said. "At first blush, not all these things appear to be related" to the 23-year-old Nigerian and the bombing attempt, he said, "but we believe they were."

It's unclear how many of these intercepts were directly between Abdulmutallab and Awlaki, and therefore presumably reviewed by the FBI team in San Diego. But at least according to the sentencing materials submitted in the Abdulmutallab case (there are reasons to treat this with a bit of skepticism), there were substantive communications between Awlaki and Abdulmutallab.

> Defendant provided this individual [who offered to connect him with Awlaki] with the number for his Yemeni cellular telephone. Thereafter, defendant received a text message from Awlaki telling defendant to call him, which defendant did. During their brief telephone conversation, it was agreed that defendant would send Awlaki a written message explaining why he wanted to become involved in jihad. Defendant took several days to write his message to Awlaki, telling him of his desire to become involved in jihad, and seeking Awlaki's guidance. After receiving defendant's message, Awlaki sent

> defendant a response, telling him that Awlaki would find a way for defendant to become involved in jihad.

Now, it's possible this communication didn't show up in the San Diego stream. Maybe the NSA didn't share all its Awlaki intercepts with the San Diego team. The report notes that Awlaki and his allies were using means to hide their contacts (127). The report notes some forms of VOIP are not included under CALEA, which may have affected Abdulmutallab's call. (128) And the month after the Abdulmutallab attack and after Pete Hoekstra revealed the NSA intercepts on Awlaki, he allegedly implemented a sophisticated encryption system with Rajib Karim. But if the Awlaki collection, as it existed in 2009, failed both because of volume and because of technical reasons, shouldn't those be part of the same inquiry?

By the end of December 2009, the FBI and NSA knew they had collected, reviewed, and failed to adequately respond to intercepts from two future terrorists. Why not include both in this study?

Hasan's contacts (and presumably Abdulmutallab's) were dissociated needles in an Awlaki haystack

The Webster report doesn't provide exact details of how much intelligence was coming in on the Awlaki investigation. They redact the number of leads, investigations, and Information Intelligence Reports the intercepts produced—though they appear to be 3-digit numbers (see page 35). The report suggests that the San Diego team focused attention on Awlaki-related intercepts starting on March 16, 2008 (87; interestingly, in the extension period for PAA and before FAA imposed new protections for Americans overseas). Between March 2008 and November 2009, the JTTF team in San Diego reviewed over 29,000 intercepts. And the volume was growing: in earlier phases of the Hasan investigation, the San Diego team was averaging 1,420 intercepts a month; that number grew to

1,525 by the time of the Fort Hood attack. The daily average went from 65-70 intercepts a day to 70-75, though some days the team reviewed over 130 intercepts. And while he obviously had reasons to play up the volume involved, the Analyst on the San Diego team considered it a "crushing volume" of intercepts to review. Discussions of the volume of intercepts appear on page 35, 36, 46, 61, 87, 88, 92.

In any case, the emails between Hasan and Awlaki made up just one quarter of one percent of the volume the FBI reviewers reviewed over this period. While we don't know how these emails compared to the rest of the traffic (a point the Webster report makes, (88) it is clear they made up just a tiny fraction of what the FBI reviewed.

There are two factors that must have made this review process more difficult.

First, the FBI's database of intercepts sucked. When the first Hasan intercepts came in, it allowed only keyword searches; tests the Webster team ran showed it would have taken some finesse even to return all the contacts between Hasan and Awlaki consistently. More importantly, it was not until February 2009 that the database provided some way to link related emails, so the Awlaki team in San Diego relied on spreadsheets, notes, or just their memory to link intercepts. (91) But even then, the database only linked formal emails; a number of Hasan's "emails" to Awlaki were actually web contacts, (100) which would not trigger the database's automatic linking function. In any case, it appears the Awlaki team never pulled all the emails between Hasan and Awlaki and read them together, which would have made Hasan seem much more worrisome (though when the San Diego agent set the alert for the second email, he searched and found the first one).

In addition, the Agent in charge of the investigation took on a supervisory role in mid-July 2009, just before Abdulmutallab came on the scene. (45) Given that the computer didn't

allow for any institutional memory, losing an investigative team member would effectively lose the work on any given investigation.

One more factor would have made it harder to respond appropriately to early Abdulmutallab intercepts. At least some of those reportedly needed to be translated (this also suggests that some of the most interesting intercepts involving Abdulmutallab weren't between Awlaki and the Nigerian, as English would be the natural language for the two to converse in).

Even tracking the communications of one terrorist radicalizer, we're drowning in data

All of which suggests we're still collecting more information than we can even analyze. Whatever else I've said about the government's evidence against Awlaki, I absolutely believe he was an obvious target for collection. But if we don't have the technical capabilities to exploit even that one stream, what does that say about our intelligence gathering?

The Webster report does say that many of the problems with FBI's intercepts database were fixed with a September 2011 update. And FBI changed training and access rules before that point to make sure key members of the JTTFs can use the database. But several of the recommendations made by the Webster team pertain to enhancing the database with both hardware and software improvements.

One of the big takeaways from the Webster report, it seems to me, is we were asking FBI officers to analyze a flood of data using the most archaic tools. Sure, there was reason enough they should have escalated the investigation into Nidal Hasan. But far more attention needs to be focused on our continued data failures, particularly among the belief more data is a cure-all.

WHAT IS THE SECRET ITEM THE GOVERNMENT WANTS WITHHELD FROM ABDULMUTALLAB?

As I tweeted earlier, I find the timing of the Anwar al-Awlaki assassination to be rather curious. The first time we might hear real evidence supporting the government's claim that Awlaki was operational, and not just producing propaganda, will be in Umar Farouk Abdulmutallab's trial, which starts next week.

Which is why I'm curious about the government's motion for a protective order submitted last Friday, seeking to have one item withheld from Abdulmutallab (who, remember, is technically defending himself; Judge Edmunds granted the motion on Monday).

> The United States of America respectfully moves pursuant to [Criminal Procedure and CIPA] for a second protective order precluding the discovery of a particular item which contains classified information. The classified information is not exculpatory, is privileged, and is otherwise not discoverable.

A page and a half of the seven page filing (which includes a half page redacted description of the item in question) is background which I don't believe to be boilerplate; that is, I think it is background specific to this filing. And that background includes a close focus on Abdulmutallab's ties to Awlaki.

> The defendant told the [FBI] agents that he was inspired to commit jihad against the United States as a result of regular visits to the web sites of Anwar Awlaki, a member and leader of Al Qaeda in the Arabian Peninsula ("AQAP"), which has

> been designated by the United States government as a foreign terrorist organization. The defendant stated that while in Yemen, he was able to make contact with members of Al Qaeda, who subsequently provided the defendant with the bomb and gave him training on its components. The defendant and other members of Al Qaeda discussed plans to attack the United States.

Now, I have no real suspicions about what this item is and I'm not suggesting the government is withholding it improperly.

But I find it curious that the government is, at this late date (and at a time when they were already watching Awlaki for their opportunity to kill him) finding items that must be withheld from Abdulmutallab. And I find the particular focus in this filing on his time with Awlaki—precisely the stuff that supports the claim Awlaki had given Abdulmutallab operational instructions—to be interesting.

Is there any reason why the government might be obliged to protect the assassination approval, which we know to be based in part on Abdulmutallab's own testimony, from him?

Update: I've got just a few more major filings left, and thus far, I haven't found one that mentions Awlaki. This is how the superseding indictment referred to Abdulmutallab's time in Yemen, which is some of the most detail given on this front.

> Defendant Umar Farouk Abdulmutallab is a Nigerian national. In August 2009, defendant Abdulmutallab traveled to Yemen for the purpose of becoming involved in violent "jihad" on behalf of Al Qaeda.
>
> [snip]
>
> In preparation for a suicide attack, defendant Abdulmutallab practiced

> detonating explosive devices similar to one which he later received for an attack on a U.S. airliner.

The government moved for an earlier protective order in August. That motion doesn't mention Yemen at all.

Update: This request for expert testimony again mentions Yemen.

> The First Superseding Indictment, on which defendant will be tried, alleges that he traveled to Yemen to become involved in violent jihad on behalf of Al Qaeda, a designated terrorist organization, as part of a conspiracy to commit an act of terrorism transcending national boundaries.

And it describes the importance of English-language propaganda.

> Finally, the government seeks to admit three minutes and forty two seconds of the Al Qaeda produced video, America and the Final Trap1 and portions of the Al Qaeda in the Arabian Peninsula publication Inspire. Through testimony by the Al Qaeda expert, see Argument A, supra, the government will establish that America and the Final Trap and Inspire are produced by Al Malahem media, an Al Qaeda production company, that products of Al Malahem media serve as official statements by Al Qaeda, and thus are unquestionably authentic. The Al Qaeda expert will explain the reasons Al Qaeda produces Arabic language videos with accurate English language subtitles, as is the case with America and the Final Trap. The expert also will establish that such productions are created by terrorist organizations as part of and in furtherance of their criminal conspiracies, for a number of

> reasons. Those reasons include the goals of terrorizing their targets into fearing that additional attacks will be forthcoming, and to convince their own supporters and possible recruits that the terrorists are successful and are gaining the upper hand.

And it mentions the toner cartridge plot.

> The conspiracy to commit aircraft attacks against the United States had not ended, as demonstrated, at a minimum, by the contents of America And the Final Trap and the 2010 toner cartridge conspiracy by Al Qaeda in the Arabian Peninsula.

Yet in none of these discussions—all of which involve actions in which Awlaki was central—does the filing mention the cleric.

"FACT WITNESS:" HOW ROD ROSENSTEIN GOT DOJ IG TO LAND A PLANE ON BRUCE OHR

The DOJ IG Report on Carter Page has some important evidence on the FISA process. But its treatment of Bruce Ohr threatens to undermine the information sharing that DOJ has been trying to encourage for almost two decades.

TRUMP REFUSES TO KEEP THIS COUNTRY SAFE FROM TERRORISM

Republicans believe that a President who refuses to take a very aggressive approach to terrorism should not be President. So for those Republicans, let’s make this an issue not of the ways Trump’s network fostered actions like we saw last week, but how Trump’s Administration has chosen not to combat terrorism.

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10 YEARS OF EMPTYWHEEL: KEY NON-SURVEILLANCE POSTS 2011-2012

Some key non-surveillance posts from 2011 and 2012.