

HATFILL AND WEN HO LEE AND PLAME AND AL- AWLAKI AND ASSANGE

Last night I appeared on a panel on the Scooter Libby case. It was Judge Reggie Walton, Peter Zeidenberg, Alexandra Walsh from the Libby team, Lee Levine (who represented Andrea Mitchell and Tim Russert), Walter Pincus and I.

The panel itself was good. My high point came after Walsh had explained why the Defense had argued that bloggers might embarrass the nice people who had written leniency letters for Libby. I said, "well I was flattered we were considered such a threat. But there were at least three people who submitted letters who were implicated in the case. And I was shocked that I was one of only two or three people who demonstrated the many conflicts of those who wrote letters."

But I also had several weird moments when we were talking about reporter's privilege, when I was acutely aware that I was sitting between Judge Walton—who had forced journalists to reveal who had blamed Steven Hatfill for the anthrax case [see Jim White's post for an update on the anthrax case]—and Walter Pincus—who said he had had eight or nine sources for his stories implicating Wen Ho Lee in security leaks. Walton made the very good point that if he hadn't held AP reporter Toni Locy in contempt, then Hatfill might not have gotten the huge settlement he did for having had DOJ ruin his life. Walton's comment suggested he had had to choose between reporter's privilege or government impunity for attacking one of its citizens.

The collection of people sitting there had all touched on three major cases recently where the government had ruined civil servant's lives and then hid behind reporter's privilege to try to get away with it.

I had that in mind when I read this Jay Rosen

piece, in which he suggests the behavior best incarnated by the Judy Miller-Michael Gordon aluminum tubes story created the need for Wikileaks.

The aluminum tube story, Rosen suggests, marks the moment when top journalists came to see their role as simply repeating what the government said.

This was the nadir. This was when the watchdog press fell completely apart: On that Sunday when Bush Administration officials peddling bad information anonymously put the imprimatur of the New York Times on a story that allowed other Bush Administration officials to dissemble about the tubes and manipulate fears of a nuclear nightmare on television, even as they knew they were going to war anyway.

The government had closed circle on the press, laundering its own manipulated intelligence through the by-lines of two experienced reporters, smuggling the deed past layers of editors, and then marching it like a trained dog onto the Sunday talk shows to perform in a lurid doomsday act.

Rosen argues that the NYT was not only on the wrong side of the facts with that story, but also on the wrong side of secrecy.

But it has never been recognized that secrecy was itself a bad actor in the events that led to the collapse, that *it* did a lot of damage, and that parts of *it* might have to go. Our press has never come to terms with the ways in which it got itself on the wrong side of secrecy as the national security state swelled in size after September 11th. (I develop this point in a fuller way in my 14-min video, [here](#).)

The failures of skepticism back then, Rosen argues, creates the need or opportunity for Julian Assange today.

Radical doubt, which is basic to understanding what drives Julian Assange, was impermissible then. One of the consequences of that is the appeal of radical transparency today

Now, I think Rosen actually misses a key step here: from where the press sees itself as the neutral conduit of what the government is thinking, to where the press thinks its leaks from the government can stand-in for due process in the Anwar al-Awlaki case, and from there to Assange. Recall how Dana Temple-Raston, a very good national security journalist, lectured Glenn Greenwald about how the leaks she had received justified the government's targeting of al-Awlaki.

Glenn Greenwald on his exchange with NPR's Dina Temple-Raston:

At roughly 53:00, the Q-and-A session with the audience began, and the first questioner was NPR's national security reporter Dina Temple-Raston, whose Awlaki reporting I had criticized just a couple days earlier for uncritically repeating claims told to her by anonymous Pentagon officials. She directed her rather critical multi-part question to me, claiming, among other things, that she had seen evidence of Awlaki's guilt as a Terrorist (which she had not previously reported or described in any detail), and that led to a rather contentious – and, in my view, quite revealing – exchange about the role of journalists and how Awlaki can and should be punished if he is,

in fact, guilty of any actual crime.

It's really an amazing exchange – Temple-Raston snaps at Greenwald, asking him, “Isn't it possible that I've seen something you haven't seen?” When asked about the evidence of al-Awlaki's operational role in al-Qaeda in the Arabian Peninsula, she smugly tells him that “he doesn't do national security for a living.”

Temple-Raston is a good reporter, and hardly ignorant of the civil-liberties side of the national-security equation. I have no doubt that government officials have shown her evidence of al-Awlaki having an operational role in AQAP. But that's really beside the point when we're discussing whether or not the government has the authority to kill an American citizen without due process based on secret evidence. So it's interesting to me that she felt obligated to back Greenwald down, since that suggests the kind of analytical conclusion “objective” reporters aren't supposed to make: Al-Awlaki is guilty therefore targeting him is ok.

The story of al-Awlaki's targeting started when senior government officials repeatedly and very deliberately leaked to reporters that the Yemeni-American had been targeted, first by JSOC and then by CIA. Yet when his father sued to find out whether he had been targeted appropriately, the government sortof kindof invoked state secrets, allowing the judge in the case to sortof kindof say state secrets would apply but he didn't need that to dismiss the suit. Meanwhile, Temple-Raston argues her access to secrets—because she “does national security for a living”—gives her adequate knowledge to certify the government's assassination order against al-Awlaki. Whereas before, journalists

were used as a star chamber to condemn Hatfill and Lee and Plame to lose their livelihoods, they're now serving as the government's star chamber to condemn an American citizen to death.

And we come full circle with Assange. Now, many (not all) journalists are condemning someone who has committed the "crime" of facilitating the publication of unfiltered news. In this odd new economy, it's the relationship built on secrets that seems to be defended, not the First Amendment (and certainly not the Fifth).

Rosen seems optimistic Wikileaks will make some difference here. Me? I'm still skeptical that the Bill of Rights will win out over the culture of secrecy.