

JAMES JONES' TARGETED KILLING MEMO

In recent weeks, both Colleen McMahon and Ron Wyden have been hinting that there is more than one targeted killing memo (indeed, Wyden has been suggesting that for almost a year). Both also suggest the Administration may be relying on the President's Article II authority—and not the Authorization to Use Military Force—in its drone program (or at least its strike(s) on Anwar al-Awlaki).

Those hints made me return to this long passage—from the NYT's Angler 2.0 story pitching John Brennan's shiny object—in more detail.

The attempted bombing of an airliner a few months later, on Dec. 25, stiffened the president's resolve, aides say. It was the culmination of **a series of plots,** including the **killing of 13 people at Fort Hood, Tex.** by an Army psychiatrist who had embraced radical Islam.

Mr. Obama is a good poker player, but he has a tell when he is angry. His questions become rapid-fire, said his attorney general, Mr. Holder. "He'll inject the phrase, 'I just want to make sure you understand that.'" And it was clear to everyone, Mr. Holder said, that he was simmering about how a 23-year-old bomber had penetrated billions of dollars worth of American security measures.

When a few officials tentatively offered a defense, noting that the attack had failed because the terrorists were forced to rely on a novice bomber and an untested formula because of stepped-up airport security, Mr. Obama cut them short.

"Well, he could have gotten it right and

we'd all be sitting here with an airplane that blew up and killed over a hundred people," he said, according to a participant. He asked them to use the close call to imagine in detail the consequences if the bomb had detonated. In characteristic fashion, he went around the room, asking each official to explain what had gone wrong and what needed to be done about it.

"After that, as president, it seemed like he felt in his gut the threat to the United States," said Michael E. Leiter, then director of the National Counterterrorism Center. "Even John Brennan, someone who was already a hardened veteran of counterterrorism, tightened the straps on his rucksack after that."

David Axelrod, the president's closest political adviser, began showing up at the "Terror Tuesday" meetings, his unspeaking presence a visible reminder of what everyone understood: a successful attack would overwhelm the president's other aspirations and achievements.

In the most dramatic possible way, the Fort Hood shootings in November and the attempted Christmas Day bombing had shown the new danger from Yemen. Mr. Obama, who had rejected the Bush-era concept of a global war on terrorism and had promised to narrow the American focus to Al Qaeda's core, suddenly found himself directing strikes in another complicated Muslim country.

The **very first strike under his watch in Yemen, on Dec. 17, 2009,** offered a stark example of the difficulties of operating in what General Jones described as an "embryonic theater that we weren't really familiar with."

It killed not only its intended target, but also two neighboring families, and left behind a trail of cluster bombs that subsequently killed more innocents. It was hardly the kind of precise operation that Mr. Obama favored. Videos of children's bodies and angry tribesmen holding up American missile parts flooded You Tube, fueling a ferocious backlash that Yemeni officials said bolstered Al Qaeda.

The sloppy strike shook Mr. Obama and Mr. Brennan, officials said, and once again they tried to impose some discipline.

In Pakistan, Mr. Obama had approved not only "personality" strikes aimed at named, high-value terrorists, but "signature" strikes that targeted training camps and suspicious compounds in areas controlled by militants.

But some State Department officials have complained to the White House that the criteria used by the C.I.A. for identifying a terrorist "signature" were too lax. The joke was that when the C.I.A. sees "three guys doing jumping jacks," the agency thinks it is a terrorist training camp, said one senior official. Men loading a truck with fertilizer could be bombmakers – but they might also be farmers, skeptics argued.

Now, in the wake of the bad first strike in Yemen, Mr. Obama overruled military and intelligence commanders who were pushing to use signature strikes there as well.

"We are not going to war with Yemen," he admonished in one meeting, according to participants.

His guidance was formalized in **a memo by General Jones**, who called it a

“governor, if you will, on the throttle,” intended to remind everyone that “one should not assume that it’s just O.K. to do these things because we spot a bad guy somewhere in the world.”

The passage purports to explain how the Administration imposed limits on the drone program in response to the al-Majala cruise missile strike (remember, the al-Majala attack was launched from a ship, not a drone). The passage is a misleading mess—which I’ll describe at more length below.

Just as interesting, though, it leads up to the description of a James Jones memo laying out limits to—at a minimum—our strikes in Yemen. Jones’ memo may well be one of the things responsive to—at least—ACLU’s targeted killing FOIA which the Administration is so squeamish about releasing.

And the sloppiness of this passage makes that all the more interesting. The chronology it tells looks like this:

December 25, 2009 UndieBomb attack
November 5, 2009 Fort Hood attack
[unknown date] Axelrod at Terror Tuesdays
December 17, 2009 al-Majala attack
[unknown date] James Jones memo

Described in this way, the passage suggests that we identified a new risk in Yemen—a claim emphasized by this passage:

the Fort Hood shootings in November and the attempted Christmas Day bombing had shown the new danger from Yemen

In response, the passage suggests misleadingly, we launched the attack against al-Majala, which was a disaster. And in response Obama and the

Moral Rectitude Drone Assassination Czar imposed some discipline.

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But of course, that can't be how it happened. While, within days of the Nidal Hasan attack, Pete Hoekstra had rushed to the press to expose Hasan's communications with Anwar al-Awlaki, we also know that nothing in those communications showed Awlaki directed Hasan's attack. And the December 25 attack surely can't be the justification for the December 17 attack on al-Majala.

Moreover, the NYT conveniently doesn't mention that the December 17 attack on al-Majala was followed by a December 24 attack on Awlaki and Nasir al-Wuhayshi. That allows them to avoid mentioning that on the day we first targeted Awlaki, the intelligence community believed him not to be operational. Which, in turn, also allows them to leave unclear whether the James Jones memo—written in response to a strike on December 17—was in operation yet when the US first tried to kill Awlaki on December 24.

This sloppy passage about “the sloppy strike” seems to cover up some other really key details. First, by describing that “two neighboring families”—rather than two entire clans—were killed, it downplays the carnage (to say nothing of the Administration's ongoing efforts to cover it up). It also avoids discussing whether the target—reportedly Saleh Mohammed al-Anbouri—was targeted because he was a known AQAP member recently released from prison, or whether he was involved in some plot.

Which is interesting because immediately after the attack, anonymous sources claimed an imminent attack was being planned.

On orders from President Barack Obama, the U.S. military launched cruise

missiles early Thursday against two suspected al-Qaeda sites in Yemen, administration officials told ABC News in a report broadcast on ABC World News with Charles Gibson.

One of the targeted sites was a suspected al Qaeda training camp north of the capitol, Sanaa, and the second target was a location where officials said "an imminent attack against a U.S. asset was being planned."

[snip]

American officials said the missile strikes were intended to disrupt a growing threat from the al Qaeda branch in Yemen, which claims to coordinate terror attacks against neighboring Saudi Arabia.

Particularly given reports that NSA had intercepted early hints about a Nigerian joining AQAP to train for an attack, you have to wonder whether this imminent attack was just an effort by Ali Abdullah Saleh to play up the AQAP threat, or whether we got specifically bad intelligence about where the imminent attack was coming from that ended up distracting us from the attack that would come over Detroit. But either of those two things—particularly viewed after the UndieBomb attack a week later—would be additional reason to concern Brennan and Obama. It would explain, for example, why this attack elicited more panic than the signature strikes that caused civilian casualties in Pakistan.

Indeed, Jones' comment about the "embryonic theater that we weren't really familiar with" seems to reflect an intelligence failure. Was it just an accidental failure (and was this strike actually a signature strike, as suggested by the passage)? Or was it intentional, an effort by an ally to suck us into Yemen?

All of which would provide rather interesting background to a memo written by the National

Security Advisor on targeted killing. All the more interesting, too, that it came from the National Security Advisor. Remember—just months earlier, Jones submitted a highly unusual declaration in the ACLU's torture FOIA, keeping any mention of the Gloves Come Off Memorandum of Notification secret, in part, because it also authorized ongoing actions. And then here he was in December (or January) issuing an early rule book—one that has just been or will shortly be updated, this time by another NSC aide—on targeted killing.

Note one more detail about this early rule book.

In the explanation he gave to the House Intelligence Committee in February 2010, Dennis Blair did not say an American had to be operational to be a target.

"We take direct actions against terrorists in the intelligence community," he said. "If we think that direct action will involve killing an American, we get specific permission to do that."

He also said there are criteria that must be met to authorize the killing of a U.S. citizen that include "whether that American is involved in a group that is trying to attack us, whether that American is a threat to other Americans. Those are the factors involved."

[snip]

Mr. Blair responded that he would rather not discuss the details of this criteria in open session, but he assured: "We don't target people for free speech. We target them for taking action that threatens Americans or has resulted in it."

Blair describes the criteria used to target Awlaki on December 24, 2009 was:

1. Whether he was involved in a group that is trying to attack us
2. Whether he has taken action that a) threatened Americans or b) resulted in action that threatened Americans

This is significantly different from the multiple speeches about what would make an American a suitable target for a drone strike from last year. For example, Holder laid out these criteria, which seem to reflect what we believe to be in the June 2010 OLC memo, but which were clearly not true at the time Awlaki was first targeted.

U.S. citizen who is a senior operational leader of al Qaeda or associated forces, and who is actively engaged in planning to kill Americans

A “senior operational leader” is very different than “involved in.” And “actively engaged in planning to kill Americans” is far stronger than “haven taken action that resulted in action that threatened Americans.”

All of which is to say that it appears James Jones’ memo on targeting killing may be one of the earlier bases for Obama’s targeted killing program—possibly including the first targeting (or all of them?) or Anwar al-Awlaki. If so, it appears that the criteria laid out in that first memo—written by a General, not a lawyer—fell far short of what OLC subsequently said would be required for killing an American citizen.