

THE WAR AND INTELLIGENCE BEHIND ANWAR AL-AWLAKI'S TARGETING

Believe it or not, there's a fascinating debate going on over at NRO. First, Charles Krauthammer points to the muddle of the Administration's white paper, which could have (he argues) just authorized Awlaki's killing under the laws of war.

Unfortunately, Obama's Justice Department memos justifying the drone attacks are hopelessly muddled. They imply that the sole justification for drone attack is imminent threat – and since al-Qaeda is plotting all the time, an al-Qaeda honcho sleeping in his bed is therefore a legitimate target.

Nonsense. Slippery nonsense. It gives the impression of an administration making up criteria to fit the president's kill list. No need to confuse categories. A sleeping Anwar al-Awlaki could lawfully be snuffed not because of imminence but because he was a self-declared al-Qaeda member and thus an enemy combatant as defined by congressional resolution and the laws of war.

Nowhere, unfortunately, does Krauthammer consider why they didn't do this – or indeed look more closely at the details behind Awlaki's killing.

Kevin Williamson takes issue with that, reviewing both Awlaki's lack of indictment after 9/11, but also expressing doubt that Awlaki moved beyond propaganda.

There is a difference between

sympathizing with our enemies and taking up arms against the country; there is even a difference between actively aiding our enemies and taking up arms against the country, which is why we have treason trials rather than summary execution.

The question of whether al-Awlaki in fact took up arms against the United States is unanswered, at least in my mind. The evidence suggests that he was very much the “bin Laden of the Internet” rather than a man at arms. What perplexes me is that so many conservatives trust the same government authorities who got it so spectacularly wrong about al-Awlaki the first time around – feting him at the Pentagon, treating him as an Islamic voice of reason – to get it right the second time around. This is not a libertarian criticism but a conservative one. It is entirely possible that the same unique strain of stupidity that led to al-Awlaki’s being invited to the Pentagon as an honored guest of the U.S. military is alive and well in the Obama administration. This is precisely why we have institutions such as the separation of powers, congressional oversight, and trials. Killing a U.S. citizen in the heat of battle is one thing, but Al-Awlaki was not killed in a battle; he was not at arms, but at breakfast. Enemy? Obviously. Combatant? Not obviously.

And then Andrew McCarthy writes in to suggest that Jane Fonda would have made the Kill List had we had one during Vietnam.

Now aside from McCarthy (who serves here only as a warning in where this is going), both these contributions are worth reading.

But what both are missing are the known details

about the development of intelligence on Anwar al-Awlaki between the time he was first targeted, on December 24, 2009, and the time he was killed, on September 30, 2011. And while I can't claim to know the classified intelligence, there's enough in the public record that ought to give both men more nuance in their arguments. Three key points I lay out in more detail here:

- Awlaki was first targeted, by the military and before the OLC memo the white paper is based on was written, at a time when the intelligence community did not consider him operational.
- During negotiations for a plea agreement that never happened, Umar Farouk Abdulmutallab implicated Awlaki in a clearly operational role, but after plea negotiations fell apart, that testimony was never presented in an antagonistic courtroom (indeed, the government itself told a significantly different story at Abdulmutallab's trial).
- By the time Awlaki was killed, the government likely had additional evidence suggesting Awlaki's role in actual plots – notably the October 2010 toner cartridge plot – was weaker than the “senior operational leader” role

they invoked when they
killed him.

The one time we presumably did try to kill
Awlaki under the Krauthammer standard – even the
government now says – he did not fit that
standard. There was probably a moment to kill
Awlaki under that standard (if you ignore that
the government was only at this point
formalizing AQAP's status as a terrorist group)
around February 2010, before the white paper was
written. But by the time we did kill him, not
only were there unidentified reasons to get CIA
involved (probably having to do with the
unreliability of Ali Abdullah Saleh), but the
contorted pre-crime standard of imminence John
Brennan described probably was what the
government was working with (as well as, I
suspect, a theory that made Awlaki's propaganda
into an act of war), because the intelligence
implicating Awlaki had gotten weaker over time.

There are probably multiple reasons why the
argument in support of Awlaki's killing is so
contorted. But one of them appears to be changes
in the intelligence the government had
implicating him.

Which is why Williamson is ultimately correct.
This is why we have courts and separation of
powers.