

SHORTER JEH JOHNSON: 16-YEAR OLD ABDULRAHMAN AL- AWLAKI LEGITIMATE MILITARY TARGET

I'll have more to say about this speech Jeh Johnson gave at Yale later. But for the moment I wanted to unpack the logic of his comments about targeted killing.

As part of his claim that drone strikes are just like past military killing, Johnson boasted of the precision of our current weapons.

I want to spend a moment on what some people refer to as "targeted killing." Here I will largely repeat Harold's much-quoted address to the American Society of International Law in March 2010. In an armed conflict, lethal force against known, individual members of the enemy is a long-standing and long-legal practice. What is new is that, with advances in technology, we are able to target military objectives with much more precision, to the point where we can identify, target and strike a single military objective from great distances.

Should the legal assessment of targeting a single identifiable military objective be any different in 2012 than it was in 1943, when the U.S. Navy targeted and shot down over the Pacific the aircraft flying Admiral Yamamoto, the commander of the Japanese navy during World War Two, with the specific intent of killing him? Should we take a dimmer view of the legality of lethal force directed against individual members of the enemy, because modern technology makes our

weapons more precise? As Harold stated two years ago, the rules that govern targeting do not turn on the type of weapon system used, and there is no prohibition under the law of war on the use of technologically advanced weapons systems in armed conflict, so long as they are employed in conformity with the law of war. Advanced technology can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations.

He then goes on to argue that our targeted killing is not assassination because the targets are all legitimate military targets.

On occasion, I read or hear a commentator loosely refer to lethal force against a valid military objective with the pejorative term “assassination.” Like any American shaped by national events in 1963 and 1968, the term is to me one of the most repugnant in our vocabulary, and it should be rejected in this context. Under well-settled legal principles, lethal force against a valid *military* objective, in an armed conflict, is consistent with the law of war and does not, by definition, constitute an “assassination.”

Well then. If our weapons have that much precision—if the intelligence that goes into such strikes is so good we can strike individuals with precision—and we only hit military targets, it must follow that we knew 16-year old American citizen Abdulrahman al-Awlaki was present when we killed him with a drone strike. And we must have considered the teenager a legitimate military target.

Because of course the United States would never

assassinate its teenagers, would it?

THE DRONE LOBBY ADMITS IT HAS A CYBERSECURITY PROBLEM

Or should I say “challenge”?

Lee Fang hits on the most important parts of this presentation the drone lobby made last year, most notably the way they admitted they needed global conflict as a selling point for their drones.

Drone lobbyists claimed access to airspace and **“Global Conflict – particularly U.S. and allied nation involvement in future conflicts”** will **“either positively or negatively”** influence **“market growth”** for the industry.

But given that the US will be rolling out six test sites for drones in US airspace in the next year, I’m pretty troubled by the problems the drone lobby admits they see ahead.

Notably, cybersecurity (see page 12).

Obviously, if the Iranians can bring down one of our more sophisticated drones, we’ve got a cybersecurity problem. Though of course, this presentation was given—on June 2, 2011—six months before Iran took down our Sentinel. And four months before Wired reported that keylogger software had infected the computers at Creech Air Force Base.

So it seems that the drone lobby was aware it had this little, uh, challenge on this front.

And yet DOD seemed totally unprepared anyway.

THE ARAB SPRING MEETS US COUNTERTERRORISM: “WE CONSIDER THE DRONES TERRORISM”

Jeremy Scahill has a new story describing how our counterterrorism efforts in Yemen, combined with the Arab Spring, are making al Qaeda's affiliates in Yemen more popular among local Yemenis. He quotes one tribal leader comparing AQAP's terrorism to our use of drones.

“Why should we fight them? Why?” asks Sheik Ali Abdullah Abdulsalam, a southern tribal sheik from Shebwa who adopted the nom du guerre Mullah Zabara, he says, out of admiration for Taliban leader Mullah Mohammed Omar. “If my government built schools, hospitals and roads and met basic needs, I would be loyal to my government and protect it. So far, we don't have basic services such as electricity, water pumps. Why should we fight Al Qaeda?” He says that AQAP controls large swaths of Shebwa, conceding that the group does “provide security and prevent looting. If your car is stolen, they will get it back for you.” In areas “controlled by the government, there is looting and robbery. You can see the difference.” Zabara adds, “If we don't pay more attention, Al Qaeda could seize and control more areas.”

Zabara is quick to clarify that he

believes AQAP is a terrorist group bent on attacking the United States, but that is hardly his central concern. "The US sees Al Qaeda as terrorism, and we consider the drones terrorism," he says. "The drones are flying day and night, frightening women and children, disturbing sleeping people. This is terrorism." Zabara says several US strikes in his region have killed scores of civilians and that his community is littered with unexploded cluster bombs, which have detonated, killing children. He and other tribal leaders asked the Yemeni and US governments for assistance in removing them, he says.

As Scahill describes it, the increasing influence of AQAP and its new rebranded organization, Ansar al Sharia, has been made worse in the last year, as the US has moved most of its counterterrorism personnel to Djibouti for security reasons, leaving Saleh's government to use the counterterrorism troops we've outfitted to defend his own regime, and leaving us to rely on the unpopular drone strikes to hit counterterrorism targets. And the guy who is supposed to be in charge of these counterterrorism forces, Ali Abdullah Saleh's son Yahya, has left the country to go hang out in Cuba with Che Guevara's family.

Given Scahill's description of how Yemen's Central Security Forces ran away from a battle with militants last May, effectively handing them all their weapons, you get the feeling significant numbers of troops will join al Qaeda's affiliates once Saleh loses his incentive to toy with Americans.

But that shouldn't be a big surprise. That's about what's happening in Afghanistan right now too.

In almost every combat outpost I visited this year, the troopers reported to me they had intercepted radio or other

traffic between the ANSF and the local Taliban making essentially mini non-aggression deals with each other.

[snip]

To sum: in a number of high profile mission opportunities over the past 11 months the ANA and ANP have numerous times run from the battle, run from rumors, or made secret deals with the Taliban.

What we're doing? Partnering with illegitimate leaders who have a disincentive to do anything to fix their country which, as a result, lends credibility to the insurgents?

That's not working.

WHEN WAS DOJ GOING TO GET AROUND TO TELLING US ABOUT AWLAKI? PART ONE

Let me start by saying that I'm all in favor of DOJ releasing the information it has on Anwar al-Awlaki. I'm not complaining that they have released it. I'm just puzzling through why they have treated it as they have thus far. In this post, I'm going to review how the government came to tell one story at Umar Farouk Abdulmutallab's trial last year, and another one—one that implicates Awlaki—last Friday. In a follow-up post, I'm going to explore why DOJ has refused to lay out the case they have against Awlaki before (including last October).

DOJ Hid Awlaki in October

As I have noted, when DOJ made its opening

argument in Umar Farouk Abdulmutallab's trial on October 11, 2011, prosecutor Jonathan Tukul said that Abdulmutallab told the FBI on Christmas Day 2009 that a guy named Abu Tarak had ordered him to attack the US.

And **Abu-Tarak gave him the direction.**

Remember, I said there were only three parts to the plan, he had to blow up a plane, it had to be a U.S. airliner and it had to take place over U.S. soil. Abu-Tarak reported that way, make sure it's a U.S. aircraft, make sure it takes place over the United States.

And then the defendant told the FBI that on approximately December 6 or 7 he received the bomb from Abu-Tarak in Yemen. [my emphasis]

In the narrative they released last Friday, they said Awlaki gave that order.

Although Awlaki gave defendant operational flexibility, **Awlaki instructed defendant** that the only requirements were that the attack be on a U.S. airliner, and that the attack take place over U.S. soil. [my emphasis]

Now, the explanation I've gotten is that Abu Tarak is Awlaki, or rather, that Abu Tarak is an alias for Awlaki.

But assuming that explanation is correct (I'm not entirely convinced), it still permits several possibilities:

- Abdulmutallab just made the name up in an effort to hide Awlaki—and, as we'll see below—bomb-maker Ibrahim al Asiri's role (but the FBI described Abdulmutallab as bragging about his ties to

Awlaki and al Qaeda in his first interrogation)

- The government already knew Abu Tarak was an alias Awlaki used (which doesn't seem to be the case, since early reporting says Awlaki blessed the op, but didn't say he was the cleric who ordered it)
- Abdulmutallab later told the FBI that Abu Tarak was Awlaki's alias
- Abdulmutallab never confirmed Abu Tarak was an alias for Awlaki, but in later interrogations said that Awlaki had given the order to strike the US and therefore the government concluded that Abu Tarak must be an alias

(Here are two more of the most comprehensive stories based significantly on Abdulmutallab's initial confession to give more of a sense of what they knew from Abdulmutallab's first confession, on which Tukul's opening was based.)

Dr. Simon Perry's statement seems to rule out some of those possibilities, given that, even after reading redacted versions of 18 or 19 of Abdulmutallab's interrogation reports, Perry treats Abu Tarak and Awlaki as different people: he describes Abu Tarak as someone **besides Awlaki** who significantly influenced Abdulmutallab.

Awlaqi was not the only influential fundamentalist in UFAM's life. While residing at Abu Tarak's residence in Sana, Yemen he was mainly confined to his residence and discouraged from any

communication with the outside world (phone, email). During this period, **UFAM spoke regularly with Abu Tarak** and three other individuals who visited him daily, speaking with them about Jihad and martyrdom. [my emphasis]

Given Perry's apparent understanding that Abu Tarak and Awlaki are different people, either Abdulmutallab never clearly said that Abu Tarak and Awlaki were the same person, any statement he made to that effect was redacted in the copies Perry read, or Perry wasn't given the interrogation where Abdulmutallab made such a statement. (Note, however, that the only reference Perry makes to Abu Tarak cites the Christmas Day confession, so it's possible Abdulmutallab never mentioned him again.)

With all that in mind, let's review how Tukei told the story about Abu Tarak at the trial but is now telling a story about Awlaki at sentencing.

DOJ committed in August not to use information from "plea bargains"

Back in August, Abdulmutallab tried to mount a defense by making all of his confessions, one way or another, inadmissible. He wanted his initial confession thrown out because he had not received a Miranda warning, he wanted statements he made at UM Hospital thrown out because he was drugged up, and he wanted the statements he made while at Milan (pronounced My-Lan) Prison—all of them—excluded because they were made as part of a plea negotiation.

Defendant ABDULMUTALLAB met with government agents on numerous occasions at the Milan Correctional Facility. The government intended to obtain incriminating statements from Defendant regarding the alleged incident on December 25, 2009. In addition, the government engaged in plea negotiations with the Defendant during the meetings.

Before the meetings began, the government agents verbally agreed that they would not use any statements Defendant made, against him. Defendant relied on the government's representation – as officers of the court – and made incriminating statements. See *United States v. Dudden*, 65 F.3d 1461, 1467 (9th Cir. 1995) (the government can grant the defendant varying degrees of immunity in an informal agreement). Allowing the government to use these statements at trial will violate the government's agreement with Defendant.

In response to this motion, the government said it would not use any of these statements "at trial," so the judge should deny his motion as moot, which she did.

Defendant also filed a separate motion to suppress statements made to agents on other dates. R.59: Motion to Suppress Statements Made to Government Agents at the Milan Correctional Facility. The government will not seek to offer those statements at trial either, and therefore that motion should be denied as moot.

So basically, the government committed, on August 26, 2011, not to use anything Abdulmutallab said while at Milan during "the trial." That means they were confident they could rely solely on Abdulmutallab's initial confession to convict him, which seems like a pretty safe bet.

It appears that the narrative released on Friday includes at least some information from those Milan interrogations, because Abdulmutallab's standby counsel objected to their inclusion in the presentence investigation, and the government treats those paragraphs of the presentence investigation and their own

sentencing narrative together in a footnote responding to his objection.

As detailed extensively in the Presentence Investigation Report at ¶¶ 13-24 and in the Supplemental Factual Appendix [the government narrative],² defendant was deeply committed to his mission, seeking out and finding Al Qaeda and Anwar Awlaki, volunteering for a martyrdom mission, and then becoming involved in planning and training for a significant amount of time.

² Defendant states that the objected-to paragraphs contain “information obtained during plea negotiations in this matter and can not at this stage be used against him, for sentencing purposes.” Assuming arguendo that the debriefings at which the statements were made were in fact “plea negotiations,” defendant’s argument precisely misses the point. The admissibility of plea negotiations is controlled by Federal Rule of Evidence 410, which is inapplicable at sentencing. Fed. R. Evid. 1101(d)(3); see also 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purposes of imposing an appropriate sentence.”).

So the government committed not to use this information “at trial,” but is using it in sentencing.

The “plea bargain” information names Awlaki

That said, there doesn’t appear to be a lot that comes from those interrogations. If you compare the government’s narrative with what Tukul said in his opening, just about all the facts appear in the opening, meaning the government either

got them from forensics (like the construction and ingredients in the bomb) or from Abdulmutallab's initial confession.

The exceptions are the references to texts between Awlaki and Abdulmutallab (though early reporting said the NSA found some of this communication), the names of Samir Khan and Ibrahim al-Asiri (though they had the latter from his fingerprint on the bomb, and Tukul did mention the fingerprint), the description of Asiri, not Abu Tarak, training Abdulmutallab on the bomb, the description of Awlaki, not Abu Tarak, ordering the attack on the US, and this information:

Thereafter, defendant was picked up and driven through the Yemeni desert. He eventually arrived at Awlaki's house, and stayed there for three days. During that time, defendant met with Awlaki and the two men discussed martyrdom and jihad. Awlaki told defendant that jihad requires patience but comes with many rewards. Defendant understood that Awlaki used these discussions to evaluate defendant's commitment to and suitability for jihad. Throughout, defendant expressed his willingness to become involved in any mission chosen for him, including martyrdom – and by the end of his stay, Awlaki had accepted defendant for a martyrdom mission.

In short, while the initial effort to rule the Milan interrogations inadmissible may have been a more general defense strategy, here it appears to be an effort to minimize Abdulmutallab's connection to Awlaki.

The government even admits, in the guise of proving that Abdulmutallab was engaged in international terrorism, that it used this additional information largely to implicate Awlaki.

The Supplemental Factual Appendix is

included in order to provide the Court with additional information regarding “the nature and circumstances of the offenses,” particularly Count One. It provides the Court with relevant details regarding other terrorists with whom defendant interacted overseas as part of this plot, including Anwar Awlaki.

The government has a reason ostensibly tied to Abdulmutallab’s sentencing, but it’s pretty clear this is about providing evidence against Awlaki, not Abdulmutallab. Abdulmutallab would surely be sentenced to multiple life sentences in any case, as he will be if Judge Edmunds decides to ignore this detail too.

Why play hide-and-seek with Awlaki?

I can think of two explanations for why the government would use this approach.

The first is that Abdulmutallab’s admissions really were problematic from an evidentiary standpoint. Either his admissions about Awlaki were not as clear cut as the government now claims—and might have been successfully discredited at trial—or the government really did extract them under the guise of a plea bargain that Abdulmutallab never received.

Which makes you wonder why his court-appointed lawyers (the ones he fired in September 2010, citing a conflict of interest) didn’t advise him to sign the Kastigar letter the government offered. Abdulmutallab’s lawyer say the government offered him one.

Moreover, the government presented Defendant with a signed Kastigar letter before Defendant made incriminating statements.

But the government says Abdulmutallab, with the advice of counsel, did not sign it.

However, no proffer agreement was ever signed by Defendant Abdulmutallab, who,

after consultation with his then-counsel, chose to speak to agents without signing such an agreement.

What were the terms of these interrogations, then, and what kind of undelivered promises did the government make before Abdulmutallab implicated Awlaki?

This article laying out aborted DOJ plans to charge Awlaki—written the day after Abdulmutallab fired his lawyers, citing conflict of interest—suggests that the government tried, but never convinced Abdulmutallab to testify against Awlaki.

The best case scenario for the government would be for Abdulmutallab to plead guilty. He has already told the FBI that al-Awlaki was involved in the airliner bomb plan, and a plea deal would allow Abdulmutallab to become a witness against him. But Abdulmutallab, who fired his lawyers Monday and was given approval to represent himself, has yet to strike a deal and would probably seek a reduced prison sentence in exchange for his help.

In other words, this sentencing hearing is the opportunity to achieve legally what they never managed to achieve earlier: getting Abdulmutallab to make their case against Awlaki for them. Without, it should be said, the opportunity to challenge the evidence.

I'll cover the other reason DOJ may have hidden Awlaki so long in a follow-up post.

WHAT WAS OUR

SENTINEL DRONE SURVEILLING IN IRAN?

Kevin Drum captures where the state of the reporting on the story that the MEK, backed by Israel, is responsible for the assassinations of Iranian scientists and the implication that that makes Israel a state that sponsors terrorism. Drum writes,

Are the attacks on Iran terrorism? Of course they are. If they're not, we might as well give up on even trying to define the word. But is it acceptable just because the other side is using it? Of course it's –

But wait a second. Is it? For all practical purposes, Iran and Israel are at war; they've been at war for a long time; and both sides have tacitly agreed that it will primarily be a war carried out nonconventionally. The alternative is what we did in Afghanistan and Iraq: a full-scale conventional attack.

Is that a superior alternative? To say the least, I'm a little hard pressed to say it is. But the alternative is not to fight back at all. Given the current state of the art in human nature, that's really not in the cards.

Still: is it terrorism? Yes. Do both sides use it? Yes. Is this, in many cases, the future of warfare? Probably yes.

The only question I'd raise is a chicken and an egg thing. Who attacked whom first? And if Hezbollah is your proxy to say that Iran did, then what was the 2006 invasion of Lebanon about?

Speaking of chickens and eggs, though, there's something left out of this formulation. The US.

As I noted back in December, the reporting of David Sanger (whose beat seems to be precisely the intersection of US and Israeli covert ops) seems to suggest that our drones have been surveilling now-dead Iranian scientists.

So David Sanger, the (American **and** Israeli) intelligence community's chief mouthpiece to boast about their latest victories against Iran, by-lined this story from Boston (rather than his home base of DC) to tell us the Sentinel drone was surveilling Iran's suspected nuclear sites, using its isotope-sniffing powers.

In addition to video cameras, independent experts say the drone almost certainly carries communications intercept equipment and sensors that can detect tiny amounts of radioactive isotopes and other chemicals that can give away nuclear research.

But the real advantage of the Sentinel drone, Sanger and Shane tell us, is the ability to see who's onsite when.

While an orbiting surveillance satellite can observe a location for only a few minutes at a time, a drone can loiter for hours, sending a video feed as people move about the site. Such a "pattern of life," as it is called, can give crucial clues to the nature of the work being done, the equipment used and the size of the work force.

Actually, we knew that. Here's the kind of information the Sentinel presumably gave us about Osama bin Laden's compound.

Agents, determining that Kuwaiti was living there, used aerial surveillance to keep watch on the compound, which consisted of a three-story main house, a guesthouse, and a few outbuildings. They observed that residents of the compound burned their trash, instead of putting it out for collection, and concluded that the compound lacked a phone or an Internet connection. Kuwaiti and his brother came and went, but another man, living on the third floor, never left. When this third individual did venture outside, he stayed behind the compound's walls. Some analysts speculated that the third man was bin Laden, and the agency dubbed him the Pacer.

In our assassination of Osama bin Laden, it seems, we used the Sentinel to learn the daily routine of everyone in the compound. Just the kind of information we've used to assassinate key Iranian scientists.

Don't get me wrong. I'm sure the Sentinel **is** looking for secret nuclear or other military sites to bomb, "among other missions." But I also suspect the reason government sources have been so forthcoming with confirmation about the Sentinel and its role in hunting nuclear sites is to distract from its role in hunting human beings.

So, sure, Israel assassinated Iranian civilians by partnering with a terrorist group. But what if they did it using intelligence gathered with our drones? Does that make us a state sponsor of terrorism, too? Besides, DNI James Clapper seemed to suggest the other day the CIA may use

assassinations in some limited non-counterterrorism situations (ironically, allowing the CIA to use terrorism when **not** fighting terrorists).

All this discussion of Israel as a state sponsoring terrorism is interesting. But it's probably not just Israel we should be examining.

THE UNDieBOMBER'S INTERROGATORS ASKED HIM ABOUT ANWAR AL- AWLAKI'S DEATH JUST AFTER HE WAS PUT ON KILL LIST

At least by October 4, 2011, UndieBomber Umar Farouk Abdulmutallab had been told that Anwar al-Awlaki had been killed. During jury selection that day, he yelled out "Anwar is alive," as he had previously yelled out "Osama's alive" at a hearing in September.

A week later, Abdulmutallab tried to plead guilty, and the following day, on October 12, he somewhat surprisingly did so (though of course he had tried to plead guilty a year earlier when he fired his court appointed lawyers, so maybe it shouldn't have been such a surprise after all).

I find it interesting that Abdulmutallab knew Awlaki was dead when he plead guilty because Abdulmutallab's interrogators appear to have tried to goad him into revealing more by discussing the death of Awlaki ... before it happened.

In his memo on why Abdulmutallab represents an

ongoing danger, Dr. Simon Perry lists the Abdulmutallab interrogations he relied on. The dates track what we know about Abdulmutallab's interrogation: he confessed on Christmas Day 2009 (apparently implicating an Abu Tarak, which may be an alias for Anwar al-Awlaki). Then he clammed up for several weeks, until the FBI got Abdulmutallab's family members to fly to MI to convince him to cooperate, which he started doing on January 29, 2010. Perry describes interrogations happening almost every day for 11 days (taking a break on Monday, February 1 and the following weekend, February 6 and 7), followed by seven more interrogations in February. Perry's list suggests there was a break until April—though he does cite a March 15 interrogation (see footnote 54) that doesn't appear in his list. In April, there were three interrogations: on April 8, 16, and 30. Altogether, Perry says he referred to reports from 18 or 19 interrogations, depending on whether there was one on March 15.

Perry's memo therefore provides a really general overview of the interrogations Abdulmutallab had (though we can't be entirely sure that these include all his interrogations). We can't really draw conclusions about what the government learned from him when, since Perry's focus is limited to Abdulmutallab's radicalization and desire for martyrdom rather than specific information about Awlaki. And, as I noted here, Perry rather bizarrely doesn't date the interrogation when Abdulmutallab admitted that Awlaki was the person originally named as Abu Tarak who ordered him to attack the US, so we can't learn from Perry's memo when Abdulmutallab clearly implicated Awlaki as Awlaki in the plot.

But there are two fascinating details of Abdulmutallab's interrogation revealed by the following passage of Perry's memo (remember, Perry uses the acronym UFAM for Abdulmutallab).

Yet we can learn that the rewards of martyrdom play a significant part for UFAM since when **he talks about Aulaki's**

martyrdom he stresses that he believes that if Aulaqi were to be killed, he would be entitled to a martyrs reward. UFAM explains (again not in the context of his own martyrdom) that there are different degrees of reward for martyrdom. [interrogation from April 16, 2010] For example UFAM believes that **if the accusations against Aulaqi were true (allegations of solicitation of prostitution) Aulaqi could repent for these sins** and his commitment to Jihad would outweigh such transgressions. He adds that people are not perfect and that they make mistakes. [interrogations from February 15, 19, 2010]

I'll start with the second detail first. On February 15 and 19, 2010—Abdulmutallab's 12th and 14th interrogations of 18 or 19 Perry reviewed, so fairly late in the interrogation process—his interrogators were challenging Awlaki's sanctity based on his prior busts for soliciting prostitutes. Interrogators presumably told Abdulmutallab about the two times Awlaki had been busted in the 1990s while living in San Diego.

The probe of the 9/11 attacks soon led Washington FBI agents back to San Diego, where they found that al-Awlaki had twice been busted for soliciting prostitutes in 1996 and 1997 but had avoided jail time. Al-Awlaki has previously described these charges as "bogus." But FBI agents hoped al-Awlaki might cooperate with the 9/11 probe if they could nab him on similar charges in Virginia. FBI sources say agents observed the imam allegedly taking Washington-area prostitutes into Virginia and contemplated using a federal statute usually reserved for nabbing pimps who transport prostitutes across state lines.

And it would make sense that interrogators would raise Awlaki's past with prostitutes. It appears that Abdulmutallab's interrogators were trying to get him to reveal more information—lose faith in Al Qaeda so he would reveal more—based on what a hypocrite his religious mentor was.

Not that it appears to have worked. Abdulmutallab just forgave Awlaki in the same way many religious conservatives dismiss their own leaders' hypocrisy in this country.

The other reference is even more interesting. On April 16, 2010, the second-to-last interrogation of those Perry reviewed, Abdulmutallab's interrogators asked him about Awlaki's martyrdom. Or, to use the secular term, they talked about Awlaki's death. (This is the sole reference to the April interviews in Perry's report.)

Look at the date. One of the first stories reporting Awlaki had been added to CIA's kill list was published the evening of April 6, 2010, so just a couple days before that first April interrogation, after what appears to be a significant break in interrogations, and just ten days before the interrogation in question. That is, just after Awlaki was put on the CIA kill list, interrogators asked Abdulmutallab what he thought would happen were Awlaki to be killed.

And remember one more thing about this timing. At this point in April 2010, they seem to have finished the initial flurry of interrogations that provided evidence to put Awlaki on the kill list. They were asking Abdulmutallab about Awlaki's death just as Awlaki was added to the CIA kill list that would eventually lead to his death. Yet DOJ had not yet signed off on the OLC memo authorizing it (they would do so in June).

WHY HAS THE GOVERNMENT STORY ABOUT WHO ORDERED THE UNIDIEBOMBER TO ATTACK THE US CHANGED?

The government has told two or three slightly different stories about who directed and inspired Umar Farouk Abdulmutallab's UndieBomber plot. The stories are all reconcilable (I'm not suggesting nefarious intent). But the differences in the three stories are worth noting, not least because the government killed Anwar al-Awlaki based on a claim he was the director of external operations of Al Qaeda in the Arabian Peninsula, reportedly based in significant part on a claim that he directed Abdulmutallab's plot.

In October, prosecutor Jonathan Tukul said that an Al Qaeda member with whom Abdulmutallab stayed in Sana, Yemen named Abu Tarak ordered the UndieBomber to attack a US airline over US airspace. Today, they say Awlaki gave that order. *[See update below for what I think is an explanation.]*

Update: There's a totally different explanation. Abu Tarak is an alias for Awlaki. Thus, while Abdulmutallab seemed to be hiding Awlaki's identity in that first interrogation, that initial story is consistent with his later story (which is presumably why the government was happy just using the initial interrogation).

Al-Awlaki had significant influence—but so did Abu-Tarak and others

The most balanced of the three stories submitted by the government came in a memo, released today, from an expert on martyrdom, Dr. Simon Perry, basically laying out why Abdulmutallab,

who hoped for martyrdom, is so dangerous (I'll leave to others to assess the validity of Perry's science; it's not relevant to this post).

In a section describing who inspired Abdulmutallab to extremism, Perry makes the central inspirational importance of Anwar al-Awlaki to Abdulmutallab clear—going back to 2005—but describes the following as other influences:

- Fundamentalist Islamists
- Abu Tarak and three other visitors who visited daily while Abdulmutallab stayed with Abu Tarak in Sana leading up to his attack
- Uthmann (?)
- A Jihadist who preached in England
- Other fighters in Yemen
- A man from Al Qaeda he met in Yemen

Here's the passage. (Note, Perry uses the acronym UFAM for Abdulmutallab; I've taken out the footnotes here for ease of reading, but they're all to interrogations between Christmas 2009 to February 5, 2010.)

Manipulated by fundamentalists, such as Aulaqi and his internet lectures, UFAM claims that the main motivation for conducting the martyrdom mission included his interpretation of Koranic verses and his regularly attendance at prayers, where he met and interacted with Fundamentalist Islamists. UFAM was familiar with all of Aulaqi's lectures, and they were an important motivator which led UFAM to decide to participate in Jihad. He began listening to the lectures in 2005 and reading Aulaqi's

writings, which motivated him to accept martyrdom as a possibility. Aulaqi was not the only influential fundamentalist in UFAM's life. While residing at Abu Tarak's residence in Sana, Yemen he was mainly confined to his residence and discouraged from any communication with the outside world (phone, email). During this period, UFAM spoke regularly with Abu Tarak and three other individuals who visited him daily, speaking with them about Jihad and martyrdom. UFAM discussed the concept of Jihad also with Uthmann who supported Mujahidin worldwide already from 2005. He was deeply influenced by a Jihadist who preached in England and elsewhere and used to meet with him intensively (as often as 3 times a week). UFAM associated with Aulaqi who frequently spoke of Jihad and interacted with other fighters, and while in Yemen, he met with a man from Al Qaeda who further deepened his conviction. [my emphasis]

Now, it's not Perry's job to describe the operation itself, so I'll take nothing from his silence on who directed it. He makes it very clear Awlaki counselled Abdulmutallab on the appropriateness of martyrdom.

And Perry does say that Awlaki told Abdulmutallab he should prepare a martyrdom video in anticipation of a plane operation; Abdulmutallab made the video on December 2 or 3 (this passage is sourced to Interrogations on January 29 and February 9, 2010).

UFAM himself participated in this practice of preparing a martyrs' video after he was told by Aulaqi that he would bring down a plane and that he should prepare a video. UFAM spent time thinking about his martyr's video. Approximately on the 2nd or 3rd of Dec. 2009, UFAM made a martyr's video with the help of two video technicians who

brought the equipment. They brought a black flag with Islamic writing for the background as well as clothing and other props. It took them approximately 2 or 3 days to complete the video.

And the target was chosen, according to Perry, by Awlaki. But oddly, he did not source that assertion to any of Abdulmutallab's interrogations.

He was prepared to fulfill his mission of Jihad **against whatever enemy was identified by Aulaqi**. UFAM did not choose the target or the mission, it was chosen for him. **[Perry did not source this statement**. Instead, in a footnote he points out his unsourced statement contradicted a comment Abdulmutallab made at his sentencing, in which the defendant said he was motivated by hate for the US.]

Awlaki chose the target

In the narrative released today (based, according to the government filing, on conversations of unknown date during which Abdulmutallab's original court-appointed lawyers were trying to negotiate a plea bargain that never happened), Awlaki instructed Abdulmutallab to make a martyrdom video.

Awlaki told defendant that he would create a martyrdom video that would be used after the defendant's attack. Awlaki arranged for a professional film crew to film the video. Awlaki assisted defendant in writing his martyrdom statement, and it was filmed over a period of two to three days.

Thus far, the government's narrative matches Perry's. But the government narrative provides more details about how Awlaki gave Abdulmutallab the final instructions about how to carry out

the attack.

Although Awlaki gave defendant operational flexibility, **Awlaki instructed defendant that the only requirements were that the attack be on a U.S. airliner, and that the attack take place over U.S. soil.** Beyond that, Awlaki gave defendant discretion to choose the flight and date. Awlaki instructed defendant not to fly directly from Yemen to Europe, as that could attract suspicion. [my emphasis]

Abu Tarak chose the target

That's funny, because back when prosecutors gave their opening argument on October 11, just 12 days after the government killed Awlaki in a drone strike, they told a different story. In that version, Awlaki provided the inspiration for Abdulmutallab.

So [Abdulmutallab] had the opportunity to do anything he wanted with his life. But instead he began listening to tapes of someone named Anwar al-Awlaki, a radical preacher, and he became committed to jihad, and he left graduate school and he went to Yemen. He wanted jihad and he sought it out and he found it.

That's it—the sole mention of Awlaki in the case the government was willing to defend in court.

But a guy named Abu Tarak—the guy, according to Perry, with whom Abdulmutallab stayed in Sana, Yemen—gave Abdulmutallab the instructions.

So what else did the defendant say to the FBI? He said that he sought out and found al-Qaeda. **He said that he was introduced at a mosque to someone he called Abu-Tarak, an al-Qaeda member.** He told the FBI that he and Abu-Tarak spoke daily about jihad and martyrdom and

supported al-Qaeda and Osama bin Laden. And martyrdom is, of course, a suicide operation where the person is engaged in jihad, and they carry out an operation, sometimes called suicide bombing, sometimes called martyrdom bombing, where the person intends to kill and to himself die in the act of doing it, and they usually think that they will end up in heaven as a result of doing that.

And the defendant said that he and Abu-Tarak spoke daily about ways to attack the United States. Daily.

And then **in late November of 2009**, remember, this interview is taking place on December 25th so he's talking about a month or so earlier, **Abu-Tarak suggested to the defendant that he become involved in a plane attack against the United States aircraft.** And the defendant agreed to do that. And the plan was that the bomb would be concealed in the defendant's underwear, and Abu-Tarak gave him training in detonating the bomb. And the way the bomb would work is that the defendant would inject liquid into a powder with a syringe and that would cause the explosion.

And Abu-Tarak told the defendant that the bomb would not be detected by airport security anywhere in the world. And he said that the bomb maker was a Saudi Arabian individual, and in fact, the defendant told the FBI that he met the bomb maker, he met the Saudi Arabian bomb maker while he was in Yemen. And Abu-Tarak told him that the plane would crash and it would kill everybody on board.

And Abu-Tarak gave him the direction.

Remember, I said there were only three parts to the plan, he had to blow up a plane, it had to be a U.S. airliner and

it had to take place over U.S. soil.
Abu-Tarak reported that way, make sure it's a U.S. aircraft, make sure it takes place over the United States.

And then the defendant told the FBI that
on approximately December 6 or 7 he received the bomb from Abu-Tarak in Yemen. [my emphasis]

According to the story the government told in court last October, the timeline works out this way:

Late November: Abu Tarak suggests Abdulmutallab become involved in a plane attack on the US

Before December 2-3: Awlaki instructs Abdulmutallab to make his martyrdom video

December 2-3: Abdulmutallab makes the video

December 6-7: Abu Tarak gives him the bomb and the instructions to attack a US airliner over the US

The key difference here—and it's pretty significant given the government's claims that Awlaki was the operational leader here—is that Abu Tarak, not Awlaki, targeted the US.

The government's new description of Abu Tarak

And what of Abu Tarak in today's narrative?

Well, if the story AUSA Jonathan Tukul told in his opening statement is correct—that Abdulmutallab met Abu Tarak at a mosque—then it appears Abu Tarak is this guy in the current government narrative.

Once in Yemen, defendant visited mosques and asked people he met if they knew how he could meet Awlaki. Eventually,
defendant made contact with an individual who in turn made Awlaki aware

of defendant's desire to meet him. [my emphasis]

Given the story the government told back in October, it appears that Abu Tarak—who in October had the central, starring role in this plot—is now that anonymous “individual” Abdulmutallab met in a mosque who introduced Abdulmutallab to Awlaki.

Reconciliation of the three stories

Now, Abdulmutallab will have an opportunity to respond to the government's narrative, so perhaps we'll get some clarity then. But there are two ready explanations for the differences between these stories (though not for the government's decision to tell different stories in different forums).

First, the story Tukel told in his opening argument was sourced entirely to what Abdulmutallab told the FBI agent on Christmas Day. So it is quite possible that Abdulmutallab initially hid the operational role of Awlaki, and only began to tell it in later interrogations.

As for the other possibility, remember that Abdulmutallab (rather, the lawyer Abdulmutallab is trying to replace, Anthony Chambers) appears to be complaining the government used statements he made during plea negotiations in his presentencing investigation and their narrative.

As detailed extensively in the Presentence Investigation Report at ¶¶ 13-24 and in the Supplemental Factual Appendix [the government narrative],² committed to his mission, seeking out and finding Al Qaeda and Anwar Awlaki, volunteering for a martyrdom mission, and then becoming involved in planning and training for a significant amount of time.

² Defendant states that the objected-to paragraphs contain “information obtained

during plea negotiations in this matter and can not at this stage be used against him, for sentencing purposes.”

Given this complaint, the other possibility is that in a bid to get some kind of plea deal (back before he started, technically, to represent himself), Abdulmutallab implicated Awlaki more deeply in the operational aspects of the plot—the instructions to attack a US airliner over US airspace—than he had previously done, whether or not it was the truth or not.

I’m agnostic about which of these scenarios is more likely—both are completely plausible—but I would note that Abdulmutallab’s complaints that his plea negotiation conversations are now being used in his sentencing might have more to do with what he was willing to say to get a lesser sentence than what he believed to be true.

Back in October, the government was clear. “Abu-Tarak gave Abdulmutallab the direction” to hit a US airliner over US airspace.

But now, when they’re under pressure to justify killing Awlaki with no due process and trying to release the best case on that killing, their story has changed. Now, Awlaki gave that order.

Who ordered the UndieBomber to attack the US? Awlaki? Or Abu Tarak, whom they now appear to relegate to an anonymous role introducing people in a mosque?

Update: There is one more reason why the government’s story may have changed. In his memo, which is dated January 2010, Perry notes he was working from redacted memos. It may be the government has only subsequently declassified the details that pertain to Awlaki.

Update: Here’s what I think happened.

Abdulmutallab tried to suppress the statements he made at the Milan correctional facility, arguing they were made in the course of a plea bargain. The government responded by saying it would not seek to introduce those statements at

trial.

The government will not seek to offer those statements at trial either, and therefore that motion should be denied as moot.

As a result, Judge Nancy Edmunds didn't rule on whether or not these statements were protected under *Kastigar* (which is the reason Abdulmutallab wants them suppressed now). So when Tukul gave his statement at trial, he was, in fact, relying on that first interview. And implication of Awlaki, then, came during the period when Abdulmutallab was cooperating with the government.

GOVERNMENT FINALLY RELEASES NARRATIVE OF ANWAR AL-AWLAKI'S ROLE IN UNDEBOMBING PLOT

As part of its sentencing memo asking for multiple counts of life imprisonment against Umar Farouk Abdulmutallab, the government has finally officially laid out how it claims Anwar al-Awlaki was involved in Abdulmutallab's plot. I've included the entirety of the account below the rule.

I agree with Evan Perez. Now that they've made this narrative available, surely they can make the OLC memo authorizing Awlaki's death available (note, the narrative says only that Awlaki and Samir Khan died, not that we killed them).

One more thing I'm interested in. I assume that Abdulmutallab, in this response to this filing, will object if he finds any of this inaccurate (so I assume it is accurate). He appears to have objected to this narrative in the presentencing report (and therefore, here), but he doesn't say they were inaccurate.

Defendant states that the objected-to paragraphs contain "information obtained during plea negotiations in this matter and can not at this stage be used against him, for sentencing purposes."

But given certain vague aspects of the narrative, I'm wondering how much corroborating evidence they have (particularly since several of the people mentioned in it are dead—and even Ibrahim al-Asiri, the bombmaker, was rumored to be). For example, the initial communication with Awlaki would involve data evidence. Did they get that after the fact? Or were they tracing it in real time and missed that too? Some of it might depend on other witnesses who have since returned to Saudi Arabia. And I wonder if the government has tracked down (for example) the unnamed middle man who put Abdulmutallab in touch with Awlaki? We know they have physical proof of Asiri's involvement. What other evidence is out there?

Anyway, it's high time the government release this information officially. And now that it's released, they should do more and release the OLC memo.

In August 2009, defendant left Dubai, where he had been taking graduate classes, and traveled to Yemen. For several years, defendant had been following the online teachings of Anwar Awlaki, and he went to Yemen to try to meet him in order to discuss the possibility of becoming involved in jihad. Defendant by that time had become committed in his own mind to carrying out an act of jihad, and was contemplating "martyrdom;"

i.e., a suicide operation in which he and others would be killed.

Once in Yemen, defendant visited mosques and asked people he met if they knew how he could meet Awlaki. Eventually, defendant made contact with an individual who in turn made Awlaki aware of defendant's desire to meet him. Defendant provided this individual 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.

Thereafter, defendant was picked up and driven through the Yemeni desert. He eventually arrived at Awlaki's house, and stayed there for three days. During that time, defendant met with Awlaki and the two men discussed martyrdom and jihad. Awlaki told defendant that jihad requires patience but comes with many rewards. Defendant understood that Awlaki used these discussions to evaluate defendant's commitment to and suitability for jihad. Throughout, defendant expressed his willingness to become involved in any mission chosen for him, including martyrdom – and by the end of his stay, Awlaki had accepted defendant for a martyrdom mission.

Defendant left Awlaki's house, and was taken to another house, where he met AQAP bombmaker Ibrahim Al Asiri. Defendant and Al Asiri discussed defendant's desire to commit an act of jihad. Thereafter, Al Asiri discussed a plan for a martyrdom mission with Awlaki, who gave it final approval, and instructed Defendant Abdulmutallab on it. For the following two weeks, defendant trained in an AQAP camp, and

received instruction in weapons and indoctrination in jihad. During his time in the training camp, defendant met many individuals, including Samir Khan.⁹

Ibrahim Al Asiri constructed a bomb for defendant's suicide mission and personally delivered it to Defendant Abdulmutallab. This was the bomb that defendant carried in his underwear on December 25, 2009. Al Asiri trained defendant in the use of the bomb, including by having defendant practice the manner in which the bomb would be detonated; that is, by pushing the plunger of a syringe, causing two chemicals to mix, and initiating a fire (which would then detonate the explosive).

Awlaki told defendant that he would create a martyrdom video that would be used after the defendant's attack. Awlaki arranged for a professional film crew to film the video. Awlaki assisted defendant in writing his martyrdom statement, and it was filmed over a period of two to three days. The full video was approximately five minutes in length.¹⁰

Although Awlaki gave defendant operational flexibility, Awlaki instructed defendant that the only requirements were that the attack be on a U.S. airliner, and that the attack take place over U.S. soil. Beyond that, Awlaki gave defendant discretion to choose the flight and date. Awlaki instructed defendant not to fly directly from Yemen to Europe, as that could attract suspicion. As a result, defendant took a circuitous route, traveling from Yemen to Ethiopia to Ghana to Nigeria to Amsterdam to Detroit. Prior to defendant's departure from Yemen, Awlaki's last instructions to him were to wait until the airplane was over the United States and then to take the plane down.

⁹ Khan later came to be involved with AQAP's Inspire magazine. Both Khan and Awlaki were killed in September 2011.

¹⁰ The Court has seen the thirty-four-second excerpt of the video that was subsequently

released by AQAP as part of its video *America and the Final Trap*.

IF RON WYDEN HASN'T SEEN AWLAKI MEMO, THERE HAS BEEN INADEQUATE OVERSIGHT

As MadDog noted and Ellen Nakashima reported, Ron Wyden is getting cranky that DOJ won't even show him—a member of the Senate Intelligence Committee—the OLC memo authorizing the killing of Anwar al-Awlaki.

There's one basic thing the letter makes clear (that Nakashima doesn't emphasize). Ron Wyden, a member of the Senate Intelligence Committee, has still not seen the legal justification for killing Anwar al-Awlaki, four months after Awlaki was killed.

So, as you will remember, I called you in April 2011 and asked you to ensure that the secret Justice Department opinions that apparently outline the official interpretation of this lethal authority were provided to Congress. The Justice Department provided me with some relevant information in May 2011, and I mistakenly believed that this meant that you had agreed to my request. Nine months later, however, the Justice Department still has not fully complied with my original request, and it is increasingly clear that it has no intention of doing so.

Simply put, this situation is unacceptable. For the executive branch to claim that intelligence agencies have the authority to knowingly kill American citizens (subject to publicly unspecified limitations) while at the same time refusing to provide Congress with any and all legal opinions that delineate the executive branch's understanding of this authority represents an indefensible assertion of executive prerogative, and I expected better from the Obama Administration.

So Wyden asked for the legal justification before Awlaki was killed, at a time when he could have exercised oversight over the killing, and got "some relevant information" but not the legal justification he asked for. And DOJ has not given him the legal justification since.

We know the Gang of Four had some kind of review over the killing, because all four made comments after his death in support. But there should be no justification for keeping such information at the Gang of Four level at this point—Awlaki is good and dead, the covert operation to kill him achieved its objective and is not all that covert now that the guy who oversaw the operation has talked about it on TV.

And yet these are the questions that Wyden still has about the killing:

Some of these questions include: 'how much evidence does the President need to decide that a particular American is part of a terrorist group?', 'does the President have to provide individual Americans with an opportunity to surrender before using lethal force against them?', 'is the President's authority to kill Americans based on authorization from Congress or his own authority as Commander-in-Chief?', 'can the President order intelligence agencies to kill an American who is

inside the United States?', and 'what other limitations or boundaries apply to this authority?'.

If even the members of the Senate Intelligence Committee have not been permitted to review the Administration's legal justification for the targeted killing of an American citizen, then the oversight over the op is even more inadequate than we knew. The Administration has really been operating on the principle that it can go off and kill American citizens without even having the elected representatives designated to oversee their actions fully review such killings.

ONE-THIRD OF AMERICANS KNOWN TO HAVE BEEN KILLED IN DRONE STRIKES WERE US SERVICEMEN

I agree with Greg Sargent. It is depressing (though I find it unsurprising) that a majority of Democrats support drone strikes on American terrorist suspects overseas.

The Post has just released some new polling that demonstrates very strong support for Obama's counterterrorism policies, including 83 percent of Americans approving of his use of drone strikes against terror suspects overseas.

This finding, however, is particularly startling:

What if those suspected terrorists are

American citizens living in other countries? In that case do you approve or disapprove of the use of drones?

Approve: 65

Disapprove: 26

[snip]

And get this: Depressingly, Democrats approve of the drone strikes on American citizens by 58-33, and even liberals approve of them, 55-35.

The Democratic Party has, under Obama, significantly abandoned a commitment to civil liberties and rule of law, so I'm unsurprised by these results.

But I wonder how Americans would vote if they learned that one-third of Americans known to have died in US drone strikes were servicemen? Here's the list:

Kamal Derwish, killed November 5, 2002, purportedly as collateral damage on a strike against Abu Ali al-Harithi; Derwish is alleged to have recruited the Lackawanna Six

Marine Staff Sgt. Jeremy Smith, killed in friendly fire incident on April 6, 2011

Navy Medic Benjamin Rast, killed in same friendly fire incident on April 6, 2011

Anwar al-Awlaki, killed September 30, 2011; Awlaki had ties to AQAP, though the Administration has never released evidence to support their claim he was "operational"

Samir Khan, killed in same September 30 drone strike, purportedly as collateral damage; Khan was a propagandist for AQAP

Abdulrahman al-Awlaki, aged 16, killed in drone strike on October 14, 2011, purportedly collateral damage in a

strike aimed at Fahd al-Quso, who was indicted in the Cole bombing

Civil libertarians have long noted that the government's lack of transparency undermines their (possibly entirely legitimate) claims that Awlaki was an imminent threat and the others really were just in the wrong place at the wrong time.

But the case of Smith and Rast points to the other real problem with Obama's drone program: targeting is prone to analytical errors and Americans may shoot before they've confirmed that targets are enemy forces.

A Marine and a Navy medic killed by a U.S. drone airstrike were targeted when Marine commanders in Afghanistan mistook them for Taliban fighters, even though analysts watching the Predator's video feed were uncertain whether the men were part of an enemy force.

[snip]

The incident closely resembles another deadly mistake involving a Predator in early 2009. In that attack, at least 15 Afghan civilians were killed after a Predator crew mistook them for a group of Taliban preparing to attack a U.S. special forces unit.

In that case, analysts located at Air Force Special Operations Command in Florida who were watching live battlefield video from the aircraft's high-altitude cameras also had doubts about the target. Their warnings that children were present were disregarded by the drone operator and by an Army captain, who authorized the airstrike.

[snip]

Air Force analysts who were watching the live video in Terre Haute, Indiana, noted that the gunfire appeared aimed

away from the other Marines, who were behind the three. The analysts reported that gunshots were “oriented to the west, away from friendly forces,” the Pentagon report says.

But the Predator pilot in Nevada and the Marine commanders on the ground “were never made aware” of the analysts’ assessment.

When that pilot targeted Rast and Smith, he believed he was targeting someone, at the least, with ties to the Taliban. That is, these servicemen were erroneously and tragically “suspected” of being terrorists. And while some friendly fire is to be expected in a war zone, with drones, such friendly fire stems not from the immediate fog of war, but poor communication and analysis spread out across the globe, and that poor communication and analysis plagues our drone program generally.

So whether the issue is secret intelligence that may or may not back Administration anonymous leaks about the risk of these “suspected terrorist” targets, or our inability to properly identify the enemy, asking whether American support the drone killing of “terror suspects” grossly simplifies the murky mess that qualifies someone as a “suspect” worthy of targeting.