

IF THE LEGAL CASE FOR KILLING AWLAKI IS SO SOUND, THEN WHY MAINTAIN PRESIDENTIAL PLAUSIBLE DENIABILITY?

Glenn Greenwald has another worthwhile post on Democrats' silence about the Anwar al-Awlaki assassination. But i wanted to push back against one thing he said. After quoting from this Mark Hosenball story on the kill list approval process, Glenn said,

So a panel operating out of the White House – that meets in total secrecy, with no law or rules governing what it can do or how it operates – is empowered to place American citizens on a list to be killed, which (by some process nobody knows) eventually makes its way to the President, who is the final Decider.

But that's not actually what Hosenball wrote. On the contrary, Hosenball emphasized that Obama's role in the kill list approval process remains unclear.

The role of the president in ordering or ratifying a decision to target a citizen is fuzzy. White House spokesman Tommy Vietor declined to discuss anything about the process.

[snip]

Other officials said the role of the president in the process was murkier than what Ruppertsberger described.

They said targeting recommendations are drawn up by a committee of mid-level National Security Council and agency officials. Their recommendations are then sent to the panel of NSC

“principals,” meaning Cabinet secretaries and intelligence unit chiefs, for approval. The panel of principals could have different memberships when considering different operational issues, they said.

[snip]

Several officials said that when Awlaki became the first American put on the target list, Obama was not required personally to approve the targeting of a person. But one official said Obama would be notified of the principals’ decision. If he objected, the decision would be nullified, the official said.

A former official said one of the reasons for making senior officials principally responsible for nominating Americans for the target list was to “protect” the president.

And the Administration has tried to keep Obama’s role murky. In addition to the Vietor refusal to discuss the issue Hosenball notes, Obama very pointedly refused to answer whether he had ordered Awlaki’s killing when asked by Michael Smerconish.

Michael Smerconish: Now comes the news that we’ve taken out Anwar al-Awlaki. Did you give that order?

Obama: I can’t talk about the operational details, Michael. [my emphasis]

This is, sadly, another way that the Awlaki assassination is like Bush’s torture program. There, too, the Administration built in plausible deniability for the President. The initial authorization for the torture—Bush’s September 17, 2001 Finding authorizing the capture and detention of al Qaeda figures—didn’t mention torture at all. The Administration twice

refused to tell Jane Harman whether the President had authorized the program. The White House only gave more formal Presidential torture authorization in 2003 and again in 2004 (though even there, it attempted to avoid doing so).

Sure, Bush ultimately boasted that he had approved torture. But for years, the Administration sustained the President's plausible deniability for the illegal program.

The Obama White House efforts to do the same with Awlaki's death are all the more striking given that it has not been so coy about Obama's involvement in ordering hits in the past, most notably when we killed Osama bin Laden. Indeed, they worked hard to foster the narrative of Obama making the difficult decision to order the SEAL operation. And here's what a Senior Administration Official who may be named John Brennan said the day after the Osama bin Laden killing regarding Obama's role.

In the middle of March, the President began a series of National Security Council meetings that he chaired to pursue again the intelligence basis and to develop courses of action to bring justice to Osama bin Laden. Indeed, by my count, the President chaired no fewer than five National Security Council meetings on the topic from the middle of March – March 14th, March 29th, April 12th, April 19th, and April 28th. And the President gave the final order to pursue the operation that he announced to the nation tonight on the morning – Friday morning of April 29th. [my emphasis]

With OBL, the Administration proudly highlighted Obama's role in the decision-making process; here, they're working hard to obscure it.

As with the torture program, that suggests the Administration may believe it important for the President to have plausible deniability about

this killing.