

WALID BIN ATTASH TO BE DENIED DAY IN COURT BECAUSE AL-NASHIRI WAS TORTURED?

Dafna Linzer has a story on Obama's consideration of implementing indefinite detention via Executive Order because Congress isn't going to cooperate with it.

The Obama administration, fearing a battle with Congress that could stall plans to close Guantanamo, has drafted an executive order that would reassert presidential authority to incarcerate suspected terrorists indefinitely, according to three senior government officials with knowledge of White House deliberations.

The whole story is worth reading. But I'm particularly interested in the last bit—where Linzer names one of the people they're considering using indefinite detention on: Walid bin Attash.

Walid bin Attash, who is accused [4] of involvement in the bombing of the USS Cole in 2000 and who was held at a secret CIA prison, could be among those subject to long-term detention, according to one senior official.

Little information on bin Attash's case has been made public, but officials who have reviewed his file said the Justice Department has concluded that none of the three witnesses against him can be brought to testify in court. One witness, who was jailed in Yemen, escaped several years ago. A second witness remains incarcerated, but the

government of Yemen will not allow him to testify.

Administration officials believe that testimony from the only witness in U.S. custody, Abd al-Rahim al-Nashiri, may be inadmissible because he was subjected to harsh interrogation while in CIA custody.

"These issues haven't morphed simply because the administration changed," said Juan Zarate, who served as Bush's deputy national security adviser for counterterrorism and is now at the Center for Strategic and International Studies in Washington.

A couple of bits about this.

First, there was a great deal of FBI work done on the *Cole* before the torture started. Are you saying we captured and held someone based on Rahim al-Nashiri's word, and not on real FBI information? This is all the more interesting, because information about bin Attash's role in the *Cole* bombing is precisely the information that—in 2000—was not used to support a response to the *Cole* bombing.

But the presentation of bin Attash as one candidate for indefinite detention raises another obvious problem with indefinite detention. Is the Administration worried about al-Nashiri's credibility as a witness? Or—given the weirdness surrounding his waterboarding—is the Administration worried about what al-Nashiri's testimony (either public or written) would reveal about our own treatment of him?

Will Walid bin Attash be deprived a day in Court because we're covering up our own torture?