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## Did Americans kill Anwar al-Awlaki?

By Nat Hentoff

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The CIA drone killing of the charismatically influential al-Qaida instrument of terrorism, Anwar al-Awlaki, was celebrated in a Wall Street Journal editorial (Oct. 1):

“For ridding the world of the menace that was Awlaki ... the administration deserves congratulations and thanks.”

I am sure the great majority of Americans agree. However, there are objectors claiming that this was an assassination (defined as the murder of a politically important or prominent person), which is outside of our rule of law. Before I analyze those arguments, this warning from American Civil Liberties Union National Legal Director Steven Shapiro:

“With each passing year, the risk increases that legal changes adopted after 9/11 that erode our (constitutional) civil liberties (as American citizens) ... will become permanent fixtures of our legal system.”

Al-Awlaki was an American citizen who earned a civil engineering degree from Colorado State University, a master’s degree in educational leadership from San Diego State University and worked toward (but did not finish) a Ph.D in human resource development at George Washington University — all this before becoming our notorious enemy, connected to al-Qaida, and relocating to Yemen.

The authority for the CIA to kill him came from the final decision from President Barack Obama, without the president having to go to a judge. Says ACLU Deputy Legal Director Jameel Jaffer: “It is a mistake to invest the president — any president — with the unreviewable power to kill any American whom he deems to present a threat to the country” (aclu.org, Sept. 30).

Also objecting is libertarian Congressman Ron Paul, R-Texas, who cites a Feb. 3 statement by Dennis Blair, then Obama’s national intelligence director, telling the House Intelligence Committee: “Being a U.S. citizen will not spare an American from getting assassinated by military or intelligence operatives” if he is a danger to national security.

Assassinated? President Obama and the members of his administration never use that word. They insist that so clear an enemy of the United States can and must be exterminated by the president.

But Rep. Paul goes on to emphasize that: “The president wants to spread American values around the world but continues to do great damage to them here at home, appointing himself judge, jury and executioner by presidential decree.”

A central point of all the objectors to this official killing of an American citizen — however “detestable” as Ron Paul calls him — has been made by Feisal Mohamed in his Huffington Post blog:

“And though the meaning of the due process clause of the Fourteenth Amendment (and Fifth) is often debated, it is seldom denied that citizens should have knowledge of the charges for which they are being tried, and should be tried before being punished.”

As news analyst Juan Williams declared during a panel discussion on Fox News on Oct. 2: “Mr. President, what is the standard (for us and the world) by which you would say that this man (an American citizen) deserves to be targeted?”

That and other questions were asked in a lawsuit filed by the ACLU and the Center for Constitutional Rights in August 2010 — Nasser Al-Aulaqi (alternate spelling) vs. Barack H. Obama, et al. U.S. District Court Judge John Bates in Washington prefaced his Dec. 7 decision by saying the case (Nasser is Anwar’s father) presented “stark and perplexing questions. ... Can the executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization?”

In this first case about an American citizen being targeted for assassination by his own government, Judge Bates dismissed the case. How come? He quoted from a previous Supreme Court decision, *Gilligan v. Morgan* (1973) that “it is difficult to conceive of an area of governmental activity in which the courts have less competence (concerning) ... the complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force.”

There was no appeal by the ACLU or the Center for Constitutional Rights, but both agree “the executive’s claimed right to act as prosecutor, judge and executioner” requires judicial involvements. Anthony Romero, head of the ACLU, had previously written Obama: “The program you have reportedly endorsed is not simply illegal but also unwise, because how our country responds to the threat of terrorism will in large measure ... govern every nation’s conduct in similar contexts.”

But rest easy. Dick Cheney praised Obama (cnn.com, Oct. 2) for the drone strike that killed al-Awlaki. And President Obama has indeed been lauded by other members of the Bush administration for — in my view — turning the rule of law upside down, as they did, to guard national security. This is the nation defined in our Constitution?

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.