The Secret Behind the Yemen War

Exclusive: A recent PBS report about the war in Yemen exposed the secret connection between the U.S.-Saudi alliance and Al Qaeda, a reality that also underscores the jihadist violence in Syria, writes Daniel Lazare.

By Daniel Lazare

PBS Frontline's "Yemen Under Siege," which aired on May 3, makes for powerful viewing. A first-hand look at the devastation that the U.S., Saudi Arabia, and other powers have visited on one of the poorest countries in the Middle East, the 35-minute documentary shows families struggling amid the rubble, children dying from mortar attacks, surgeons operating without anesthesia, and other such horrors.

But the most important revelation comes almost as an aside. Interviewing pro-Saudi fighters near the central Yemeni city of Taiz, journalist Safa Al Ahmad suddenly hears shouting. "What's wrong?" she asks. "Who are they? They don't want me to be here?"

A soldier explains that the people making a ruckus are Ansar al Sharia, i.e. fighters for shari'a. "And he just says quite casually, these are Al Qaeda in the Arabian Peninsula," Al Ahmad says later of the local Al Qaeda affiliate often referred to as AQAP. "And he referred to them by their local name, which is Ansar al Sharia. He revealed what is considered an open secret in the front lines, that they [AQAP] had been fighting with all the different factions, the [pro-Saudi] Yemeni factions and the [U.S.-Saudi] coalition against the Houthis."

"We don't accept you," the Al Qaeda members cry out. "On religious grounds, we do not accept you." A non-Al Qaeda fighter says dismissively, "They are ISIS." But a second corrects him: "No, they're not. They're worse than ISIS. We can't coexist with them."

But coexist they do, as the film makes clear. Yet another non-Al Qaeda fighter explains: "Islam does not allow for people to be overly strict. We must be moderate. But we have a group here who are strict."

"But you fight together at the front line?" Al Ahmad asks.

"For sure. At the front, we are together."

With that, the documentary lifts the lid on perhaps the single most incoherent aspect of U.S. policy in the Middle East. On one hand, the United States claims to be fighting Al Qaeda, and indeed AQAP, regarded as one of Al Qaeda's most

aggressive franchises, has been a prime target of U.S. drone strikes ever since the war on terror began.

At the same time, though, the U.S. provides military backing for forces led by Saudi Arabia, the United Arab Emirates, and other Persian Gulf petro-states that welcome AQAP fighters into their ranks as full and active participants in the anti-Houthi crusade.

The U.S. opposes Al Qaeda, on one hand, but supports elements that ally with it, on the other.

Explaining the War in Yemen

As Al Ahmad — a heroic Saudi dissident who has been effectively banished from her homeland for reporting on the plight of the kingdom's Shi'ite minority — puts it:

"This is why it's so difficult to explain the war on Yemen, because there are so many enemies that find themselves on the same front lines fighting the other enemy. A lot of people who wanted to fight the Houthis, that didn't necessarily agree with Al Qaeda, did join them because that was a ready front for them to go out and fight. And that grew with the ranks of Al Qaeda. And so the situation only got worse from 2012 until now."

Where formerly Al Qaeda "controlled huge parts of South Yemen," she adds, the group's reach over the last four years has grown to the point where it now constitutes a veritable state within a state.

All of which runs directly counter to the official line in Washington, which holds that if AQAP has expanded, it is only because it has taken advantage of the disorderly conditions that the Houthi uprising has imposed. As a U.S. counterterrorism official told The Daily Beast last summer:

“It is now clear that AQAP has been a significant beneficiary of the chaos unleashed by the Houthi takeover. While the Saudi-led coalition has started to push back the Houthis, they are not able to simultaneously fight AQAP. The net result is that AQAP continues to make inroads and exploit the situation.”

This vision holds that the Houthis are the prime cause of Al Qaeda’s expansion, they created the conditions that have allowed it to expand, and poor Saudi Arabia is now struggling valiantly to set things right. It’s all quite heartwarming except that “Yemen Under Siege” shows that the opposite is really the case.

Rather than rolling Al Qaeda back, it makes clear that, whatever their misgivings, pro-Saudi forces have come to rely on it as a useful asset in the anti-Houthi struggle and that, consequently, they have encouraged its growth. Since the Saudis are backing the anti-Houthi forces, this makes them complicit in AQAP’s expansion. And since the U.S. is backing the Saudis, this makes America complicit, too.

Indeed, America’s role is even worse. By subjecting AQAP to periodic drone strikes, it not only winds up killing civilians – such as the 14 members of a wedding party that the U.S. mistakenly targeted in December 2013 – but fairly encourages AQAP members to intermingle with other anti-Houthi forces by making it clear that is the one place it will not bomb.

The result, in effect, is a highly effective machine for fueling apocalyptic fervor, spreading Islamic militancy, and encouraging AQAP to extend its tentacles throughout the broader anti-Houthi movement. The only ones who are in the dark as to why AQAP can prosper under such conditions are the foreign-policy experts back in Washington.

A Broader Pattern

None of this is unique to Yemen, meanwhile. To the contrary, it takes place wherever the U.S. pretends to combat Al Qaeda while in fact doing the opposite. The original model was Afghanistan where Pakistani journalist Ahmed Rashid estimates that the CIA, the Saudis and others poured a total of $10 billion into the anti-Soviet jihad over a ten-year period beginning in mid-1979.

Since Islamic militants generally proved to be the most dedicated fighters, the money flowed to extremists such as Gulbuddin Hekmatyar, a notorious fanatic who got his start in the 1970s throwing acid in the faces of unveiled women at Kabul University.

His reign as prime minister in 1993-94 and again briefly in 1996 was so brutal and destructive that the Taliban were hailed as liberators when they finally

took over and sent Hekmatyar fleeing to Pakistan.

The same happened in Libya when the Arab Spring touched down in early 2011 and the White House urged Hamad bin Khalifa al-Thani, emir of Qatar, to contribute to a growing swarm of anti-Gaddafi rebels. Obama described Al-Thani at a Democratic fundraiser as "a big booster, big promoter of democracy all throughout the Middle East," but then confessed: "Now, he himself is not reforming significantly. There's no big move towards democracy in Qatar. But you know part of the reason is that the per capita income of Qatar is $145,000 a year. That will dampen a lot of conflict."

In fact, it did the opposite. Happy to oblige, Al-Thani, a major supporter of the Muslim Brotherhood, funneled $400 million in the form of machine guns, automatic rifles, and ammunition to Salafist rebels who proceeded to do to Libya what an earlier generation of U.S.-backed jihadis had done to Afghanistan, i.e. reduce it to chaos. [See Consortiumnews.com's "Obama's Risky 'Mission Creep' in Syria."]

Once again, Washington's clueless foreign-policy establishment was left scratching its head as to how it had all gone so wrong.

Finally, there is Syria, where such perverse policies have generated a tidal wave of violence resulting in millions of refugees and as many as 470,000 deaths. The Bush administration began making threatening noises toward Damascus weeks after invading Iraq in March 2003, although it quickly pulled back once events in its new protectorate began spinning out of control.

But three years later, then-U.S. Ambassador to Syria William V. Roebuck suggested that fostering religious conflict might be an easier way to bring down the Assad government. Even though Sunni fears of Shi'ite proselytizing are "often exaggerated," he advised in a diplomatic cable made public by Wikileaks, "[b]oth the local Egyptian and Saudi missions here (as well as prominent Syrian Sunni religious leaders) are giving increasing attention to the matter and we should coordinate more closely with their governments on ways to better publicize and focus regional attention on the issue." [See Consortiumnews.com's "Obama Tolerates the Warmongers."]

Exploiting Religious War

Religious war was too good an opportunity to pass up. In June 2012, *The New York Times* revealed that the CIA was relying on the arch-Sunni Muslim Brotherhood to help channel arms to rebel forces that had already taken the field against Assad.

In August, the U.S. Defense Intelligence Agency reported that Al Qaeda, the

Salafists, and Muslim Brotherhood were “the major forces driving the insurgency,” that the likely outcome was the establishment of a “Salafist principality in eastern Syria,” and that “this is exactly what the supporting powers to the opposition” – i.e. the U.S., Turkey, and Arab gulf states – “want in order to isolate the Syrian regime, which is considered the strategic depth of the Shia expansion….”

In August 2014, Deputy National Security Advisor Ben Rhodes assured Americans that ISIS posed no danger since its “primary focus is consolidating territory in the Middle East region to establish their own Islamic State” rather than striking out at Western targets abroad.

Hence, Americans could count on the violence remaining safely self-contained as Islamic State made life miserable for the Damascus government – an assessment, needless to say, that proved woefully incorrect when ISIS hitmen shot up the Bataclan theater and other Paris targets last November, killing 130 people in all.

Thereafter, U.S. policy wobbled ever more unsteadily. Washington still tilted toward Islamic State when it came to combatting Syrian government forces, which is why it refrained from bombing ISIS fighters as they converged on Palmyra in May 2015 even though they would have been perfect targets as they traversed miles of open desert.

But it otherwise tilted toward Al Nusra Front, as Al Qaeda is locally known, which it now regarded as less dangerous, or toward groups with which Al Nusra is closely aligned.

“Moderate these days is increasingly becoming anyone who’s not affiliated with ISIL,” Director of National Intelligence James R. Clapper Jr. explained in March 2015 – and indeed the White House made no objection a month later when so-called moderates joined with Al Nusra to launch a major offensive in Syria’s northern Idlib province. [See Consortiumnews.com’s “Climbing into Bed with Al-Qaeda.”]

Covering for Salafists

Similarly, the U.S. resisted classifying a Salafist army known as Ahrar al-Sham as terrorist even though it collaborates closely with Al Nusra and its ideology is virtually identical, as Stephen Gowans recently noted at the Global Research website.

The same goes for a Free Syrian Army unit known as the 13th Division, which the US has long backed even though it maintains “a tacit collaboration with Nusra” according to *The Wall Street Journal* “and even shared with the group some of its ammunition supplies.”

Mohammad Alloush, who enjoys strong US backing as the chief rebel negotiator at the Geneva peace talks, is a leader of yet another Salafist group called Jaysh al-Islam, which issued a blood-curdling call to exterminate Syria's Alawite community in July 2013. Jaysh al-Islam, it informed the Alawites, "will make you taste the worst torture in life before Allah makes you taste the worst torture on judgment day." But while one might think this would place Jaysh al-Islam beyond the pale, former Ambassador to Syria Robert S. Ford praised it a year later as one of the "moderate" rebel forces that were making life "particularly painful" for the Damascus government.

Genocide is permissible, apparently, as long as it's not too extreme. More recently, Secretary of State John Kerry assailed Assad for bombing rebel positions in Aleppo even though it is clear that so-called "moderates" have intermingled with Al Nusra fighters to the degree that it is impossible to attack one without affecting the other. After Colonel Steve Warren, spokesman for US military forces in Iraq, conceded in a press briefing that "it's primarily al-Nusra who holds Aleppo," Kerry reportedly pushed to include it among the non-terrorist groups exempt from Syrian government attack under the terms of an Aleppo ceasefire agreement that went into effect on May 5.

"This was absolutely unacceptable," Russian Foreign Minister Sergey V. Lavrov said, "and at the end we managed to strike it down."

While the U.S. was happy to see ISIS attack Syrian government forces in Palmyra, it was none too pleased to see Syrian forces attack Al Qaeda in Aleppo, which pretty much tells us where its sympathies lie.

If ISIS, Al Nusra, and Al Qaeda-clones like Ahrar al-Sham and Jaysh al-Islam continue to grow, it is not hard to figure out why. The more the Sunni political spectrum shifts in a Salafist direction as sectarian warfare deepens and spreads, the more the advantage goes to a hard core composed of ISIS and Al Qaeda.

They are the best fighters, the most dedicated, the best financed thanks to years of support by wealthy gulf contributors, and the best armed thanks to weapons that other groups have relinquished voluntarily or not. Despite friction, the Saudis and Qataris cannot say no to such forces because they see them as increasingly important in a fight against a "Shi'ite crescent" stretching from the Houthis in Yemen to the Alawites in Syria.

They are allies whose help they cannot afford to forego, which is why the various Sunni forces are coming together at this point rather than pulling apart. Hence the intermingling of "moderates" and Al Qaeda that we see from Taiz to Aleppo.

As for the U.S., it is locked in a dysfunctional marriage with the Saudis from which it is unable to escape. As a result, it winds up in bed with the same forces as well. Like a character in a Somerset Maugham novel, it finds itself returning again and again to the same sordid love affair no matter how hard it tries to resist.

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How Obama 'Legalized' the War on Terror

Among the troubling legacies of Barack Obama's presidency is his consolidation of the dubious legal principles that George W. Bush cobbled together to justify the Global War on Terror, explains Michael Brenner.

By Michael Brenner

President Barack Obama's uneasy encounters with the law in devising numerous innovative means to prosecute the "War on Terror" are treated exhaustively in Charlie Savage's much discussed book, *Power Wars*. This compendious volume is destined to be a landmark in the writing of the period's history.

It also should be seen as a marker of its times as it at once explains how Obama sought legal grounds by which to justify methods that skirt the Constitution and takes at face value the assertions of those who claim to have done a conscientious analysis of the laws and the Constitution without prejudice.

Therein lies the heart of the dilemma associated with an account of this kind. For there are two broad approaches available. One is to surmise that policy preferences were made prior to and independent of the legal exegesis – however elaborate that exercise may have been.

The other is to give the participants, in the Oval Office on down, the benefit of considerable doubt in ascribing to them an earnest dedication to ascertaining where the legal boundaries lay before the decisions were taken on policies and programs.

Savage doesn't make a choice – explicitly. He does so implicitly, though, by concentrating on a systematic account of the deliberative process among the lawyers charged with demarcating legal territory. For this purpose, he spent hundreds of hours interviewing those officials. The strategic and political

dimensions are present only as background factors.

Rarely does Savage address the key question of how the latter intruded on the former – and then only obliquely. The author apparently did not press the respondents very hard to reflect on how their legal opinions might have been affected – wittingly or unwittingly – by what they knew of the Obama White House's predispositions.

Consequently, the analysis is caught in the snare of literalism. So much so, that Savage refrains from facing squarely the possibility that the officials queried may have had an incentive of a careerist nature to view issues in a particular light.

Favorable Reviews

Most reviewers of the Savage account accept the validity of its underlying premise. As David Luban writes in *The New York Review of Books*: The lawyer's "domain is the arcane network of laws that constrain the president as he wages" the War on Terror. "If the president's lawyers tell him that a policy is illegal, he will have a hard time carrying it out."

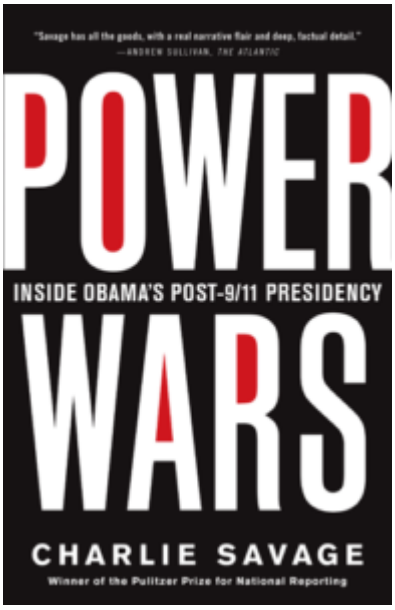
This is what we Americans would like to believe. But is it true? The record suggests otherwise. One must strain mightily to find instances where the White House did not do what it wanted to do – or, where the President felt compelled to override a contrary interpretation by his lawyers in order to act as he was inclined.

Savage can only cite two instances in support of this thesis. The first concerns the administration lawyers' tergervisations in trying to find some statutory basis for the military intervention in Libya.

As Luban paraphrases Savage: "the lawyers didn't think the solution they eventually came up with was the best reading of the law, merely that it was 'legally available.'"

This satisfied Obama because what he wanted, and expected, was a record of legal deliberation rather than a clear-cut judgment of what the law approved. Ambiguity was fine. Surely, his lawyers were well aware of this – as on other

matters.



The other case centered on the question of whether the Patriot Act of 2001 provided sufficient grounds for attacks on al-Shabaab in Somalia, which at that time was not officially affiliated with Al Qaeda. The Defense Department's General Counsel, Jeh Johnson, created some static by issuing the stunning opinion that al-Shabaab could not be judged as "associated force" as stipulated by the statute. Technically, this countermanded a planned strike by Special Operations Forces.

Did the law make a difference – as Savage asserts? Manifestly, it did not. The United States has launched drone strikes and raids into Somalia steadily for the entire seven years of the Obama presidency. Three weeks ago, it boasted about the success in killing over a hundred "fighters" at a supposed training camp.

The drone campaign develops: the Pentagon has announced that it has devised a new formula for estimating what level of "collateral" civilian casualties is acceptable from a conjectured strike – relevant factors include the value of the target, chances of success, and the demographics of the hypothetical "collaterals."

Moreover, the White House also has sent Special Forces teams into 42 other countries to deal with militants whose Al Qaeda (or ISIL) connections were vague or non-existent, without an official formula for measuring unwanted casualties.

The place of the Patriot Act in these lawyerly discourses is of central importance. Time after time, the debate turns on the question of whether the provisions of the Act are applicable to a particular place or action. There was a strong tendency, glossed over by Savage, to take the Patriot Act to be tantamount to a Constitutional Amendment – or, at least, some sort of Basic Law superior in legal standing to all other statutes.

Of course, there are no legitimate grounds for doing so. Indeed, several provisions of the Act are of dubious Constitutionality. They have not been fully adjudicated because two successive administrations have fought tooth-and-nail to deny plaintiffs access to the courts, usually with the acquiescence of a supine judiciary.

The invocation of "state secrets," especially in regard to rendition and torture, has been one of the preferred stratagems for doing so – in direct contradiction of solemn pledges given by candidate Obama in 2008.

Legal Architecture

The legal architecture of Obama's version of the "war on terror" is as resistant to adjudication as was Bush's more ramshackle structure.

How does a defendant prepare a defense when he is denied accusatory evidence on the grounds that it entails "state secrets?" How does a defendant in a non-terrorist case protect himself from the prosecution's exploitation of evidence obtained without a court warrant when its source is kept secret because it was the fall-out from a national security surveillance case?

How does a plaintiff gain standing to bring suit when the courts agree with the Executive's assertion that the individual in question must demonstrate having suffered personal damage? How does some American citizen on Obama's "kill list" appeal for redress when required to make a personal appearance in a United States court – transit to which might make him vulnerable to murder by American authorities?

Anwar al-Awlaki's father made a legal attempt to question his son's inclusion on the 'kill list' but was denied standing. It remains unclear whether the presentation of the cadaver would have changed the court's ruling. Following the Court's logic, Awlaki would have been required to address his complaint from beyond the grave.

Two weeks later, Awlaki's Denver-born teenage son was a collateral victim of a second Predator strike that killed an alleged Al Qaeda in the Arabian Peninsula member.

It seems that only another branch of the federal government, or a state government, has a chance of forcing judicial review of Executive actions of questionable legality/constitutionality.

Where there is consensus among them that a state of national emergency renders that pursuing such a theoretical option itself constitutes a threat to the country's security, no citizen or group of citizens has recourse to the courts

for redress of grievances. Savage disregards this overarching issue.

Think for a moment where that leaves us. On the one hand, a Christian Salafist in Texas can be heard by the Supreme Court in complaining that his fundamentalist interpretation of the Bible doesn't permit him to administer paycheck withholdings of health insurance premiums where the coverage extends to the policy-holder (with whom he has no personal relationship) a right to certain procedures – procedures that he, the employer, judges abhorrent – *and win his case*.

On the other hand, someone whom the President of the United States, acting at his own discretion behind his Oval Office desk, has checked off as a Hellfire missile target has no judicial recourse whatsoever.

That reality may not require a 700-page book; however, there is a convincing case to be made that it is far more important for the future of law in this Republic than the nuanced phrasing in a memo drafted by a lawyer deep in the engine room of the Executive legal machine which the ultimate decision-maker never reads – and, had he noted it, never would have done anything different.

A Glaring Omission

Savage's lengthy account has another, more glaring omission. He makes no reference to the White House/CIA hacking of the Senate Intelligence Committee computers in Fall 2014 at the time of the standoff over release of the Committee's report on rendition and torture.

CIA Director John Brennan was battling to squelch the report. He was most desperate about retrieving a document originating with the Agency's own Inspector General that provided damning evidence, i.e. the so-called "Panetta Report."

Although transmitted voluntarily, the Director saw that as a crucial mistake and wanted it back – by any means fair or foul. President Obama approved the break-in. We know of no legal opinion, memos or argument justifying this unconstitutional action.

The CIA under John Brennan's direction did not act as a rogue organization. The removal of the "Panetta Report" and other documents from the Senate Committee computers, the hacking of the staff files, and the sending of a "crime report" to the Department of Justice requesting that Senate staffers be investigated for criminal acts occurred with the knowledge and approval of President Obama.

Publicly, the White House declared its "neutrality" in the dispute between the CIA and Congress. He went on to distance himself from the matter: "that's not

something that is an appropriate role for me and the White House to wade into at this point." That statement is deceitful.

Is this not arguably an impeachable offense? Why does Savage totally ignore it?

(Alert: the reader must plow through all 700 pages in order to make that assertion since the book lacks an Index. That is odd for a scholarly work destined to remain a reference source for years to come, and where there are notations of numerous persons, offices, documents etc. on almost every page. It is likely that most reviewers, therefore, have only a faint knowledge of its contents – Luban excluded).

An Alleged Distinction

Much of Savage's interpretations have as their pivot an alleged distinction between "civil liberties" and the "rule of law." Luban claims that "confusing the two is understandable" but seriously mistaken. However, this is by no means self-evident.

The "rule of law" includes obedience to the Constitution, which means the Bills of Rights among other provisions. Admittedly, the Bill of Rights does not automatically take precedence over those other provisions. Still, neither can they simply be traded-off against the supposedly good intentions behind some proposed governmental act or other.

Luban gives the game away in stating: "Obama and his team aimed to provide a firm legal foundation for his policies, including – preventive detention, targeted killings, and extensive surveillance." They succeeded.

As John Brennan, Obama's muse on all matters "terrorist," concedes: "I have never found a case that our legal authorities … prevented us from doing something that we thought was in the best interest of the United States to do."

The FISA Court recently reconfirmed that the FBI is free to search Americans' email that have been intercepted without a warrant while supposedly gathering foreign Intelligence. Mission accomplished!

The juxtaposition of "civil liberties" and "rule of law" can have insidious implications. For the distinction easily lapses into the proposition that "civil liberties" as stipulated in the first Ten Amendments can be compromised according to circumstances. That idea of a "trade-off" has been accepted even by many on the libertarian side of debates about various aspects of the "war on terror."

The debate about privacy and surveillance in particular too often accepts the

presumed need to “strike a balance” between “security” and civil liberties as its pivot. Those who argue that Fourth Amendment guarantees are not liable to attenuation or limitation because of exigent conditions are declared to be absolutists.

For the overwhelming majority of commentators, some concessions to those conditions are deemed incontrovertible. Even distinguished law professors from prestigious law schools tell us that. [See Jeffrey Rosen “Naked Scanners, GPS Tracking, and Private Citizens: Technology’s Role in Balancing Security and Privacy,” 57 *Wayne Law Review* 1-10 (2011); David Cole “What Hope for Human Rights?” *New York Review of Books* September 17, 2013]

False Dichotomy

But it is a false dichotomy – in two respects. At the practical level, there is no evidence that transgression on our liberties makes us safer – as noted. More fundamentally, unlawful and/or unconstitutional conduct is unlawful and unconstitutional whatever the supposed motivation and purpose.

That is the essence of a rule-bound system – a system of law that delimits the valid, acceptable actions of individuals – including public officials. Expedient need is not accepted as grounds for murdering someone – even if you suspect him of harboring designs to kidnap your child. Hunger is not an acceptable excuse for mugging somebody and stealing their purse.

Motivation may be acknowledged as a mitigating factor when it comes to meting out punishment. The illegality of the act itself is not obviated, though. If searches and seizures without warrant are legally proscribed, then it should make no difference that General Clapper of the NIO, or Admiral Rogers of the NSA, or Mr. Brennan of the CIA – or Mr. Obama in the White House – thinks that it would be a good idea to violate the law and/or Constitution.

That sort of rationalization marks the road to autocracy and the subordination of law to individual will. It means wounding democratic government as we know it.

Any reasonable concern about the inherent right of public authorities to act when a situation demands the resort to coercive action or some other exceptional behavior that “exigent circumstances” and “public safety exceptions” dictate have long been incorporated into Fourth Amendment and other constitutional jurisprudence to accommodate the rare “ticking time bomb” situation.

As former FBI official Coleen Rowley has pointed out: “There’s a big difference between allowing an individual officer to determine he/she can dispense with a warrant under exigent circumstances which will have to be defended later in a

court of law, however, and creating a blanket, hierarchal ‘exigent circumstances’ during wartime. It’s essentially the difference between an individual’s right to self-defense and a country making the determination to justify going to war. The law made sense as it’s the ‘group think’ that is most dangerous, not the rogue ‘bad apple.’”

There are *inalienable* rights as ensconced in the Constitution. They are not eligible to be treated as commodities for haggling among the CIA Director, the Attorney General and the man in the Oval Office and his political operatives. We contravened that principle in 1942 to our everlasting shame – or so we thought afterwards. Exactly 60 years later, we went down that same road of infamy.

We have seen the tangible consequences of playing fast and loose with legal principle. President Obama recently felt no qualms in absolving former Secretary of State Hillary Clinton for her violating the law and federal regulation through her use of multiple email accounts and a home server.

“There is classification and there is classification,” he reassured us. That distinction, though, was not applicable in the relentless persecution of leakers like Thomas Drake whose sole, selfless motivation was to expose abuses by their government which Mr. Obama had taken pains to conceal and to deny.

Yet more egregious was the Obama-Holder arbitrary amendment of the Constitution in pronouncing that the country’s biggest banks could escape both criminal and civil prosecution because punishment for their illegal actions might do serious harm to the economy. The two men, in effect, unilaterally and without any process other than their own political calculus placed an asterisk after the Constitutional stipulations regarding “equal protection of the laws.”

There is no way of knowing with precision the avenues of thought and psychology by which those previous episodes helped shape a policy-maker’s mindset leading to later actions. It is entirely reasonable, though, that egregiously bending the law and Constitution in one domain by referring to the demands of politics makes it easier to do so in other domains, subsequently.

Nowhere in the book is there a sign that Obama, the lawyer, appreciates the menace to the country’s constitutional underpinnings from a systematic strategy of “legalism” which deforms the law. Nowhere does Savage suggest that this is a serious deficiency and a lasting cost of the GWOT.

Stretching Credulity

Back to the question of lawyers’ analytical autonomy. It stretches credulity beyond the breaking point to claim that these outcomes were a coincidence. That administration lawyers just happened to make interpretations that favored the

policy preferences of the man in the Oval Office.

Savage's fatal error of omission in his approach is the glaring failure to prod his dozens of interviewees to address the issue of bias. After all, they are not going to volunteer it.

Who would ever offer the observations: "we fixed the facts around the policy proposal;" "it was a stitch-up;" "I was so terrified at the prospect of another 9/11 that I bent over backwards to give the Executive the benefit of the doubt;" "my husband/wife admonished me: are you out of your mind! – risking having to look for a job in Boston/New York and taking the kids out of school in mid-semester?;" "I relish life in the corridors of power and wouldn't do anything to jeopardize it?"

Or, further down the ladder, "if I really ticked off Holder, I might have to spend the last 10 years of my career adjudicating disputes between the EPA and the National Park Service over the environmental impact of septic tanks at Yellowstone."

Is this an exaggeration of the internalized pressures that the Obama lawyers experienced? Was there solid basis for their supposed fears of "consequences?" No; yes. Consider the enormous pressures felt by the lawyers and regulators who had some measure of responsibility for imposing some restraint on the financial predators in the wake of the 2008 crash.

It is very hard to avoid the judgment that, due to his user friendly and accommodating attitude, Savage's respondents at times took him for a ride. The most striking case in point is their audacious assertion that the White House's implacable persecution of leakers did not represent a general strategy, but rather was the coincidental outcome of cases treated on an individual basis. Savage swallows this line whole.

Crude Fabrications

The worldly lawyers who are Savage's subjects shy away from the crudest fabrications. An appropriate analogy is baseball's "in-the-vicinity" rule. That refers to the unstated, universally accepted norm that, when turning the double-play, the shortstop – or usually the second baseman – need not have his foot clearly on the bag at the moment of pivoting to throw to first with a hard-sliding runner bearing down on him. He merely has to be reasonably close to it. Nowhere is it written down; yet, all accept and observe it.

So, too, a legal interpretation about some dubious Executive action in the "war on terror" need only be in the vicinity of what law and precedent say is valid for it to pass muster. The courts play a role similar to the umpires' in

ruling accordingly.

FISA Courts, for their part, accept the pivot foot being anywhere on the diamond. The difference is that all baseball fans know of the in-the-vicinity rule while citizens are kept in the dark about the large inventory of similar unwritten rules in the judicial domain insofar as "terrorism'' is concerned. Savage seems oblivious of this reality – or else, does a good job of pretending so.

(FISA Courts, as the record attests, are something of a joke insofar as they agree to 99.9 percent of the Executive's requests, often grant broad open-ended authority that extends the requested powers well beyond the particular case at hand – something they have no legal mandate to do, and usually don't bother to write an explanatory opinion. This is pretty much what one would expect from judges 85 percent of whom are hard-core Republicans hand-picked by Chief Justice John Roberts who characteristically doesn't hesitate to let his personal policy predilections dictate his judicial behavior.)

Lacking Context

Context is the big missing ingredient in Savage's 700-plus-page opus. Fear and dread permeated the government as it did the country. President Obama's one fixed reference point from the day he entered office was to avoid another traumatic act of terrorism that likely would make him a one-term President. That reality warped perceptions down the line.

The mania for secrecy about everything – including official documents that contained the legal justifications for dubious acts – infected everyone. "No more white papers" ordered White House Counsel Neil Eggleston – they might leak. In short, no paper trail.

This is not the mindset of a lawyer who believes that the justifications of the Obama legal team provided a "firm" legal basis for what they were doing. That supposedly "firm" legal basis, in several instances, resembles the legal basis for acquittal in the notorious Texas "affluenza" case.

Savage, in one of his rare digressions into the political realm, recounts how shaken Obama was by the failed attempt by the "underwear bomber" to blow up a plane during Christmas week of 2009. It motivated an emotionally convulsed President to double down on the draconian methods incorporated in now *his* "war on terror." This overwrought response was a reflection of the times – and of the man.

The quietus since 9/11 rightly should have been taken as evidence that Al Qaeda and friends were incapable of mounting anything like that again. A botched

effort by a rank amateur to bring down a civilian aircraft by setting his *Fruit-of-the-Looms* on fire hardly amounts to a threat to the country's national integrity and well-being. Perhaps, a single tragic event – but nothing more. Yet, it spurred the campaign to "do what we must," dragging the equally shaken and willing lawyers along with it.

There is a strange intermingling of edgy intensity and the casual in all this. Our leaders, at all levels, are supposedly in a sweat of anxiety about terror and instill that feeling in the populace. Yet, their approach in conducting the "Global War On Terror" often has been haphazard.

FBI Director James Comey told us on April 20 that the Bureau incurred a cost of $1.3 million in opening the infamous San Bernardino Apple I-phone. That was the fee charged by private consultants. Fourteen years into the GWOT and after the expenditure of close to a trillion dollars, the Intelligence agencies have to go to outsiders to find someone qualified to do a job that is daily fare for Apple software specialists.

So the FBI, our ultimate protector which relies overwhelmingly on technical tools to do its job, in effect resorts to the equivalent of renting a screwdriver from a high tech hardware store. Equally bizarre, the technical staff of this commercial enterprise sells its services worldwide. This stunning incongruity is shrugged off as just doing what's necessary to keep the terrorists at bay.

Obama's Legacy

The truth is more insidious. If the government authorities thought that the United States actually was endangered to the high degree they claim, this kind of slipshod organization wouldn't be tolerated.

The GWOT, in this and many similar instances at home and abroad, shows itself to be a macabre game wherein the currency of success is money, power and status as much as it is keeping Americans safe.

Reviewing the voluminous record, it is hard to avoid the conclusion that, for all the prolix lawyerly discussion, the Obama people reached the same conclusions as did John Yoo and David Addington in the Bush administration: the President could do pretty much as he pleased.

The thousands of hours of process and deliberation were not just theatre; however, in terms of practical effect, they might as well have been. Indeed, the long-term consequences are likely to be more pernicious since all three branches of government now have persuaded themselves that there are 'firm' legal grounds for doing things that a generation ago would have been judged clearly illegal

and/or unconstitutional by any disinterested court.

Obama legitimized and thereby institutionalized the illegalities of the “war on terror.” That is his legacy.

The discomforting truth is that the high-powered Obama lawyers, drawn from elite backgrounds, suffered from an emotional ailment – the exaggerated dread of Islamist terrorism – just as have their fellow citizens. Consequently, they were prepared to subordinate good sense and their oath to preserving American legal principles to giving a veneer of legitimacy to a slapdash series of ineffectual policies that have compromised our democracy while making us less safe than we were in 2002.

Those lawyers, unlike their untutored compatriots, should have known better – and had a professional obligation to maintain the critical edge of distinguishing between going through the motions of legal reasoning and acting with full probity.

Belief that the United States is in grave and imminent danger from serious terrorist attack is the cornerstone premise holding up the massive edifice of our Intelligence apparatus. To acknowledge that this rendering of reality is groundless is to undercut the pervasive view that extraordinary measures to protect the United States’ security are imperative.

As William Pitt warned us: “Necessity is the plea for every infringement of human liberty. It is the argument of tyrants; it is the creed of slaves.”

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