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Obama's Kill List and the End of the Post-9/11 World

By Charles P. Pierce
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The big story on the front page of *The New York Times* today about the decision-making process involved in putting together the White House "kill list" — and I'm old enough to remember those romantic days when the only one involved was Gordon Liddy and the only name on the list was Jack Anderson's — is not about the means of killing and the relative merits of killing from afar, or even about what the story refers to as the president's "own deep reserve" about the possibility that he might have to drop a Hellfire or some teenagers. (Let's face facts: If he didn't have a

"deep reserve" about this, he'd be a sociopath and, as it is, the available evidence indicates that he seems to overcome his deep reserve fairly readily.) It's really not about what he does. It's about what we tolerate.

Let's get the easiest stuff out of the way first. There is absolutely nothing in the Constitution that allows the president to make private war on individuals. Any historical precedent you can cite is rooted not in that document, but in the steady historical draining of the war powers from the Congress, where the Founders anchored them, to the Executive branch, all the way back to Thomas Jefferson and the Barbary Pirates, when Jefferson circumvented the requirements by sending a fleet off to Africa and not telling Congress until it was too late to recall it. What enables this president — any president — to behave in such a manner is custom and tradition, an historical easement granted by the Congress across its clearly defined sovereign territory because Congress has grown too timid to stand up for itself in this area, occasionally passing some fig leaf nonsense that it says amounts to a declaration of war. (Jefferson finally blackjacked one of those out of the Congress.) Except that, under the Constitution, nothing "amounts to" a declaration of war. War is declared or it isn't. You can argue that, in doing what he's doing, the president is acting in accordance with longstanding policy, and even that he's acting in the best interest of the nation, but you cannot argue that he is upholding the Constitution he swore to preserve and protect, because he's not. And no pet lawyer can say that he is.

All the talk about "flexibility" and how the president manages to keep all his options open reminds me of nothing more than all that Neustadt and Graham Allison that we learned in the aftermath of the Kennedy Administration. JFK was big on flexibility and options, too. Sooner or later, that led to body counts, and the new math of the old slaughter. There are echoes of this here....

It is also because Mr. Obama embraced a disputed method for counting civilian casualties that did little to box him in. It in effect counts all military-age males in a strike zone as combatants, according to several administration officials, unless there is explicit intelligence posthumously proving them innocent. Counterterrorism officials insist this approach is one of simple logic: people in an area of known terrorist activity, or found with a top Qaeda operative, are probably up to no good. "Al Qaeda is an insular, paranoid organization - innocent neighbors don't hitchhike rides in the back of trucks headed for the border with guns and bombs," said one official, who requested anonymity to speak about what is still a classified program.

How about the guy pushing the goat cart up the other side of the road when the trucks with the guns drive by? Is he up to no good or is he just going to work? And how do we count him? Or do we? And, all the same to you, I'd rather not have the "explicit intelligence" that I am innocent produced "posthumously" just because it keeps your bookkeeping clean. What in hell good is it to me then? Am I less dead?

The *Times* continues:

Aides say Mr. Obama has several reasons for becoming so immersed in lethal counterterrorism operations. A student of writings on war by Augustine and Thomas Aquinas, he believes that he should take moral responsibility for such actions. And he knows that bad strikes can tarnish

America's image and derail diplomacy. "He realizes this isn't science, this is judgments made off of, most of the time, human intelligence," said Mr. Daley, the former chief of staff. "The president accepts as a fact that a certain amount of screw-ups are going to happen, and to him, that calls for a more judicious process."

In this, the president becomes only the most recent secular power player to find the "just war" doctrine a useful alibi for doing what he wants to do in the first place, while simultaneously salving his conscience. It has been a moral mess since it was first devised, and has been used as alibi for imperial bloodletting going back to the doctrine's formative days, when Tertullian told the emperor not to worry, that the Christians in his army were not pacifists. (Read up some time on the tortured mess the Church made of itself trying to determine if "just war" applied to "just revolution," especially when the religious turmoil of the Reformation spilled bloodily over into peasant revolts and the like.) And, anyway, the president is relying on a theory first devised by a bishop named Augustine from North Africa and codified by a scholar in France named Thomas Aquinas. Whatever happened to all that bellyaching about basing American law on the opinions of damned foreigners, anyway?

Finally, though, the nickel drops:

David Axelrod, the president's closest political adviser, began showing up at the "Terror Tuesday" meetings, his unspeaking presence a visible reminder of what everyone understood: a successful attack would overwhelm the president's other aspirations and achievements.

This has been the new normal since September 11. Everyone knows, but nobody says, that if something happens again, the elite consensus in this country, and the overwhelming consensus of the citizenry, will be to pitch the Bill of Rights out the window and start rounding folks up. And, also, that, if it happens on a Democrat's watch, they'll be carving Dick Cheney's head on Mt. Rushmore by sunset of the second day. Could make it tough in Indiana or North Carolina this fall. And thus do homicidal maniacs overseas come to control the spirit of the democratic process.

And, of course, there is the extrajudicial killing of an American named Anwar al-Awlaki. The decision to do so was reached in the calm, cool deliberation of absolute absurdity:

That record, and Mr. Awlaki's calls for more attacks, presented Mr. Obama with an urgent question: Could he order the targeted killing of an American citizen, in a country with which the United States was not at war, in secret and without the benefit of a trial? The Justice Department's Office of Legal Counsel prepared a lengthy memo justifying that extraordinary step, asserting that while the Fifth Amendment's guarantee of due process applied, it could be satisfied by internal deliberations in the executive branch.

Is it even necessary to point out how preposterous it is to claim that the dead man's Fifth Amendment rights were guaranteed because members of the Executive Branch had long discussions about how and when to kill him? Jesus, just kill the guy. The Bushies may have had manifest contempt for due process, but at least they didn't go out of their way to make a burlesque out of it.

And then, ultimately, after a lot of tightening on the rucksacks and everything, we arrive, finally, at what we've made of ourselves and our nation:

Mr. Obama's record has eroded the political perception that Democrats are weak on national security. No one would have imagined four years ago that his counterterrorism policies would come under far more fierce attack from the American Civil Liberties Union than from Mr. Romney. Aides say that Mr. Obama's choices, though, are not surprising. The president's reliance on strikes, said Mr. Leiter, the former head of the National Counterterrorism Center, "is far from a lurid fascination with covert action and special forces. It's much more practical. He's the president. He faces a post-Abdulmutallab situation, where he's being told people might attack the United States tomorrow." "You can pass a lot of laws," Mr. Leiter said, "Those laws are not going to get Bin Laden."

Of course not. Laws are weak. Laws are wrong. Laws are as clumsy as flintlocks and Bowie knives. Laws do not help make people dead. (Except in Texas, of course.) Laws are not even good politics any more. They won't get you re-elected. It used to be that we were in a post-9/11 world, and that made anything acceptable. Now, apparently, we are in a post-bombs-in-the-skiivies world, and that's an even more dangerous place.