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The Wall Street Journal story “Drone Kills Top Al Qaeda Figure” and The New York Times “Judging a Long, Deadly Reach” and “Two-Year Manhunt Led to Awlaki Death” reports a sensational action, the killing of Anwar al-Awlaki, It was a carefully planned American Military killing of a declared soldier warring against the United States. The fact that the deceased was also an American Citizen, creates the semblance of a legal question when in actuality there is none. However there is indeed a factual question that must always be posed and this leads to the real issue. How to separate the legal and factual question if they can be separated at all is the real issue.

No enemy soldier or enemy official, when actually at war with the United States is entitled to any protection of any kind offered by the United States Constitution. Our Constitution does not discuss the killing of enemy soldiers during actual warfare operations since this is clearly not a legal question. Killing of enemy soldiers during warfare is a military question and does not involve any question of law. Such killing is done without “due process of law”, since such killing is done without any law at all. The specific authority to kill enemy soldiers during warfare operations is not to my knowledge authorized by any provision of the United States Code. I have never read any section of law that specifically states the “American military is hereby authorized to kill enemy soldiers during warfare”. Yes of course enemy soldiers are protected when they become “prisoners of war” and such protection is part of the American legal system. But a soldier who becomes a “prisoner of war” which apparently can only occur by **the soldier surrendering**, is no longer a soldier at war and so the law of such military prisoners then is invoked and that then becomes a legal question. A soldier who surrenders is no longer a soldier at war, he becomes a prisoner of war.

So here we have a man, Mr. Anwar al-Awlaki, who most certainly was a soldier at war with the United States and most certainly had never surrendered. Why then is this being discussed as any kind of legal question. You know if Anwar al-Awlaki was not a citizen of the United States but a common citizen of any other country, just going about his private business, and never waging any war against America, it would be a serious crime for the United States to murder such a man. Whether he is an enemy soldier or not is the only consideration. The issue is Not whether he is an American, but whether he is an enemy soldier during time of war and it certainly appears he was. SO enemy soldiers during time of war are supposed to be killed by the United States Military. That is what we have a military for. This is not a legal or due process issue at all.

However the true fear and concern is how do we make a determination as to whether those we kill are in fact enemy soldiers and not just persons who our elected government simply wants to murder for other reasons? As long as we know that in fact the decision to kill is a verified and confirmed decision to kill enemy soldiers the law has no interest in this. But if ever we have a time where our Military and the destructive force of the United States is used to kill those who we simply do not like, then our law must rise up and punish those who under the guise of authorized American power commit murder in contravention of our laws. Here in appears that is not the case and our country is a little safer for the killing of those who seek to kill us.

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