



Written by [Thomas R. Eddlem](#) on October 1, 2011

Awlaki Killing: Does America Need Courts, Juries, or Trials Anymore?

Awlaki wasn't the only American targeted in the drone strike. "The strike also killed a second U.S. citizen — Samir Khan, the co-editor of an al-Qaeda magazine — and two other unidentified al-Qaeda operatives," the Yemeni government [told](#) the *Washington Post*. *The New American* [reported back in June](#) that dozens of other American citizens are apparently on Obama's assassination list.



President Obama [alleged](#) that Awlaki "directed the failed attempt to blow up an airplane on Christmas Day in 2009. He directed the failed attempt to blow up U.S. cargo planes in 2010." Awlaki denied directing these attacks in a [February 2010 interview with Al Jazeera](#), though he admitted he liked the idea of attacks on U.S. military targets.

So Awlaki was not a nice guy. There's no doubt about that.

But many patriotic Americans are wondering: Does the President have the rightful power to order the assassination of any U.S. citizen he deems a threat or a danger to society? And if the answer to that first question is yes, what limit can be placed on a presidential license to kill? The Constitution and Anglo-American common law places no firewalls on this pretended new presidential power. And if the President is to be trusted with an unlimited license to kill, why should the United States continue to bother with inefficient courts, juries, and trials at all?

The basic argument justifying Obama's assassination of Awlaki is this: Trust the President with an unlimited license to kill. Putting a video criticizing America on YouTube, as Awlaki unquestionably did, may not be a crime punishable by death. But the President says he has secret evidence Awlaki did more than cheer on terrorists. We must, the President/executioner's supporters argue, trust the President.

But America's whole history, indeed the lesson of the whole 800-year-old Anglo-American common law system, is that chief executives cannot be trusted to be judge, jury, and executioner. The Anglo-American purpose in holding trials was not to confer some benefit upon the guilty, but to sort the guilty from the innocent so that innocents are not punished. Chief executives have long knowingly thrown innocent people in jail (or knowingly kept innocents there, as [Bush and Cheney did](#) with some innocents at Guantanamo) or even killed innocents.

Trusting the President with a license to kill certainly makes all courts obsolete. If Americans must trust the President in this case, why should they doubt him in other cases? As noted above, there is no constitutional provision or power to limit this precedent from multiplying. If the President has this



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power to stop terrorism, then he has it to stop any crime.

Obama's assassination is a direct attack on the U.S. Constitution and the Founding Fathers' vision for America. James Madison argued in [The Federalist #51](#) that the very purpose of government was separation of powers, to prevent the executive from becoming judge, jury, and executioner. He wrote that the purpose of the U.S. Constitution was:

to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty.... In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Alexander Hamilton agreed with Madison, writing in [The Federalist #78](#) (and quoting Enlightenment author Baron de Montesquieu):

For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."

Montesquieu, in his 1752 classic *The Spirit of the Laws*, [wrote](#) that "there is no liberty, if the judiciary power be not separated from the legislative and executive.... Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

Montesquieu's [Spirit of the Laws](#) introduced the world to the term "separation of powers," and was quoted liberally by James Madison at the 1787 constitutional convention. But the "spirit of the law" has been eroded in America. The *Washington Post*'s Elizabeth Flock [quoted](#) half a dozen Washington leaders on the targeted killing of Awlaki in an aptly titled story "Anwar al-Aulaqi killing praised in Washington." All but one praised the killing effusively. Those praising the presidential killing included presidential contender and Texas Governor Rick Perry, Senator Olympia Snowe (R-Maine), and Congressmen Peter King (R-N.Y.), Hal Rogers (R-Ky.), and Adam Smith (D-Ore.). The one "outlier" — in the words of the *Post* — was Congressman Ron Paul (R-Texas), also a presidential candidate.

Paul [told a local NBC-TV news](#) crew:

He is an American citizen. He was never tried or charged for any crimes. No one knows if he killed anybody. We know he might have been associated with the underwear bomber. But if the American people accept this blindly and casually that we now have an accepted practice of the president assassinating people who he thinks are bad guys, I think it's sad.

Paul [added](#) that the United States traditionally has held trials for alleged terrorists:

I think what would people have said about Timothy McVeigh? We didn't assassinate him, who we were pretty certain that he had done it. Went and put through the courts then executed him. To start assassinating American citizens without charges, we should think very seriously about this.

Noting that President Obama had approved the assassination of Awlaki at least as early as January of this year, Paul noted in his new book [Liberty Defined](#) of the assassination policy that "we've moved much further along in the disintegration of American jurisprudence."

The cheering for the first open presidential assassination of an American citizen from politicians — and



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probably more than a few uninformed citizens — is what has *Salon's* Glenn Greenwald most alarmed. He aptly [summed it up](#) this way:

What's most striking about this is not that the U.S. Government has seized and exercised exactly the power the Fifth Amendment was designed to bar ("No person shall be deprived of life without due process of law").... Many will celebrate the strong, decisive, tough President's ability to eradicate the life of Anwar al-Awlaki.... From an authoritarian perspective, that's the genius of America's political culture. It not only finds ways to obliterate the most basic individual liberties designed to safeguard citizens from consummate abuses of power (such as extinguishing the lives of citizens without due process). It actually gets its citizens to stand up and clap and even celebrate the destruction of those safeguards.

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