



Written by [Joe Wolverton, II, J.D.](#) on March 1, 2013

Lawyers Testify Before House Committee in Favor of Targeted Killings of Americans

On Wednesday, the [House Judiciary Committee held a hearing](#) on the legality of the federal government targeting American citizens for assassination by drone.

Representative Bob Goodlatte (R-Va.), chairman of the committee, [released the following statement](#) before hearing testimony from a panel of expert witnesses.



On Feb. 4, 2013, a confidential Justice Department white paper outlining the legal justification for targeted killings of U.S. citizens overseas was leaked to NBC News. The leak of this white paper brought renewed attention to an issue largely ignored during President Obama's tenure — is the targeted killing of alleged American terrorists appropriate and under what circumstances? The white paper also confirms a palpable shift in War on Terror policy by this President.

In 2007, Barack Obama, the then-junior Senator from Illinois laid out his position on the War on Terror.

“To build a better, freer world, we must first behave in ways that reflect the decency and aspirations of the American people.... This means ending the practices of shipping away prisoners in the dead of night to be tortured in far-off countries, of detaining thousands without charge or trial, of maintaining a network of secret prisons to jail people beyond the reach of the law.”

The same president who opposes the detention of foreign terrorists, who opposes the use of enhanced interrogation techniques on foreign terrorists, and who attempted to bring foreign terrorists to trial in New York City is now personally approving the killing of Americans. Ironically, the detention facility in Guantanamo remains open and Khalid Sheik Mohammed and his co-conspirators are being tried before a military commission.

Following the release of the white paper, a bipartisan group of Committee members requested the opportunity to review the memos that form the basis for the white paper. Our request was denied. One of President Obama's first acts as President was to release the Bush Justice Department's enhanced interrogation techniques memos to the public. But he now refuses to provide his Justice Department's targeted killing memos not just to the public but even to congressional overseers.

The white paper referred to by Chairman Goodlatte is a [16-page justification released by the Justice Department](#) on the eve of the confirmation hearing for John Brennan, President Obama's choice to



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replace David Petraeus as director of the CIA.

In the document, the Justice Department claims that the decision regarding who will be killed by the government will be made by “an informed, high-level official of the U.S. government.” That is hardly sufficient protection of the due process rights of Americans. Due process requires that the suspected terrorist “co-belligerent” be charged with a crime, allowed to answer those charges, and defend himself against those charges before an unbiased judge in court.

The memo also insists that constitutionally mandated rights of due process must be by-passed in the name of national security, arguing that the safety of America is more important than the constitutionally protected rights of one individual. Furthermore, the memo claims that only those who pose an “imminent threat of violent attack against the United States” will be targeted.

Of course, just how imminent the threat must be is not discussed, nor is the fact that buried in the memo is the assertion that there are no geographical limits to the president’s lethal authority. In other words, despite Wednesday’s Judiciary Committee hearing’s focus on Americans overseas, the Justice Department makes no such jurisdictional distinction.

Three regular contributors to the Lawfare blog testified before the committee Wednesday in favor of extra-judicial killing of Americans. Although all three admitted that there were “difficult” and “complex” issues of constitutional law involved in the targeted killing of Americans, none of them opposed the policy.

[John Bellinger, a former George W. Bush administration official, testified](#) that “killing al Qaida leaders, may at some point cause the U.S. more harm than good. These are important questions for U.S. policymakers to consider, but I do not have sufficient information about the effectiveness of drone strikes, or their negative effects, to offer a view on them here.”

Bellinger must be too busy with his law practice to read accounts of the [growing violent backlash](#) to the U.S. drone war or the [horrendous psychological effect](#) these strikes are having on the people of Yemen and Pakistan.

Speaking about the Justice Department white paper purporting to lay out the legal justification for targeted extra-judicial killing of Americans by the president or the CIA, Bellinger said, “I agree with the general legal analysis in the White Paper and the Attorney General’s speech.” While Bellinger claims that he believes “that an American citizen who is a senior al Qaida leader outside the United States does enjoy a constitutional right to due process before being targeted,” he believes that having the assassination vetted by a “senior, informed government official” is sufficient to satisfy the constitutional due process requirement before blowing the American to bits by a Hellfire missile launched from a U.S. drone.

Joining the pro-assassination chorus, [Professor Robert Chesney of the University of Texas testified](#) that judicial review of targeted killing by the government is not “strictly required by current law, still less that the government acted unconstitutionally in using force in the particular case of Anwar al-Awlaki or that the positions set forth in the Justice Department’s White Paper are incorrect.”

How is it that a presidential presumption of guilt by association followed by the autocratic order of a lethal drone strike doesn’t bother these legal experts? So many questions of legal and constitutional importance remain unanswered and should give such experts pause.

For instance, why can’t these alleged “terrorists” be tried in our federal court system? For decades



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those accused of terroristic crimes have been formally charged with those crimes, had those charges heard before an impartial federal judge, and been permitted to mount a defense to those crimes.

In fact, a survey of such trials conducted by [Human Rights Watch](#) reported, “Federal civilian criminal courts have convicted nearly 500 individuals on terrorism-related charges since 9/11.”

Add to this the story of Timothy McVeigh, who was executed in June 2011 for the Oklahoma City bombing, the worst terrorist act on American soil until 9/11. Extending the full panoply of due-process rights — including a trial in federal court — did not allow McVeigh or other convicted terrorists to evade justice. Furthermore, the purpose of protecting and providing civil liberties to those accused of crimes is not to set the guilty free, but to avoid punishing the innocent who are wrongly accused of crimes.

And should the president suggest that alleged evildoers cannot be apprehended, he should be reminded that “public enemy number one” Osama bin Laden was reportedly tracked and overtaken by a U.S. special operations team. Why could other less high-value targets not be similarly found by the military? Although bin Laden was reportedly killed in the raid, there is every reason to believe that a team skilled in this type of operation could have captured him alive if those had been the orders they were following.

Once in the custody of the United States, these suspects could be brought to stand trial for their alleged crimes. This would preserve, protect, and defend the fundamental concept of due process, one of the pillars of liberty upon which our Constitution is built.

Sadly, the House Judiciary Committee hearing on the drone war provided another piece of evidence that increasingly, legal minds in positions of power and influence have no problem suspending the rights of due process to men suspected (not accused or convicted) of being an “imminent” threat to the security of the homeland. This should frighten all friends of the Constitution who recognize that the right to life, liberty, and property was given to all men not by the Constitution, but by God. The Constitution merely protects these rights, providing safeguards protecting them from being unlawfully (and often immorally) denied by the federal government.

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