

THEY KNEW THE EVIDENCE AGAINST ANWAR AL-AWLAKI WAS WEAK WHEN THEY KILLED HIM

In case you don't want to read these two long posts, I want to point to two passages from the white paper that show, on two key points, the government wasn't even claiming Anwar al-Awlaki was the "senior operational leader of Al Qaeda or associated forces" they keep saying he was when they killed him.

First, on the issue of whether someone is an imminent threat or not, the white paper says a person is an imminent threat if he has "recently been involved in activities posing an imminent threat against the US" and has not renounced those activities.

Moreover, where the al-Qa'ida member in question has recently been involved in activities posing an imminent threat of violent attack against the United States, and there is no evidence suggesting that he has renounced or abandoned such activities, that member's involvement in al-Qa'ida's continuing terrorist campaign against the United States would support the conclusion that the member is an imminent threat.

And this part of the definition requires only that the target be an al Qaeda member, not a "senior operational leader."

And then, when examining whether killing an American overseas counts as murder, the white paper says the President can order the murder of an al Qaeda member who poses an imminent threat to the US.

Similarly, under the Constitution and the inherent right to national self-defense recognized in international law, the President may authorize the use of force against a U.S. citizen who is a member of al-Qa'ida or its associated forces who poses an imminent threat of violent attack against the United States.

Again, the American need only be a member, not a senior operational leader.

These are, to be sure, two short passages in a much longer memo. But consider how they work with the 3-part criteria laid out in the memo, which requires only that 1) John Brennan determines that someone is an imminent threat, 2) John Brennan determines that capture is not feasible, and 3) that the killing be consistent with applicable law of war principles.

Once you get to that "imminence" designation, you can kill the American, based on John Brennan's say so. And "imminence," for these purposes, can be as weak as past involvement (not leadership – and remember they once said that actions that lead to actions that pose a threat can get you killed, too) in activities that pose an imminent threat of violent attack on the US, so long as you haven't formally renounced those activities.

This, I strongly suspect, is why Ron Wyden keeps asking "Does the President have to provide individual Americans with an opportunity to surrender before using lethal force against them?" Because as the white paper stands, being uninvolved with any attack for at least a year and perhaps as long as 20 months – which may well be the case with Awlaki – doesn't count as renunciation.

I have suggested this language may have gotten introduced in a second memo, not long before they killed Awlaki in September 2011, at a point when all the evidence against him was very stale

and had gotten weaker over time (the government moved to protect something under CIPA in the UndieBomber case just a week before Awlaki was killed, though that could have been the first memo).

Whether that's what happened, though, it seems highly unlikely the language would be in the white paper if it weren't in some document somewhere authorizing Awlaki's killing.

Which seems to suggest they couldn't prove – even if they once had been able to – that Awlaki was the senior operational leader they have insisted him to be. And so they wrote the memo to authorize the killing anyway.