

THE ASSASSINATION CZAR'S WAR CRIMES DODGE: REVISITING JOHN BRENNAN'S TARGETED KILLING SPEECH

Now that John Brennan is in charge of selecting which patterns of behavior we should target with drones, it ought to be easy to charge him with war crimes. The at least eight civilians we killed in Jaar a number of weeks after Brennan seized control of targeting? John Brennan killed them, presumably based not on intelligence about who they were and what ties to AQAP they had, but because they ran out of a house after an earlier strike.

John Brennan is choosing to target people in Yemen without making adequate efforts to avoid civilian casualties. Given that we know he's making these choices, you'd expect someone to try to hold him accountable.

Of course, such an effort would present all kinds of difficulties. You can't really make a legal case against Brennan based on anonymous sources in an AP story. Furthermore, moving the drone program into the National Security Council makes it inaccessible to FOIA and, probably, to full Congressional oversight.

Most of all, though, Brennan appears to be preemptively crafting his defense.

When Brennan gave his drone speech on April 30, I—and a few other people—noted that the speech was already outdated. Brennan did admit, unequivocally, that we use drones to kill people.

So let me say it as simply as I can.
Yes, in full accordance with the law,

and in order to prevent terrorist attacks on the United States and to save American lives, the United States Government conducts targeted strikes against specific al-Qaida terrorists, sometimes using remotely piloted aircraft, often referred to publicly as drones.

Yet he spoke repeatedly of targeting specific individuals.

Without question, the ability to target a specific individual, from hundreds or thousands of miles away, raises profound questions.

[snip]

In this armed conflict, individuals who are part of al-Qaida or its associated forces are legitimate military targets. [my emphasis]

Thus, he wasn't talking about the program in Yemen that—perhaps 10 days earlier—had been expanded to target patterns rather than individuals. Rather, he was pretending that the program remained limited to personality strikes, strikes against known targets.

The speech always seemed like an attempt to put the best spin on the program. But the approach makes even more sense now that we know Brennan is the one who has legal liability for making these targeting decisions.

When and if anyone were to charge Brennan for war crimes for targeting civilians, for example, he will point back to these paragraphs as “proof” of his “belief” that we were not targeting civilians.

Targeted strikes conform to the principles of distinction, the idea that only military objectives may be intentionally targeted and that civilians are protected from being

intentionally targeted. With the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qaida terrorist and innocent civilians.

Targeted strikes conform to the principle of proportionality, the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage. By targeting an individual terrorist or small numbers of terrorists with ordnance that can be adapted to avoid harming others in the immediate vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft.

He will also point to these paragraphs—which we now know are also outdated—describing a targeting process that existed before Brennan seized control of the process.

This leads me to the final point I want to discuss today, the rigorous standards and process of review to which we hold ourselves today when considering and authorizing strikes against a specific member of al-Qaida outside the hot battlefield of Afghanistan.

[snip]

If our counterterrorism professionals assess, for example, that a suspected member of al-Qaida poses such a threat to the United States to warrant lethal action, they may raise that individual's name for consideration. The proposal will go through a careful review and, as appropriate, will be evaluated by the

very most senior officials in our government for a decision. First and foremost, the individual must be a legitimate target under the law.

[snip]

Even if it is lawful to pursue a specific member of al-Qaida, we ask ourselves whether that individual's activities rise to a certain threshold for action, and whether taking action will, in fact, enhance our security. For example, when considering lethal force we ask ourselves whether the individual poses a significant threat to U.S. interests. This is absolutely critical, and it goes to the very essence of why we take this kind of exceptional action.

[snip]

I am not referring to some hypothetical threat, the mere possibility that a member of al-Qaida might try to attack us at some point in the future. A significant threat might be posed by an individual who is an operational leader of al-Qaida or one of its associated forces. Or perhaps the individual is himself an operative, in the midst of actually training for or planning to carry out attacks against U.S. persons and interests.

[snip]

In addition, our unqualified preference is to only undertake lethal force when we believe that capturing the individual is not feasible.

[snip]

Given the stakes involved and the consequences of our decision, we consider all the information available to us, carefully and responsibly.

We review the most up-to-date

intelligence, drawing on the full range of our intelligence capabilities. And we do what sound intelligence demands, we challenge it, we question it, including any assumptions on which it might be based. If we want to know more, we may ask the intelligence community to go back and collect additional intelligence or refine its analysis so that a more informed decision can be made.

We listen to departments and agencies across our national security team. We don't just hear out differing views, we ask for them and encourage them. We discuss. We debate.

What appears to have happened is the Saudis delivered up a sting presenting a threat, and following that, we—or rather, John Brennan—proceeded to target more generally, using that Saudi-delivered threat as the rationale.

But Brennan will be able to point to these outdated paragraphs and claim they represent his understanding of the legal review of the targeting for the killings he oversaw.

John Brennan has always lied publicly about the drone program, particularly the civilian deaths associated with it. But knowing what has transpired in the last month—the Saudi sting presenting a threat, followed by the decision to use signature strikes overseen by John Brennan—it seems like something far more cynical: a pre-emptive statement of his purported understanding about the drone program, just in case anyone ever tries to hold him accountable for strikes that don't show the appropriate concern for civilian life.

“Oh, those 8 civilians I killed in Jaar?” John Brennan effectively said 15 days before he killed them, “I didn't intend to or know I was killing civilians. I was conducting strikes

against known targets found to present a direct threat to the United States.”

John Brennan gave this speech in the name of transparency. But given that it involved deliberate and obvious obfuscation, it appears to have little to do with transparency and lots to do with self-preservation.