

PRE-EMPTING THE ABDULMUTALLAB “CONFESSION” WITH A DRONE KILLING DECISION

Make sure to read the update below: It's possible McMahon's estimate is off and this whole review process has gotten hopeless screwed up.

Update: yes, this memo is actually the February 19, 2010 memo, not an earlier one. The referenced pages refer to the discussion from the February 19 memo. I'm marking out this post, because it appears to be incorrect.

~~If I'm understanding this heavily redacted memo from Colleen McMahon correctly, the government was reviewing whether it was legal to kill Anwar al-Awlaki before Umar Farouk Abdulmutallab implicated him in his High Value Interrogation Group obtained “confession.”~~

~~That's because, in her discussion of what she, at times, calls “the first Barron memo,” she says this:~~

~~Bies Exhibits B, which is responsive to both FOIA requests, is a memorandum prepared by OLC six months prior to its preparation of the OLC-DoD memorandum and the Draft White Paper. It pertains specifically to the proposed al-Aulaqi operation that was the subject of the Draft White Paper and the OLC-DoD Memorandum. Written by David J. Barron, it is entitled “Lethal Operation Against Shaykh Anwar Aulaqi.” I will refer to it hereafter as the Bies Exhibit B or as “The First Barron Memorandum.”~~

~~The “OLC-DoD” memo is the July 16, 2010 memo-~~

~~McMahon justifies the partial release of “the First Barron Memo” because the July 16, 2010 memo cites it specifically. Apparently, the reference “As we explained in our earlier memorandum, Barron Memorandum at 5-7” (page 94) refers to that memo, and further discussions on the Fourth and Fifth Amendment and EO 12333 rely on that memo.~~

~~But McMahon tells us this earlier memo—the first Barron memo considering the drone killing of Anwar al Awlaki—was “prepared by OLC six months prior” to the July 16, 2010 one.~~

~~That would date it around January 16, 2010. Before Umar Farouk Abdulmutallab could have implicated Awlaki in his plot. We know that’s true because:~~

- ~~▪ In the opening at Abdulmutallab’s trial, prosecutor Jonathan Tukul made it clear that Abdulmutallab’s Christmas Day confession attributed everything to “Abu Tarak.”~~
- ~~▪ After that confession, Abdulmutallab stopped cooperating for almost a month.~~
- ~~▪ According to the sentencing documents turned over, Abdulmutallab did not start “cooperating” until January 29, which accords with public claims as well.~~

~~That is, unless McMahon’s estimate is off by 2 weeks, there’s no way they could be relying on Abdulmutallab’s confession in their case against Awlaki. And yet that is the one thing the government points to to explain its changed view—from December 24, 2009—that Awlaki was not~~

operational.

~~The government appears to be aware of this problem. In trying to claim this document was still secret, they claimed “the date, title, and recipient of the analysis provided in the document relate to “entirely separate deliberative processes.” Indeed, it seems likely this was one of the memos the government was trying to bury after the Second Circuit ruled.~~

~~Because, when this memo gets released with a mid January release date, it will be clear that the entire story they’ve been telling about Awlaki doesn’t hold up.~~

In any case, McMahon is having none of that claim.

The Government’s arguments are demonstrably untrue. There were no “separate deliberative processes” here; rather, the Government deliberated about whether or not it could and should kill al-Aulaqi over the course of many months, during which time it asked OLC to render advice on a number of occasions.

The deliberation process is the same process. And it started before such time as the government had what it claims is first-hand evidence against Awlaki.

Update: There is one more possibility. That this memo—released in August and dated February 19, 2010—is the memo in question. That would mean 1) That McMahon was off in her estimate by a month and 2) that she’s very confused about what she’s reviewing, given that her opinion dates to a month and a half after the memo was released. But the content and the title would match up. So it seems possible that’s the memo, at which point they had their first “confession” implicating Awlaki.