

BREAKING!! WHITE TERRORISTS TO BE TREATED LIKE BROWN TERRORISTS!!

All the discussion about the wisdom or legality of Eric Holder's unilateral change to Miranda procedure for "operational terrorists" (Evan Perez story, Charlie Savage story, bmaz post) seems to be missing a stunning detail.

The memo laying out the change in procedures apparently doesn't distinguish between foreign terrorists (that is, members of al Qaeda) and domestic terrorists (presumably including self-radicalized Muslims, but also white supremacists, and abortion doctor killers). Indeed, Perez' article uses the term "domestic-terror" three times. I asked Savage about this specifically, and he said that while the preamble of the memo notes international terrorist groups are of particular danger (a claim I'm not convinced holds up after 10 years of the GWOT and the recent rise in right wing hate groups), the memo seems to apply to all "operational terrorists."

Whatever the hell that means.

Update: Savage has made the text of the memo available here. Here's how it describes an operational terrorist:

For these purposes, an operational terrorist is an arrestee who is reasonably believed to be either a high-level member of an international terrorist group; or an operative who has personally conducted or attempted to conduct a terrorist operation that involved risk to life; or an individual knowledgeable about operational details of a pending terrorist operation.

The latter two descriptions—an operative who “has personally ... attempted to conduct a terrorist operation that involved risk to life” or “an individual knowledgeable about operational details of a pending terrorist operation” seem in no way limited to international terrorist groups. Furthermore, the third category, someone who knows about a pending attack, might not even be a terrorist himself.

Now, as much as I think the policy is ill-considered, at one level the application of it to white terrorists along with brown ones is, IMO, a good thing. After all, if the reason for the change in Miranda derives from “operational” risk, then nothing really does distinguish between the danger of an imminent attack by a white guy and the danger of an imminent attack by a brown guy. So to take any other approach—to apply the Miranda change just to brown terrorists—would demonstrate the claimed reason for it to be false.

Moreover, this country will never begin to restore a balance between rule of law and security until white terror suspects are treated according to the same abusive rules as brown terror suspects. I mean, you really think Peter King would be so thrilled about this change (as reported in Perez’ story) if he realized that the same rules might apply to white supporters of terrorists like him?

New York Republican Peter King, chairman of the House homeland-security committee, is among the lawmakers who welcomed Mr. Holder’s call to change Miranda. At a hearing last year, Mr. King said, “It’s important that we ensure that the reforms do go forward and that at the very least the attorney general consults with everyone in the intelligence community before any Miranda warning is given.”

All that said, what is the first non-distinction

between foreign and domestic terrorists of the GWOT that I know of is deeply troubling.

It was inevitable, of course, that as the US continues its success at shutting down al Qaeda abroad, and as the government increasingly has to point to self-radicalized terrorists (or young Muslim men entrapped as such) to justify their expanded GWOT powers, and as it became increasingly clear that right wing terrorists pose as great a threat domestically and—with the MLK bomber—have the same operational sophistication as Islamic terrorists, that the limits on special terror-related authorities would begin to break down. But there's really no protection against a further breakdown here. Soon, environmental activists (already officially classified as terrorists according to DOJ and DHS) will have their Miranda rights withheld because they were "operationally" prepared to strike at property, not people. And from there it won't take long to deny peace activists their Miranda rights because they support humanitarian groups that might be trying to persuade terrorists to adopt peaceful tactics.

In spite of all the myths government lawyers have told themselves, in secret, to pretend the assault on privacy and civil liberties in the name of a war on terror is different from that of the 60s, we were always on a slippery slope that would eventually defy all those myths.

And limiting the Miranda rights of white terror suspects along with brown terror suspects is just one more important step down that slippery slope.

Update: Also note that the text of the memo allows individual agents to decide whether someone should be deprived of their Miranda rights.

As noted above, if there is time to consult with FBI-HQ (including OGC) and Department of Justice attorneys regarding the interrogation strategy to

be followed prior to reading the defendant his Miranda rights, the field office should endeavor to do so. Nevertheless, **the agents on the scene who are interacting with the arrestee are in the best position to assess what questions are necessary to secure their safety and the safety of the public**, and how long the post-arrest interview can practically be delayed while interrogation strategy is being discussed. [my emphasis]

If I had any confidence DOJ's Inspector General would have the same integrity in the future it had under Glenn Fine, I'd bet a ton of money that we see an IG Report describing the very predictable abuse that came out of this memo.