



Written by [Joe Wolverton, II, J.D.](#) on December 14, 2014

From Torture to Drone Strikes, Presidents Protect Their Plausible Deniability

The same memo that the George W. Bush administration relied on to provide legal justification for its torture of alleged terrorists is being used by the Barack Obama administration to justify its killing the suspects with drone-launched missiles.

In order to understand President Obama's expansion of the "authority" to torture suspects into "authority" to kill them, consider this statement from a recent *Foreign Policy* article:



On the second day of Barack Obama's presidency, he prohibited most forms of physical torture. On the third, a CIA drone strike he authorized killed up to 11 civilians.

As almost everyone knows, on December 9, the Senate released a 525-page summary of an almost 6,000-page full report on the CIA's use of torture as a tool for extracting intelligence from alleged enemies of the United States. The data revealed in that synopsis are shocking to the conscience of Americans aware of the need for morality and moral leadership in our international relations.

Even war hawk Senator John McCain (R-Ariz.) came out against the practice. Given his personal experience as a prisoner of war in Northern Vietnam, it is no wonder that McCain appreciates the situation better than most of his fellow neocons.

"I know from personal experience that the abuse of prisoners will produce more bad than good intelligence," he said during a lengthy statement on the Senate floor on December 9. "I know that victims of torture will offer intentionally misleading information if they think their captors will believe it. I know they will say whatever they think their torturers want them to say if they believe it will stop their suffering."

McCain's take on the reliability of information obtained through torture is corroborated by the Senate summary. As *Foreign Policy* reports:

The summary portrays brutal torture that was also largely counterproductive for intelligence-gathering purposes. It depicts a program so badly managed that the CIA lost count of detainees and on more than one occasion detained and tortured the wrong suspect.

More pertinent than the efficacy of torture in collecting useful information, however, is the part of the Senate report that discloses in dictum that the same Memorandum of Notification (MON) that George W. Bush used to green light the abuse of prisoners is being used by his successor to kill them before they are captured.

As the *Foreign Policy* article explains:

A MON (or "finding") is what the president uses to notify Congress of operations he orders the CIA to conduct that are not intended to be acknowledged by the U.S. government. According to the 1947 National Security Act, when the president authorizes the CIA to conduct covert operations, he



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must document what those operations will be and notify the Senate and House Intelligence committees. That process is what America's democratic society uses to provide spies with legal cover for acts that would otherwise often be considered illegal.

One of the recent report's disclosures that most offends the core principles of the rule of law is that the president is content to outsource the killing of suspects, in much the same manner that President Bush delegated the approval of "enhanced interrogation" and to the same contractor: the CIA.

White House water carriers in Congress insist that there is more oversight now and that the same laissez faire executive attitude does not exist in the Obama era. The facts don't support the fadom, though.

Take, for example, the story of a wedding party targeted by a U.S. drone in December 2013.

The story of the strike is unconscionable, and it would be unbelievable if it were not for the president's penchant for adding names to a kill list and then erasing them with Hellfire missiles fired from a remote-control aircraft.

Citing "local security authorities," Reuters reports that the families celebrating the wedding "were killed in an air strike after their party was mistaken for an al-Qaida convoy."

Another unnamed official told Reuters that 10 people were killed immediately by the missiles, while five died later of injuries sustained in the attack. Five more members of the wedding party were wounded, but survived the strike.

While the people at the wedding may have been "accidentally" killed by the United States, thousands of so-called "militants" have been purposefully assassinated by our government. For President Obama and those pulling the triggers on the joysticks guiding the missiles toward their human targets, "suspected militants" are officially defined as "all military-age males in a strike zone."

For those of us concerned with the Constitution, due process, and the rule of law, however, "suspected militant" is just a euphemism for a person not charged with any crime, not afforded even the most perfunctory due process protections, but executed by presidential decree anyway. In this way, we are no better than those we kill in the name of safety.

Or, how about the "accidental" killing of the teenage son of Anwar al-Awlaki.

As he sat enjoying a roadside picnic in Yemen with a few second cousins and their friends — most of whom the young Colorado native had never met before that day — the teenager and all his companions were killed by two Hellfire missiles fired from a Predator drone.

The finger that pressed the button launching the lethal ordnance was American, and so was 16-year-old Abdulrahman al-Awlaki, the target of the strike.

Where was President Obama? Why did he not immediately revoke the CIA's "authority" to kill people in the name of the United States?

Abdulrahman al-Awlaki was killed in October 2011, and to date the Obama administration has never informed the country of any wrongdoing by this teenager, other than his being related to a man (his father) who posted on the Internet anti-American videos that allegedly influenced others to commit crimes. A government-sanctioned assassination of such an individual is repugnant to all those who cherish life, liberty, and the due process that protects them.

Foreign Policy has a theory on the silence and the secrecy:



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Obama appears to want the same benefits on the drone program that Bush had on torture: plausible deniability. While numerous accounts describe Obama micromanaging the drone strikes, his administration also fought for years to hide the Justice Department's legal review of the Awlaki drone strike from both Congress and the public, saying it was legal to kill Awlaki because he posed an imminent threat to the country. (And the administration still hides memos detailing relationships with foreign countries on drone strikes.)

It would be very naïve to believe the targeted assassination of an innocent like Abdulrahman was an unfortunate miscalculation. When the judicial and executive powers of government are consolidated and restraints on the exercise of power are cast aside, it can be expected — based both on our knowledge of history and on the nature of man — that power will be abused and no one's rights or life will be safe from elimination by despots.

Of all the things left out of the Senate summary, the one thing that comes through loud and clear is that anyone slated for White House-approved assassination or torture is not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield.

President Obama and his predecessor assumed all power over life and death and created ex nihilo a new category of individual — one deprived of all rights altogether.

Where does the blame belong? Who is to be held accountable for the autocratic authorization of assassination or for the torture of suspects by agents of the United States government?

Ultimately, we, the American people, retain the right to rule over the rule makers. We have the right and the obligation to restrain the president and reclaim any power over life and death he has despotically usurped.

Photo of Presidents Barack Obama and George W. Bush: AP Images

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