

Holder Declaration Triggers Backlash

by Edward Spannaus

March 18—Winning himself a nomination for the worst U.S. Attorney General since Richard Nixon's John Mitchell, Attorney General Eric Holder formally declared that President Obama has the right to execute an American citizen without any judicial due process or oversight.

Holder's lawless speech, ironically delivered at Northwestern University law school March 5, has drawn condemnation from across the political spectrum—although shamefully, many Democrats who would have loudly protested had George W. Bush and Dick Cheney enunciated such a "legal" doctrine, are silent when it comes to a President of their own party claiming this unprecedented power. Obama, here again, follows in the footsteps of the Crown Jurist of the Third Reich, Carl Schmitt, who asserted that the Executive is not bound by any legislative or judicial constraints under conditions of "emergency."

Qualified observers in the U.S. intelligence community have noted that Obama's "right-to-kill" doctrine, the latest expression of his "Unitary Executive" policy, is especially dangerous when combined with the Administration's "humanitarian intervention" or "Right to Protect" (R2P) doctrine—formalized in Presidential Study Directive No. 10, issued last August—in which Obama claimed the right and duty to launch military action against any regime it deems to be carrying out mass atrocities or genocide.

Broad Reaction Against Holder

Holder's Northwestern speech—an attempt to defuse the clamor from the Senate and elsewhere for the release of the Justice Department's legal memorandum justifying the policy of "targeted killing" which the U.S. government had always previously opposed—claimed that, since "we are a "nation at war," the President has the authority to use "lethal force," without geographic limit, against any person deemed a threat to

the United States, even if that person is a U.S. citizen. And in a depraved display of sophistry, Holder asserted that "due process" does not equal "judicial process," but that *this* "due process" can be undefined and secret, carried out entirely within the Executive Branch.

As the *New York Times* wrote in an editorial March 7: "President Obama, who came to power promising transparency and the rule of law, has become the first President to claim the legal authority to order an American citizen killed without judicial involvement, real oversight, or public accountability." As to Holder's claim that Constitutional due process is not the same as judicial due process, the *Times* noted: "The judiciary has the power to say what the Constitution means and make sure the elected branches apply it properly. The executive acting in secret as the policy, prosecutor, jury, judge and executioner is the antithesis of due process."

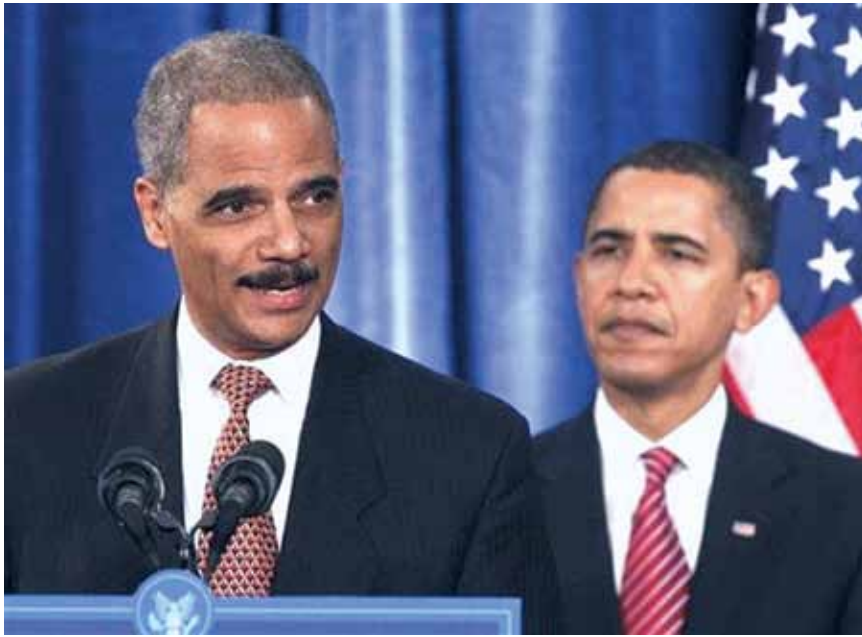
George Washington University law professor Jonathan Turley wrote on March 6, on *Foreign Policy* magazine's website, that "what Holder is describing is a model of an imperial presidency that would have made Richard Nixon blush.

"If the President can kill a citizen," Turley continued, "there are a host of other powers that fall short of killing that the President might claim, including indefinite detention of citizens—another recent controversy. Thus, by asserting the right to kill citizens without charges or judicial review, Holder has effectively made all of the Constitution's individual protections of accused persons matters of presidential discretion. These rights will be faithfully observed up the point that the President concludes that they interfere with his views of how to best protect the country..."

Former foreign service officer Peter Van Buren, in a March 7 *Huffington Post* piece called "The Day 'Due Process' Died: Obama, Holder the End of Rights," wrote:

"Like most of the Bill of Rights, the Fifth Amendment to the Constitution is beautiful in its brevity and clarity. When you are saying something true, pure, clean, and right, you do not need many words: '...nor be deprived of life, liberty, or property, without due process of law.'

"There are no footnotes in the Fifth Amendment, no caveats, no secret memos, no exceptions for war, terrorism, mass rape, creation of concentration camps, acts of genocide, child torture or any evil. Those things are unnecessary, because in the beauty of what Lincoln offered to his audience as 'a government of the people, by the people, for the people,' the government would be



Attorney General Eric Holder and his boss President Obama have asserted a “kill-at-will” Executive power—which goes beyond even the extremes of the Bush-Cheney regime.

made up of us, the purpose of government was to serve us, and the government would be beholden to us. Such a government would be incapable of killing its own citizens without care and debate and open trial.”

At least that was the case up until Sept. 30, 2011, Van Buren notes, when a U.S. drone missile killed U.S. citizen Anwar al-Awlaki in Yemen, and then a week later, the U.S. murdered al-Awlaki’s 16-year-old son.

Bush, Cheney, and ... Obama

The notable parallels between the Obama-Holder justifications for targeted killings, and the legal rationalizations set forth by Bush-Cheney Administration lawyers and legal theorists, were duly noted by constitutional lawyer and Salon columnist Glenn Greenwald on March 6. Not only the arguments that “we are at war, the battlefield is everywhere,” that “the Executive Branch is the sole organ for war and no courts can interfere,” etc., but also the exact same argument that “we are only using these powers against bad people,” and therefore, “if you’re not a terrorist, you have nothing to worry about.” These were precisely the arbitrary and unchecked assertions of power which both Barack Obama and Eric Holder fervently denounced during the Bush-Cheney years, and which they have just as fervently adopted today.

That these claims—that unchecked Executive powers are not a threat to law-abiding citizens—are not

exactly new, Greenwald shows with a quote from Nixon’s Attorney General John Mitchell, in defending the government’s eavesdropping, powers: “Any citizen of this United States who is not involved in some illegal activity has nothing to fear whatsoever.”

Except for the Bush-era neocons, many conservatives have also denounced Holder’s claims. Fox News legal analyst Andrew Napolitano, a former New Jersey Superior Court Judge, warned, in the most dire terms, of the dangers of the Obama-Holder doctrine. “Obama is taking the position that he can be judge, jury, and executioner, without a jury, without a charge, without a grand jury, without any of the basic requirements of due process. Due process is not something that the government gives,”

said Judge Napolitano, “it is a natural right that every human being has, and the Constitution requires the government to respect that in the Fifth Amendment.”

Napolitano also pointed out that the Fifth Amendment gives that right to *all* persons, not just American citizens—but, that doesn’t even matter, he says, “because the three people who died [on Obama’s orders], Anwar al-Awlaki, his 16-year-old son, and their friend, were all Americans.”

“If accepted uncritically,” Napolitano concluded, “then we are doomed, our freedoms are gone!”

Holder’s March 5 speech was ostensibly an effort to dampen criticism from both Democrats and Republicans for the Administration’s legal memorandum justifying targeted assassinations. As a number of observers have pointed out, Holder’s speech was no substitute for the memorandum, including for the reason that it contained not a single legal citation or footnote purporting to show whence the Administration claims such extraordinary powers.

Among those who have unsuccessfully demanded access to the Administration’s legal memorandum is Sen. Chuck Grassley (Iowa), the senior Republican on the Senate Judiciary Committee. At a committee session on March 15, Grassley noted that the Obama Administration has refused to even admit that such a memo exists, even in the face of demands for the memo from

both himself and Senate Judiciary Committee chairman Patrick Leahy (D-Vt.). Grassley's view of the inadequacy of Holder's speech was shown when he noted that "if the Attorney General is going to justify targeted killings based on 'robust' Congressional oversight, he needs to follow through and make these documents available to Congress, not just give us the Cliff Notes in a speech to law students."

International 'Permission'

A related, unprecedented claim of the Executive's power to bypass and ignore Congress and the Constitution—in service of "humanitarian intervention"—occurred in an exchange between Sen. Jeff Sessions (R-Ala.) and Defense Secretary Leon Panetta, at a March 7 Armed Services Committee hearing. Ranking member Sessions stated that he thought Panetta had "circumvented" Congress in joining NATO in operations in Libya, and asked his plans for Syria. As reported by CNN, the exchange went as follows:

Sessions: We spend our time worrying about the UN, the Arab League, NATO, and too little time, in my opinion, worrying about the elected representatives of

the United States. As you go forward, will you consult with the United States Congress?

Panetta: You know, our goal would be to seek international permission. And we would come to the Congress and inform you and determine how best to approach this, whether or not we would want to get permission from the Congress.

Sessions: Well, I'm troubled by that. I think it does weaken the ability of the United States to lead. I do think ultimately you need the legal authority from the United States of America, not from any other extra-territorial group that might assemble.

Even as Sessions gave Panetta a chance to explain, Panetta continued to use the word "permission," to the point of forcing Committee chairman Carl Levin (D-Mich.) to state, "I don't think the word 'permission' is appropriate even in that context."

Whether Panetta actually believes what he said, or was just stating the position of President Obama and some of his top advisors, is open to question. In any event, there is no doubt that this is another area in which British-puppet Obama feels free to ignore and violate the Constitution of the United States.

Released on Thanksgiving 2011, the LPAC-TV documentary "NAWAPA 1964" is the true story of the fight for the North American Water and Power Alliance. Spanning the 1960s and early '70s, it is told through the words of Utah Senator Frank Moss. The 56-minute video, using extensive original film footage and documents, presents the astonishing mobilization for NAWAPA, which came near to being realized, until the assassination of President Kennedy, the Vietnam War, and the 1968 Jacobin reaction, killed it
... until now.

NAWAPA 1964

PUEBLO, COLORADO
AUGUST 16, 1962

<http://larouchepac.com/nawapa1964>