

Obama's Killer-Drone Policy Comes Under Scrutiny

by Edward Spannaus

Feb. 11—For the first time in three years, Congress has put President Obama's drone killing-spree—in which over 3,000 people have died, including three U.S. citizens—under a spotlight; and under pressure, Obama was forced, after months and years of resistance, to give the House and Senate Intelligence Committees access to some of the secret legal opinions which claim to justify this policy.

The occasion was not a formal hearing on drone policy—the last time such a hearing was held was a House subcommittee hearing in 2010—but a confirmation hearing on the nomination of Obama's counterterrorism advisor, John Brennan, to become Director of the CIA. The hearing by the Senate Select Committee on Intelligence Feb. 7, brought the issue to the fore again. One outcome was that two Senators, one Democrat and one Republican, threatened to hold up Brennan's confirmation until they get the answers to their questions.

Although most of the attention was on Obama's claims that he has the right to kill an American citizen on his own say-so, without any court oversight or intervention, some Senators also gave significant attention to the broader drone-strike policy, which, as a number of experts have noted, is creating far more enemies for the United States, than it is eliminating. (See "Drone Strikes as Strategic Folly: Obama Is al-Qaeda's No. 1 Recruiter," in *EIR*, Jan. 18, 2013.)

The two roadblocks which the Brennan nomination ran into, were over the Administration's refusal to provide Congress with documents on Benghazi, and, secondly, the Justice Department's withholding of legal memos asserting Obama's right to assassinate American citizens.

1. Sen. Richard Burr (R-N.C.), charging that the CIA has delayed, or flatly refused, to provide documents on the Benghazi investigation, told Brennan that, "It is absolutely essential that the documents this Com-

mittee has requested on Benghazi be supplied before the confirmation moves forward."

2. Sen. Ron Wyden (D-Ore.) declared that "we've got to see all—'any and all'—of those legal opinions, the ones that the bipartisan group of Senators asked for, before the vote" can take place on Brennan's confirmation. Wyden said that this is essential for the Senate to be able to carry out its oversight functions.

'White Paper' Leaked

The week began with the release of a letter on Feb. 4 from 11 Senators—8 Democrats and 3 Republicans—to President Obama, demanding that he immediately provide to Congress "the secret legal opinions outlining your authority to authorize the killing of Americans in the course of counterterrorism operations." The Senators warned Obama that his cooperation could help to avoid "an unnecessary confrontation that could affect the Senate's consideration of nominees for national security positions" (see below).

That same day, a 16-page Justice Department "White Paper" on assassinations, entitled "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qa'ida or an Associated Force," was leaked to NBC investigative reporter Michael Isikoff. This was not one of the documents that the 11 Senators were seeking—in fact, this document had been given confidentially to the Senate Intelligence and Judiciary Committees last June—but its disclosure set off a firestorm, triggering the first real public debate on drone killings since Obama escalated the program in 2009.

What the White Paper, a cut-down, sanitized version of the formal legal opinions, showed, is that Obama has gone the Bush-Cheney gang one better, with his claim to possess a dictatorial right to kill American citizens without any legal process, judicial review, or Congressional oversight. The "legal" rationalization for



At the Feb. 7 Senate Intelligence Committee hearing on the confirmation of John Brennan as CIA Director, Senators (left to right) Carl Levin, Angus King, and Susan Collins sharply exposed the Brennan's lying hypocrisy on both Obama's killer-drone program, and the torture program he was involved with under the Bush Administration.

these targeted assassinations—something the United States condemns when carried out by other countries—has been oozing out in speeches by Administration officials, and leaks from various sources, over the past couple of years; but the more detailed arguments in the White Paper went further, exposing the flimsy, fraudulent nature of Obama's claim to the right to kill U.S. citizens accused of involvement in terrorism. He claims the right to execute an American citizen under three, virtually meaningless, constraints:

1. That "an informed, high-level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States." Who this official is, what his or her qualifications are, what is the quality of the evidence or intelligence required—is nowhere spelled out. The outline of this was known before; what was new is that the White Paper states, astoundingly, that meeting this condition "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." The concept of "imminent threat" is thus stretched beyond all recognition.

2. That "capture is infeasible." This condition is allotted one short paragraph in the 16-page White Paper, which comes down to whether it is convenient or expedient, or not, to attempt to capture the target rather than just killing him, such as in the case that it would pose a risk to U.S. forces.

3. That the killing is conducted in a manner consistent with the laws of war. That's easy: Isn't this what

hired-gun lawyers are for—to come up with a legal justification for what you intend to do anyway? Ask any Wall Street banker, mafia boss—or Dick Cheney, for that matter.

Making the Star Chamber Look Good

While many of the Administration's arguments for extra-judicial killing have been previously made public in speeches by John Brennan, Attorney General Eric Holder, and State Department Legal Advisor Harold Koh, and were also reported in the description of the 50-page Office of Legal Council (OLC) memo that was leaked to the *New York Times* in October 2011, what was shocking was the Administration's expanded idea of "imminent" threat, what the DOJ calls "a broader concept of imminence"—so that no specific, current evidence is even needed, other than that the target is said to be associated with al-Qaeda or an "associated force," which is "continually plotting attacks against the United States." No less of an authority is cited for this proposition than Tony Blair's Attorney General Lord Goldsmith, in testimony to the British Parliament.

It boils down to this: If Obama or his designee unilaterally decides that an individual, even a U.S. citizen, is a "senior operational leader" of al-Qaeda or a related group, he can be whacked. The memo adds the proviso that this is allowed, unless there is specific evidence to the contrary. Where's that supposed to come from, when Obama or Brennan is the prosecutor, judge, and executioner—and no one else is privy to the "trial" and

judgment against the target?

Nonetheless, the DOJ concludes that there is no violation of the Fourth or Fifth Amendments to be found in this procedure, which makes the Star Chamber look like a model of due process. (The reviled Star Chamber at least allowed the accused and his lawyer to be present during its otherwise secret proceedings.)

Another over-the-top piece of sophistry, was the argument dismissing the applicability of the Federal assassination ban, and Federal laws against murder, which, the White Paper contends, only apply to “unlawful” killing. These targetted killings can’t be “unlawful,” the DOJ argues, because Obama and the Justice Department *say so*. As Dick Nixon famously said, before he was forced from office, “If the President does it, it’s not illegal.”

As for the quaint notions of separation of powers, and checks-and-balances—they have no place in this scheme. This is war, don’t you understand, war without any limitations of boundaries, time, or rules of law. The White Paper is explicit: There is no role for the courts or judicial review. As the D.C. Circuit Court of Appeals showed recently, it would strongly disagree, as did the U.S. Supreme Court, when presented with similar claims for the exercise of unfettered, unilateral authority by the Bush Administration.

Columnist and Constitutional lawyer Glenn Greenwald drew the obvious parallels (as have many other commentators), with the Bush-Cheney torture memos, writing that the White Paper “is every bit as chilling as the Bush OLC torture memos in how its clinical, legalistic tone completely sanitizes the radical and dangerous power it purports to authorize.”

Writing in the London *Guardian*, Greenwald also pointed out that the “world-is-a-battlefield” theory—where the President has unbounded power—was at the heart of the Bush-Cheney “war on terror,” and, he notes, “This new memo makes clear that this Bush/Cheney worldview is at the heart of the Obama presidency.”

Yemenis Love Drone Strikes?

On the evening of Feb. 6, under mounting pressure, Obama relented a bit, and gave members of the House and Senate Intelligence Committees access to two of the Justice Department legal memos on assassination; however, the memos were not available to other Senators, or to staff members. Indeed, Senators were not allowed to discuss them with their staffs, or to ask questions about them in the Feb. 7 hearing. Moreover,

there are apparently eight more such memos which have not yet been made available—about which even Committee chair Sen. Dianne Feinstein (D-Calif.), Obama’s most fervent defender in the Brennan hearings, made a complaint for the record at the beginning of the hearing.

Obama’s claimed legal right to kill American citizens, and the broader question of Obama’s escalation of drone warfare, thus became a key feature of the hearing.

- Sen. Ron Wyden (D-Ore.) pointed out that the Select Committee on Intelligence was created “in response to lax oversight of programs that involved targeting killings,” referring to the 1976 Church Committee investigation of abuses by the CIA and other intelligence agencies. Wyden stated the obvious, when he declared that “Every American has the right to know when their government believes it’s allowed to kill them,” and, as noted above, stated that the confirmation of Brennan should not go forward until Congress has seen all the secret legal memos on assassination.

- Sen. Angus King (I-Me.) went directly at the issue of the Constitution, and particularly the Fifth Amendment’s prohibition of deprivation of life, liberty, or property without due process of law, and added that “having the Executive being the prosecutor, the judge, the jury, and the executioner all in one, is very contrary to the traditions and the laws of this country.”

- Sen. Susan Collins (R-Maine) took up a question also raised by others, which is whether Brennan and Obama think it is better to kill a terrorist, rather than to capture him. She pointed to one study showing that in the first two years of the Obama Administration, there were four times as many targetted killings as in all eight years of the Bush Administration.

Collins also pressed Brennan on statements by both Gen. Stanley McCrystal, and former CIA Director Michael Hayden, that drone strikes are causing a backlash and “creating new terrorists.” Brennan disputed those statements, citing his oft-repeated claims that people in the areas where drones are used “welcome the work that the U.S. government has done to rid them of the al-Qaeda cancer.”

Brennan has made such statements on a number of occasions, usually in reference to Yemen, which, of all the theaters in which the Obama Administration is conducting drone strikes, seems to be Brennan’s favorite. Two days before the hearing, it was disclosed in the *New York Times*, the *Washington Post*, and wire ser-

vices, that U.S. drone strikes in Yemen are launched from a U.S. base in neighboring Saudi Arabia, and that Brennan, a former CIA station chief in Riyadh, had played the key role in negotiations with the Saudi government over the base, which was set up two years ago. The Saudis evidently also play a key role in targetting decisions, since most of those targetted are regarded as posing much more of a threat to the Saudi and Yemeni regimes, than to the United States.

The Hill, for example, reported last May 17, that the intelligence used for two drone strikes in the Spring of 2012 which took out key AQAP (al-Qaeda in the Arabian Peninsula) leaders, was provided by a Saudi double agent who had infiltrated the AQAP; that agent was working for U.S., British, and Saudi intelligence. That same article reported that the Obama Administration doesn't even have to know who the designated targets in Yemen are, before obliterating them from the air: "In April, the White House approved a CIA request that would allow the agency to hit terror targets tied to al-Qaeda's Yemen cell ... even when it doesn't know their identities."

As to Brennan's oft-repeated claims that Yemenis *like* the U.S. drone strikes because they get rid of al-Qaeda, this is what the Council on Foreign Relations's drone warfare expert Micah Zenko had to say about Brennan's assertions, in a Feb. 4 CFR conference call.

"He also claims that the Yemenis actually like drone strikes, and there isn't wide opposition to them. And there's no Yemeni—there's no journalists, there's no activists, there's no lawyers who would agree to that." Zenko added that "the size of al-Qaeda in the Arabian Peninsula has more than tripled since drone strikes started occurring with a great intensity."

"[I]n Yemen, the United States is serving as the counterinsurgency air force of the Hadi regime," Zenko continued. "The U.S. makes the claim that every individual targeted is a senior al-Qaeda operational leader who poses a significant and imminent threat of violent attack against the U.S. homeland. That's simply not plausible, and it's not true. If you look at some of the individuals targeted, they're engaged in an insurgency operation against the state of Yemen.... They are not getting on planes to conduct strikes in the U.S. homeland."

Brennan's close ties to the Saudis also surfaced when Sen. Saxby Chambliss (R-Ga.) questioned the nominee about the report in the 9/11 Commission Report, that he had advised then-CIA Director George

Tenet, and former National Security Advisor Sandy Berger, to cancel a 1998 planned operation to capture Osama bin Laden in Afghanistan, in favor of "an all-out secret effort to persuade the Taliban to expel bin Laden." While attempting to downplay his role, Brennan admitted giving such advice, explaining that "I was engaged in discussions with the Saudi government at the time" (see below).

Brennan's Torture(d) Evasions

Brennan showed himself to be a chameleon of the first order, in changing his colors to suit the Administration in power. This was particularly obvious on the question of what constitutes torture, and it came up a number of times in questions about a 6,000-page report (still classified) on the Bush Administration's detention and interrogation program which the Senate Intelligence Committee recently completed—which reportly damns the Bush-Cheney use of "enhanced interrogation techniques" (EITs), and concludes, after exhaustive inquiries, that no useful intelligence was obtained through their use. Brennan had previously asserted that valuable intelligence had come from EITs, but he was backtracking like crazy on this during the hearing—a point on which he was grilled by both Democrats, and by some Republicans who are still defending the use of EITs.

Sen. Jay Rockefeller (D-W.Va.) spoke extensively about the Committee's report, and he said that Brennan had claimed to be "shocked" at what he'd read in the report, and said he hadn't known much of what it contained.

Brennan was confronted on this by Chambliss, who interrogated him about his recent statements that he opposed the use of EITs, whereas during the Bush Administration, he had stated that EITs "saved lives." Chambliss also demonstrated that Brennan had not raised any of these objections to his superiors at the CIA at the time, and that he appeared to have been "in the loop" in receiving reports of the CIA's interrogation of alleged high-level al-Qaeda operative Abu Zubaida. True to form, Brennan denied any responsibility for the program.

When asked by Chambliss whether his policy was to kill al-Qaeda terrorists, rather than capture and detain them, Brennan sanctimoniously denied it. Chambliss then asked how many "high-value" terrorists had been captured under Obama's tenure. While Brennan hemmed and hawed, Chambliss said he would save him

the trouble: It was only *one*.

Sen. Carl Levin (D-Mich.) grilled Brennan on whether he thinks that waterboarding constitutes torture—to which Brennan adamantly refused to give a straight answer, saying he couldn't, because he is not a lawyer. Brennan would only concede that the Attorney General has called it torture, but he himself couldn't say. "I have a personal opinion that waterboarding is reprehensible and it's something that should not be done," Brennan equivocated. "And, again, I am not a lawyer, Senator, and I can't address that question."

Chambliss also pointed to the Obama Administration's lack of cooperation on Benghazi, and he referred to a question that Sen. Lindsey Graham (R-S.C.) had asked of Director of National Intelligence James Clapper, which the National Security staff in the White House ("your shop") told Clapper he didn't have to answer. On this occasion, Brennan gave a lawyer-like response, citing "the long-standing tradition" of "Executive privilege."

And Obama?

One significant omission in the Brennan hearing was a failure to address the role of the President in de-

termining the policy that Brennan had followed as his Counterterrorism Advisor. Senator Rockefeller obliquely raised this issue, when he noted that the "de-termination [to carry out drone strikes] is made by one person, and one person alone": the President.

Collins brought the issue back to Obama in her concluding statement, when she noted that CIA officers had told her that they were concerned whether Brennan, if confirmed, was going to represent the CIA at the White House, or whether he would be the White House (i.e., Obama's) agent in the CIA.

Beyond Bush

The disclosures made in the DOJ White Paper, as well as the Feb. 7 hearing, demonstrate that the Obama team is making the identical arguments that the Bush-Cheney gang made after September 2001, that the judiciary cannot interfere with the President in his exercise of his Commander-in-Chief powers in wartime. Obama is explicitly relying on the Authorization of the Use of Military Force which Congress, in a panic, approved in the Fall of 2001, and which was the basis of the Cheney-Bush claims of unfettered Executive power.

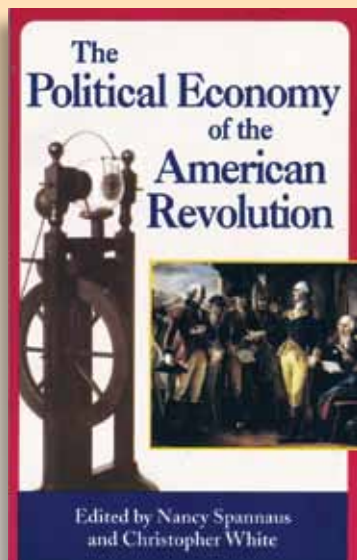
Indeed, Cheney continues to give interviews supporting Obama's use of dictatorial war powers to this day.

But, in a series of rulings in 2004, 2006, and 2008, the U.S. Supreme Court insisted that it—and not the Executive—has the last word as to whether an alleged terrorist, detained under Bush's "war on terror," has the right to challenge his detention. The Bush Administration repeatedly said "no"; the Supreme Court disagreed, and pronounced that the Executive cannot indefinitely detain even the "worst of the worst" without giving them some opportunity to be represented by counsel and to challenge the Executive's claims.

Those rulings involved mere detention. How much more should this reasoning apply when the Executive, in secret and on its own exclusive authority, claims to right to carefully plan and premeditate the killing of an American citizen, far from any battlefield or the heat of battle?

Once again, Barack Obama is proving himself to be surpassing the evil of Bush & Cheney; if Democrats would show even a fraction of the outrage they expressed toward the previous Republican Administration, Obama would be out of the White House, faster than you can say "Richard Nixon."

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