

ONE OF JUST FOUR OVERSEERS ON DRONE TARGETING BELIEVES FIRST AMENDMENT PROTECTED ACTIVITIES MERIT EXECUTION

While the Gang of Four do not have access to the CIA's kill list (and therefore did not know whether Samir Khan was on it before his death), they are the only people outside the Executive Branch who had, before today, seen the government's rationale for killing Anwar al-Awlaki (and DOJ still has 8 memos on targeted killing to turn over). Thus, up until today, the Gang of Four has been the only outside review on that killing, 16 months after Awlaki's death.

That's all very nice because last March, in the context of the Administration's refusal to turn over these memos, Dianne Feinstein offered this guarantee that the targeted killing program – and all other counterterrorism programs – are constitutional.

The Attorney General presented the administration's legal analysis for the use of force against terrorists, including Americans. I believe it is important for the public to understand the legal basis and to make clear that our counterterrorism efforts are lawful under the Constitution, U.S. law and the law of war.

We are made safer by strikes against terrorists who continue to lead and carry out attacks on the United States. There are legal limits to this authority and great care is taken to ensure it is exercised carefully and with the absolute minimum of collateral damage. The Senate Intelligence

Committee is kept fully informed of counterterrorism operations and keeps close watch to make sure they are effective, responsible and in keeping with U.S. and international law. [my emphasis]

That's it. One of the only assurances that Awlaki's death, and everyone else's, is legal.

Which is all the more troubling given that DiFi's judgement of what makes someone a legitimate target is so outrageous it made even John Brennan pause.

DiFi presented a series of terrorist attacks and asked Brennan to validate that Awlaki was, in fact, involved. It went something like this:

DiFi: Did he have connection to Umar Farouk Abdulmutallab?

Brennan: Yes.

DiFi: Can you tell us what that was?

Brennan: I prefer not to.

DiFi: Did he have a connection to Fort Hood?

[long pause and serious squirming]

Brennan: As a member in AQAP he had a role in inciting a number of individuals. There were a number of occasions where individuals, including Awlaki, has been in touch with Nidal Hasan.

DiFi: Did Faisal Shahzad tell interrogators he was inspired by Awlaki.

Brennan: Yes

DiFi: Last October, was he involved [not sure she used that word, and she means October 2010] in the failed attempt to bring down cargo aircraft?

Brennan: Awlaki was involved in

overseeing a number of attacks—there was a relationship there.

Now, it is rather telling that Brennan didn't want to address Abdulmutallab; I think it possible that there are problems with Abdulmutallab's confession, as I lay out here. That said, there is also NSA information (leaked by Pete Hoekstra and made fairly obvious by the Webster report) and, probably, information from people infiltrated into AQAP, meaning Brennan needed to protect sources and methods.

And the toner cartridge plot is pretty weak, too, as Jabir al-Fayfi reportedly testified that others from AQAP were really in charge of the operation.

But for DiFi to suggest that Awlaki could be killed because of his role in the Nidal Hasan attack is outright irresponsible. After all, FBI read the correspondence between Hasan and Awlaki in real time. And yet having read it all – and having read whatever else email Awlaki received between June 2009 and December 24, 2009 when the US first tried to kill Awlaki – they still didn't consider Awlaki to be operational (though one office following him believed he aspired to be).

As of January 7 and June 16, 2009, the FBI knew Anwar al-Aulaqi was an anti-American, radical Islamic cleric and the subject of a Tier <redacted> FBI counterterrorism investigation. San Diego believed [<redacted> that Aulaqi was [developing ambitions beyond radicalization] <redacted>. WFO viewed him at that time as merely inspirational. The FBI's full understanding of Aulaqi's operational ambitions developed only after the attempted bombing of Northwest Airlines Flight 253 on Christmas Day 2009.

Indeed, William Webster spent years trying to

figure out whether FBI should have known Hasan was planning an attack from the emails, which is a much closer call. But even after reading everything that might have transpired between the two, no one believes that Awlaki had anything more than an inspirational role.

And yet one of the only four people outside the Administration who has attested to the legality of the strike on Awlaki thinks this should be part of the case to justify a due process free execution.

It got worse from there. She went on to insist that [rough transcript] "Awlaki was not, by far, an American citizen of whom America would be proud."

But like writing a bunch of First Amendment protected hateful propaganda, being "an American of whom America would not be proud" is not reason to be executed.

Dianne Feinstein, however, thinks it is.