

LIEBERMAN'S HUNT FOR A LONE WOLF?

Jim White has two important diaries on Joe Lieberman's promise to hold hearings on the attack on Fort Hood. In the first, Jim notes that such a hearing will whip up anti-Muslim hysteria. In the second, Jim raises concerns about Nidal Hasan's interrogation.

I think both of Jim's diaries raise important concerns. But I'd like to add a third to the list: that Lieberman will use this case to advocate for expanded authorities under the PATRIOT Act.

Check out how Lieberman describes Hasan:

WALLACE: A lot of people are wondering – you talk about all the statements he made. There were a lot of warning signs out there. I know hindsight is 20/20, but were there enough signs that – enough red flags that authorities should have stepped in?

LIEBERMAN: Well, that's a very important question. And I would say, Chris, that while the Army and the FBI are conducting the criminal investigation about exactly what happened and what Dr. Hasan should be charged with, the U.S. Army – the Department of Defense has a real obligation to convene an independent investigation to go back and look at whether warning signs were missed, both of his – the stress he was under, but also the statements that he was making which really could lead people to believe that Dr. Hasan had become an Islamist extremist.

A couple of years ago, after a two-year investigation, my committee put out a report that said the new face of terrorism in America would not just be

the attacks as 9/11, organized abroad and sending people in here. It would be people within this country, **home- grown terrorists, self-radicalized**, often over the Internet, going to jihadist Web sites.

And there's concern from what we know now about Hasan that, in fact, that's exactly what he was, **a self-radicalized home-grown terrorist**. [my emphasis]

Even while Lieberman feigns an attempt not to jump to conclusions, he seems interested in holding a hearing precisely because he sees Hasan as a self-radicalized terrorist.

Cato's Julian Sanchez had a piece a few weeks ago talking about the problems with the Lone Wolf provision.

The extraordinary tools available to investigators under the Foreign Intelligence Surveillance Act (FISA), passed over 30 years ago in response to revelations of endemic executive abuse of spying powers, were originally designed to cover only "agents of foreign powers." The PATRIOT Act's "lone wolf" provision severed that necessary link for the first time, authorizing FISA spying within the United States on any "non-U.S. person" who "engages in international terrorism or activities in preparation therefor," and allowing the statute's definition of an "agent of a foreign power" to apply to suspects who, well, aren't. Justice Department officials say they've never used that power, but they'd like to keep it the arsenal just in case.

[snip]

Courts have generally been extraordinarily deferential to the executive in the realm of foreign intelligence, and have suggested that

the Fourth Amendment's protections against warrantless searches apply only weakly, if at all, in this context. But when it comes to domestic national security investigations, a unanimous Supreme Court has ruled that the usual restrictions remain largely intact. The court clearly saw the involvement of a "foreign power" as providing the distinction between the world of the criminal law's Fourth Amendment protections and the hazy arena where the executive enjoys far greater latitude. The "lone wolf" provision recklessly blurs that line, defying the common sense meaning of an "agent of a foreign power," and giving investigations that belong in the first world a dubious statutory foothold in the second.

But here's one of the biggest concerns: as Julian's piece makes clear, the Lone Wolf provision would not, currently, apply to Hasan. It applies only to non-US persons, not to US citizens like Hasan.

Which is where I worry that Lieberman is going with this. The House Judiciary bill (but not the Senate one) allows the Lone Wolf provision to sunset because of the legal concerns that Julian raises in his piece. But if a hawk like Lieberman showcases what he has pre-determined to be a self-radicalizing terrorist, it might provide just the thing people like Lieberman need to further chip away at civil liberties of US persons.

I'm not saying this guy shouldn't have been investigated—he clearly should have. But it's not clear that we need to expose all citizens to snooping expeditions to keep ourselves safe.

Update, from ABC: US intelligence was aware months ago that Hasan had tried to contact al Qaeda.

Update: Note Isikoff's source explicitly called

this a Lone Wolf attack.

To some in law enforcement – including the one who spoke to Newsweek – the purchase of the high-powered gun, the Internet writing and Hasan’s alleged shouting of “Allah U Akbar” (Arabic for “God is Great”) during the attack – suggest that the Fort Hood shooting should be viewed more as a terrorist act by a “lone wolf” Muslim extremist than as the work of a troubled physician who “snapped” under pressure.

Isikoff is notoriously well sourced in FBI. So I guess that’s where this is going.

Update: Spencer asks a question a few below have asked: why didn’t our crack data mining program alert the right people to Hasan?