

ASSASSINATION PERMISSION SLIPS AND HALL PASSES

Yesterday, Dennis Blair gave the House Intelligence Committee an explanation of the “special permission” that the Government grants itself before it places a US citizen on its kill list.

The U.S. intelligence community policy on killing American citizens who have joined al Qaeda requires first obtaining high-level government approval, a senior official disclosed to Congress on Wednesday.

Director of National Intelligence Dennis C. Blair said in each case a decision to use lethal force against a U.S. citizen must get special permission.

“We take direct actions against terrorists in the intelligence community,” he said. “If we think that direct action will involve killing an American, we get specific permission to do that.”

He also said there are criteria that must be met to authorize the killing of a U.S. citizen that include “whether that American is involved in a group that is trying to attack us, whether that American is a threat to other Americans. Those are the factors involved.”

If you haven’t already, you should read Glenn Greenwald’s entire piece on why this stance violates US law. Here’s Glenn’s description of the legal background.

The severe dangers of vesting assassination powers in the President are so glaring that even GOP Rep. Pete

Hoekstra is able to see them (at least he is now that there's a Democratic President). At yesterday's hearing, Hoekstra asked Adm. Blair about the threat that the President might order Americans killed due to their Constitutionally protected political speech rather than because they were actually engaged in Terrorism. This concern is not an abstract one. The current controversy has been triggered by the Obama administration's attempt to kill U.S. citizen Anwar al-Awlaki in Yemen. But al-Awlaki has not been accused (let alone convicted) of trying to attack Americans. Instead, he's accused of being a so-called "radical cleric" who supports Al Qaeda and now provides "encouragement" to others to engage in attacks – **a charge al-Awlaki's family vehemently denies** (al-Awlaki himself is in hiding due to fear that his own Government will assassinate him).

The question of where First Amendment-protected radical advocacy ends and criminality begins is exactly the sort of question with which courts have long grappled. In the 1969 case of *Brandenburg v. Ohio*, the Supreme Court unanimously reversed a criminal conviction of a Ku Klux Klan leader who – surrounded by hooded individuals holding weapons – gave a speech threatening "revengeance" against any government official who "continues to suppress the white, Caucasian race." The Court held that the First Amendment protects advocacy of violence and revolution, and that the State is barred from punishing citizens for the expression of such views. The *Brandenburg* Court pointed to a long history of precedent protecting the First Amendment rights of Communists to call for revolution – even violent

revolution – inside the U.S., and explained that the Government can punish someone for violent **actions** but not for speech that merely advocates or justifies violence (emphasis added):

As we [395 U.S. 444, 448] said in *Noto v. United States*, 367 U.S. 290, 297 -298 (1961), **“the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.”** See also *Herndon v. Lowry*, 301 U.S. 242, 259 -261 (1937); *Bond v. Floyd*, 385 U.S. 116, 134 (1966). A statute which fails to draw this distinction **impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments.** It sweeps within its condemnation speech which our Constitution has immunized from governmental control.

From all appearances, al-Awlaki seems to believe that violence by Muslims against the U.S. is justified in retaliation for the violence the U.S. has long brought (and continues to bring) to the Muslim world. But as an American citizen, he has the absolute Constitutional right to express those views and not be punished for them (let alone killed) no matter where he is in the world; it's far from clear that he has transgressed the advocacy line into violent action.

I want to go back to just one more problem with this whole state of affairs.

We have been focusing all of our powers of

telecom surveillance on Anwar al-Awlaki for at least a year (and probably far longer). Our government has tracked not only what he has said on jihadist websites, but also knows precisely what he has been emailing and presumably saying on the phone.

But none of that stuff, before Christmas Day, even merited an indictment.

And then—perhaps only because of the testimony from Umar Farouk Abdulmutallab that Republicans have shrieked for weeks was inadequate—the Government moved from having no charges against al-Awlaki to attempting to assassinate him. All at a time when we've increased our presence in and cooperation with Yemen (so therefore, presumably also our ability to extradite someone from Yemen).

Glenn's point is important because it appears the government agrees with him on the First Amendment point: all of the speech al-Awlaki has engaged in for the last decade was not deemed worthy of even a criminal indictment. Yet all of a sudden, it got al-Awlaki on the kill list.

The process by which that happened must be transparent to the American people.