

# JANE HARMAN NOW TARGETING INDIVIDUAL CYBERTARGETS WITH DRONE COURT

Jane Harman's advocacy for a drone court suffers from the same problem I touched on here (and will lay out at more length in the next day or so): before you can have a Drone and/or Targeted Killing Court, you need some law the court will apply. Harman seems to envision just applying the standards the Executive – not Congress – came up with, which isn't how Schoolhouse Rock taught me the government is supposed to work.

Congress, in her model, would just be fully apprised of what goes on in the Drone and/or Targeted Killing Court, not write law to limit what can be approved.

But I'm more interested – alarmed, really – by the way Harman seamlessly adds cybertargeting to her advocacy.

The FISA court, renamed the CT Court, could also oversee drones and cyber. A FISA court application must show that specific individuals are connected to a foreign power – which is defined, in part, as a group engaged in international terrorism. Drone and cyber applications could (1) list the individual/cyber target against whom the lethal operation is directed and (2) submit a finding of probable cause that the individual/cyber target is connected to a foreign power, is in a senior operational capacity and poses an imminent threat of violent attack against the United States.

Approved applications for drone strikes and cyberattacks would need to be renewed after a certain period, and discontinued if evidence is presented

that the targets no longer meet the  
criteria. [my emphasis]

Granted, it would have been nice if the government had had to go to a court to explain why a publisher like WikiLeaks should be targeted with a persistent DNS attack, assuming that's what happened. But given that both our FISA targeting and our targeting killing targeting probably allow for far too much abuse of the First Amendment, I'm not convinced the FISA Court would have noted the problem with that incident of prior restraint.

More generally, though, isn't Harman's neat inclusion of cyber targeting here a hint that our cyberattacks have gone beyond just Iran and WikiLeaks?