

AFTER MONTH OF FALSE “TRANSPARENCY,” ADMINISTRATION INVOKES SECRETS AGAIN

During the entire past month of leaks on targeted killings, I suspected that when the government finally got around to responding to the NYT and ACLU FOIAs for the OLC memo authorizing Anwar al-Awlaki's death, it would once again claim the topic it had been leaking profusely about was too secret to release.

Call me cynical, but I'm still waiting for the Administration to say all this non-specific disclosure means it can tell the ACLU to take a hike.

They're getting pathetically predictable.

The Executive Branch has determined that, while the government can acknowledge the existence of some documents responsive to the FOIA requests that form the basis of this lawsuit, for the most part it cannot provide public details regarding the classified documents that are withheld; even to describe the numbers and details of most of these documents would reveal information that could damage the government's counterterrorism efforts.

There are two things that are especially illegitimate about this response. The response points to two of the speeches given precisely to provide a false sense of transparency about its assassination program.

One result of that analysis has been a series of speeches by the State Department Legal Adviser, by the

Department of Defense General Counsel, by the Attorney General, and by the Assistant to the President for Homeland Security and Counterterrorism that have set forth for the American people the legal analysis and process involved in the determination whether to use lethal force.

[snip]

Since the filing of these cases, senior U.S. officials have publicly addressed significant legal and policy issues pertaining to U.S. counterterrorism operations and the potential use of lethal force against U.S. citizens who are senior operational leaders of al-Qaida or associated forces. Bennett Decl. ¶ 17. These include speeches by Attorney General Eric Holder on March 5, 2012, and by Assistant to the President for Homeland Security and Counterterrorism John Brennan on April 30, 2012, addressing the circumstances in which it would be lawful to use lethal force against such U.S. citizens, and the process employed by the government in making decisions to employ targeted lethal force, respectively.

[snip]

Because the CIA is a critical component of the national security apparatus of the United States, and because the speeches covered a wide variety of issues relating to U.S. counterterrorism efforts, it does not harm national security to reveal that copies of the Attorney General's and Mr. Brennan's speeches exist in the CIA's files.

Of course, within minutes of the completion of Brennan's speech, I and others noted that it was obviously misleading since it focused only on targeted killings and not signature strikes.

Then as the flood of information on the drone program continued, it became even more clear how much Brennan's speech served as self-serving propaganda.

When Brennan gave his drone speech on April 30, I—and a few other people—noted that the speech was already outdated. Brennan did admit, unequivocally, that we use drones to kill people.

So let me say it as simply as I can. Yes, in full accordance with the law, and in order to prevent terrorist attacks on the United States and to save American lives, the United States Government conducts targeted strikes against specific al-Qaida terrorists, sometimes using remotely piloted aircraft, often referred to publicly as drones.

Yet he spoke repeatedly of targeting specific individuals.

Without question, the ability to target a specific individual, from hundreds or thousands of miles away, raises profound questions.

[snip]

In this armed conflict, individuals who are part of al-Qaida or its associated forces are legitimate military targets. [my emphasis]

Thus, he wasn't talking about the program in Yemen that—perhaps 10 days earlier—had been expanded to target patterns rather than individuals. Rather, he was pretending that the program remained limited to personality

strikes, strikes against known targets.

The speech always seemed like an attempt to put the best spin on the program. But the approach makes even more sense now that we know Brennan is the one who has legal liability for making these targeting decisions.

Moreover, the specific treatment of this torrent of leaks also makes this declaration so problematic.

As Mark Hosenball reported, the CIA did not submit a crime report on all the leaks about its drone program.

The CIA has not filed a “crime report” with the Justice Department over reports about Obama’s drone policy and a U.S. “kill list” of targeted militants, an action which often would trigger an official leak investigation, two sources familiar with the matter said. They requested anonymity to discuss sensitive information.

This, in spite of the high level of detail provided in the leaks in the last months. For example, here’s the level of detail on the Anwar al-Awlaki and Samir Khan killing offered in Daniel Klaidman’s book, the precise subject of the ACLU FOIA.

But as the Americans were closing in on Awlaki, Obama let it be known that he didn’t want his options preemptively foreclosed. If there was a clear shot at the terrorist leader, even one that risked civilian deaths, he wanted to be advised of it. “Bring it to me and let me decide in the reality of the moment rather than in the abstract,” he said, according to one Obama confidant. “In this instance,” recalled the source, “the president considered relaxing some of his collateral requirements.” But in

the end Obama was never forced to confront that awful dilemma.

On the morning of September 30, after finishing breakfast, Awlaki and several of his companions left the safe house and walked about seven hundred yards to their parked cars. As they were getting into their vehicles, they were blown apart by two Hellfire missiles. (Also killed was Samir Khan, the Pakistani American propagandist for AQAP and editor of the terrorist organization's Internet organ, *Inspire*. Justice Department lawyers had told the military that they could not approve Khan's killing, but after officials learned he had died in the raid, Khan was deemed "acceptable collateral damage.")

Yet now, the government—and the CIA especially—is claiming all this is too secret to reveal.

For example, whether or not the United States government conducted the particular operations that led to the deaths of Anwar al-Aulaki and the other individuals named in the FOIA requests remains classified. Likewise, whether or not the CIA has the authority to be, or is in fact, directly involved in targeted lethal operations remains classified.

Now, I've suggested one explanation may be that this information all pertains to DOD, not CIA (indeed, Klaidman's mention of a military request to target Khan would support this possibility). So it's possible this entire FOIA response is more kabuki, a focus on CIA to avoid re-reviewing the DOD response for related files. (When I get a chance, I will review the declarations to see whether this seems to be the case, but bad English Toobz prevent that review right now.)

Still, either this information is really classified, in which case it should be among the leak investigations. Or it's not, and this submission is a outright deception.

Or some of both.

But if the court accepts this submission, it will be party to the Administration's outright deceit in hiding aspects of its assassination program.