

JOHN BRENNAN CAN'T EVEN LAST ONE 3-HOUR HEARING WITHOUT ENGAGING IN INFORMATION ASYMMETRY

One of the questions Dianne Feinstein asked John Brennan in his confirmation hearing last week pertained to the role in approving drone strikes he'll have at CIA. He refused to answer the question directly because the program is classified.

Feinstein: I'd like to ask you about the status of the Administration's efforts to institutionalize rules and procedures for the conduct of drone strikes. In particular, how do you see your role as CIA Director in that approval process?

Brennan: Chairman, as this committee knows and I'm sure wants to continue to protect certain covert action activities. But let me talk generally about the counterterrorism program and the role of CIA and this effort to try to institutionalize and to ensure we have as rigorous a process as possible that we feel that we're taking the appropriate actions at the appropriate time. The President has insisted that any actions we take will be legally grounded, will be thoroughly anchored in intelligence, will have the appropriate review process, approval process before any action is contemplated, included those actions that might involve the use of lethal force. The different parts of the government that are involved in this process are involved in the interagency,

and my role as the President's counterterrorism advisor was to help to orchestrate this effort over the past four years to ensure again that any actions we take fully comport with our law and meet the standards that I think this committee and the American people fully expect of us as far as taking actions we need to protect the American people but at the same time ensuring we do everything possible to ensure we need to resort to lethal force.

Brennan was equally evasive to similar questions in the hearing, and did not really answer a very simple question in his questions for the committee, whether the drone rule book had been finalized (see question 39: Is there a drone rulebook? A: Not so much a rulebook as little scraps of paper strewn around I sometimes lose).

But let it be noted that when the Chairwoman of the committee purportedly overseeing this program asked him what his role would be, as CIA Director, under the new rule book – a topic which has been addressed in part in the press – he suggested he couldn't answer because it was classified.

Less than three hours later, this exchange occurred.

Burr: On January 15th of this year, the President signed the 2012 Intelligence Authorization Act, which requires congressional notification of any authorized disclosure of national intelligence. Now, we've not received any notification of authorized disclosures. Have there been any authorized disclosures to your knowledge?

Brennan: I would like to say that since you haven't received any notification there haven't been.

Burr: Would you consider the information

reported in the press about the counterterrorism playbook unauthorized disclosure?

Brennan: Um, I don't know which piece you're talking about. There's been a lot of discussion out there in the media and in the newspapers about this, so I don't know specifically about any classified information – the fact that the Administration may be going through a process to try to institutionalize, codify, make as rigorous as possible our processes and procedures in and of itself is not a classified issue. So those details that are classified – I don't know of any that came out in some of those reports.

Burr: If there are classified information that's out there, and it's not authorized, was there a crime report filed relative to the playbook?

Brennan: Um, presumably there was, Senator. Those decisions as far as initiating criminal investigations are done by those departments and agencies that have stewardship of that classified information. And in discussions with the Department of Justice they make the determination whether or not, in light of the fact that so many people have access to it, how they can proceed with some type of criminal investigation.

There have been two major stories on the drone rule book since Obama signed the new intelligence authorization and each contains information that is almost certainly classified. This January 19 WaPo story reveals that CIA Director John Brennan won't have to play by the rules for the next year in Pakistan.

None of those rules applies to the CIA drone campaign in Pakistan, which began under President George W. Bush. The

agency is expected to give the U.S. ambassador to Pakistan advance notice on strikes. But in practice, officials said, the agency exercises near complete control over the names on its target list and decisions on strikes.

Imposing the playbook standards on the CIA campaign in Pakistan would probably lead to a sharp reduction in the number of strikes at a time when Obama is preparing to announce a drawdown of U.S. forces from Afghanistan that could leave as few as 2,500 troops in place after 2014.

Officials said concerns about the CIA exemption were allayed to some extent by Obama's decision to nominate Brennan, the principal author of the playbook, to run the CIA.

This information – whether Brennan will have to play by his own rule book in Pakistan – partly addresses the question Feinstein asked which he refused to answer because it was classified. That said, given the date, the story may have been reported before the new authorized disclosure rule went into effect.

That's less likely to be true of this February 5 Daniel Klaidman article, obviously written with an eye to this confirmation process. Not only does it show that Brennan authorized the covert signature strikes in Yemen in response to the personal entreaties of his buddies from the Riyadh station chief days.

Then, in the spring of 2012, with Yemen falling into chaos and AQAP gaining more and more territory, Yemeni officials—with whom Brennan had close ties going back to his days as a CIA station chief in the region—beseeched Brennan to help. The Yemeni Army was collapsing under the brutal assault; soldiers were being crucified and

beheaded by the jihadis. By April 2012, Brennan and Obama finally relented and permitted signature strikes in the country.

But it included these details about our past and future targeting rules.

And then there is “the playbook”—an ambitious attempt to create explicit rules and procedures for when lethal force is justified. The initiative began more than a year ago. It is highly detailed and lays out, for example, criteria for the so-called disposition-matrix, which prescribes whether terrorist suspects should be killed, captured, or dealt with in some other way. Embedded in the document are the legal authorizations for pursuing the enemy away from conventional battlefields in places like Yemen, Somalia, and now Mali—a crucial check on a war without defined boundaries. The playbook also toughens the standard for when a targeted killing is justified. Simply being a threat to “United States interests,” for example, no longer meets the threshold. That standard is too elastic, according to officials who have been involved in writing the new rules. And the document makes finely grained distinctions about where one must be in the chain of command of a terrorist organization to be targetable. A driver or cook, who can be easily replaced, may not represent the kind of unique threat that would warrant lethal action. A bomb maker, on the other hand, would.

Klaidman sources the news of the Pakistani exception back to the WaPo, so its answer to DiFi’s specific question may be pre-Intelligence Authorization as well.

In other words, Brennan went from telling the

Chair of the committee that he couldn't answer her question (in open session) because the answer was classified. But when Burr asked him about what I assume to be one or both of these articles, Brennan pretended there was no classified information in them – even while one of them partly answered DiFi's question!

It will be interesting to see where Burr will go on this front. The Klaidman article was pretty obviously part of the pre-confirmation press blitz for Brennan. It clearly came from and with the sanction of the White House (though not necessarily the personal knowledge of Brennan).

Burr went on to ask Brennan for a list of all the sanctioned leaks he has been part of (a question, Burr rightly noted, that Brennan entirely dodged in his responses for the committee). Burr should have asked for a list of the sanctioned leaks designed to help Brennan's candidacy, because there have been many.

One thing is clear. Brennan refused to answer questions that he said were classified about the very same topic (and to some degree, that address the very question) that has shown in the press. But Brennan suggested (though Burr didn't ask him about specific articles or classified details) that those articles were not classified.