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A Court for Targeted Killings

No American prosecutor can imprison or execute someone except on the orders of a judge or jury. That fundamental principle applies no less to the suspected terrorists that the executive branch chooses to kill overseas, particularly in the case of American citizens.

A growing number of lawmakers and experts [are beginning to recognize](#) that some form of judicial review is necessary for these killings, usually by missiles fired from unmanned drones. Last week, at [the confirmation hearing of John Brennan to be the director of the C.I.A.](#), several senators said they were considering the establishment of a special court, similar to the one that now decides whether to approve wiretapping for intelligence gathering.

Even President Obama, [in his State of the Union address](#), said he wanted counterterrorism to be more transparent and fully consistent with checks and balances.

A special court, [which we first proposed in a 2010 editorial](#), would be an analogue to the [Foreign Intelligence Surveillance Court](#) that Congress set up in 1978. If the administration has evidence that a suspect is a terrorist threat to the United States, it would have to present that evidence in secret to a court before the suspect is placed on a kill list.

“Having the executive being the prosecutor, the judge, the jury and the executioner, all in one, is very contrary to the traditions and the laws of this country,” Senator Angus King Jr. of Maine said at the Brennan hearing. “If you’re planning a strike over a matter of days, weeks or months, there is an opportunity to at least go to some outside-of-the-executive-branch body, like the FISA Court, in a confidential and top-secret way, make the case that this American citizen is an enemy combatant.”

Mr. Brennan said the idea was worthy of discussion, adding that the Obama administration had “wrestled with this.” Two other senators, Dianne Feinstein of California, the chairwoman of the Intelligence Committee, and Ron Wyden of Oregon, also expressed interest. Even Robert Gates, a former C.I.A. director who was defense secretary under President George W. Bush and President Obama, [said on CNN](#) that such a judicial panel “would give the American people confidence” that a proper case had been made against an American citizen.

The establishment of a court would have to be accompanied by clear and public standards for how a suspect can be named an enemy combatant and a detailed explanation of the process now used by the White House. (An opportunity for the president to demonstrate the transparency that he says he supports.) The court’s work would, in turn, have to be overseen

by Congress, as the surveillance court is now. The court would not be expected to approve individual drone strikes, and the executive branch would still be empowered to take emergency actions to prevent an impending attack.

The surveillance court is often considered a rubber stamp; out of 32,000 wiretap applications presented by the government from 1979 to 2011, it rejected only 11. But its presence has helped ensure that the administration's requests are serious. In 2002, it ruled that the Department of Justice had overstepped its bounds, giving prosecutors too much authority. (That decision was later overturned by an appeals court.) Creating an even stronger court to approve targeted killings is the first step Mr. Obama can take if he is serious about bringing national security policy back under the rule of law.

<http://www.nytimes.com/2013/02/14/opinion/a-special-court-is-needed-to-review-targeted-killings.html>