

**Senate Judiciary Committee
Subcommittee on Constitution, Civil Rights and Human Rights**

**Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing
April 23, 2013**

From Senator Durbin

Questions for the Record for Gen. James Cartwright

1. In a speech in April of last year, CIA Director John Brennan, who was then serving as a senior counterterrorism advisor to President Obama, discussed “the rigorous standards and process of review to which [the Administration holds itself]... when considering and authorizing strikes against a specific member of al-Qaida outside the hot battlefield of Afghanistan.” Brennan asserted that lethal force is used only when an individual is a legitimate target who “poses a significant threat to U.S. interests” and capture is infeasible. Some national security experts argue that this assertion is not entirely consistent with the use of so-called signature strikes. In signature strikes, anonymous, suspected militants are reportedly targeted on the basis of descriptions, behavioral patterns, and other characteristics that bear similarities to terrorist leaders on the run.

What is publicly known about the criteria used to select the targets of signature strikes and confirm that these individuals are, in fact, militants?

I cannot answer what is publicly known about the criteria used to select the target of signature strikes. What I can provide is that the U.S. Air Force MQ-1/9 aircraft record all mission sensor data. Consideration should be given for establishing guidelines on retention and review of this mission sensor data.

Do the tactical and strategic consequences of signature strikes risk undermining the overall counterterrorism goals or moral authority of the United States?

If strategy, tactics, and techniques imposed are perceived to do more harm than good, we risk undermining the overall counterterrorism goals and moral authority. There is reasonable evidence, in the public reporting, this may be the case. How accurate a reflection the reporting is, is not conclusive however, it is sufficiently prevalent to cause concern.

2. There are reportedly a series of policies, procedures, and safeguards currently in place that Defense Department officials must follow before carrying out a drone strike, in order to ensure legal authorization, reduce the potential for error, verify the target, and limit civilian casualties.

Would you please provide an unclassified overview of those policies and procedures and provide your recommendations on how they can be enhanced?

I retired from active duty in 2011. I recommend the committee ask DOD to provide established policies, procedures, and safeguards, currently in place, for any strike inside and outside of declared Areas of Hostility. I would also recommend a request for DOD to provide any remotely piloted aircraft-unique procedures and safeguards.

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- The Department of Justice’s white paper on the targeted killing of U.S. citizens overseas articulates a novel, and some would say, dangerously broad standard for what would constitute an imminent threat. What do you think are the implications of such a broad standard for imminence?

Committee witnesses, Rosa Brooks and Ilya Somin, are far more qualified than I to answer this question. I would only observe that if the criteria for imminence are too broad, they risk the inclusion of too many targets to be useful and/or responsible; if the criteria are too narrow in cases where the ability to act is fleeting, they risk the loss of opportunity to prevent serious harm.

- The U.S. government has apparently conducted a number of “double tap” strikes, where we have targeted the same location in back-to-back strikes. I am concerned that these sorts of double-hits place victims of the initial strike, as well as the people running to help them, in great danger. Critics of these strikes contend they violate the Geneva Conventions. Do you agree, and if so, can you explain why?

I do not advocate violating the Geneva Conventions. U.S. Air Force MQ-1/9 aircraft record all mission sensor data. If a violation of the engagement criterion or legal norms occurs, it would have been recorded and should be made available for review. I would not recommend the elimination of re-strike. There are many instances when re-strike is an appropriate action. I would recommend establishing the criteria for review of post-strike data for accountability and oversight purposes.

- The U.S. government has conducted a number of signature strikes against alleged members of al- Qaeda. Do you know what the government’s process is for verifying that a target is indeed a member of al-Qaeda? Similarly, do you know how the administration determines what are “associated forces” of al-Qaeda?

I retired from active service in 2011. I am not current on the criteria for target verification or determination of “associated forces”. Both are likely to be classified.

- How has the adaptation of policy and law lagged behind implementation of the capabilities of drone technology, in your view? What is not adequately being considered, and how might policy on the use of drones be improved?

Remotely piloted aircraft provide an unprecedented ability for target identification, management of collateral damage, persistence in the target area until all criteria are satisfied and post-strike accountability. The scenarios we addressed in the hearing (i.e., strikes against individuals or groups that pose a threat to the U.S. and/or its interests, outside of a normally declared area of hostility) are a very small segment of how the U.S. uses remotely piloted aircraft. I know of no better platform to perform this mission. A critical policy review is better focused on the scenario vice the weapon system. That said, to address the question -- improvements in the review and accountability requirements of post-strike records would enhance oversight of target identification, collateral damage management, and policy/legal compliance. Post-strike review could accomplish this without unduly risking the loss of an opportunity to prevent further harm to our interests arising from not acting against fleeting opportunities.