

ADMINISTRATION COMPLAINS THAT OTHERS ARE BRINGING TRANSPARENCY IT REFUSES TO ON ITS DRONE STRIKES

In a quote for a WaPo story on the Administration's credibility problems on its Afghanistan claims, a senior Administration official complained that their Afghan plans got leaked before they wanted them to.

There are people at every piece of this – the Taliban, Islamabad, Kabul and Washington” – who object to or are trying to influence elements of the emerging strategy, a senior administration official said, speaking on condition of anonymity to talk more candidly. “They use leaking as a tool.”

Leaking as a tool, even by those in power in DC! Imagine that!?!?

Meanwhile, in the NYT article on the Bureau of Investigative Journalism's report on the way Obama's drone strikes have targeted rescuers and funeral attendees, another senior Administration official launches this cowardly anonymous attack.

A senior American counterterrorism official, speaking on the condition of anonymity, questioned the report's findings, saying “targeting decisions are the product of intensive intelligence collection and observation.” The official added: “One must wonder why an effort that has so carefully gone after terrorists who plot to kill civilians has been subjected to

so much misinformation. Let's be under no illusions – there are a number of elements who would like nothing more than to malign these efforts and help Al Qaeda succeed.”

Mind you, that anonymous coward doesn't actually **dispute** anything in the BIJ report. Instead, he or she just questions the motives of aiming to bring transparency to our drone program, insinuating that doing the hard work of counting the innocent victims of the drone strikes equates to sympathizing with al Qaeda.

Add in fact the NYT article ends with more anonymous comments—on the use of “signature” targeting—that expose the anonymous coward's lies.

However, American officials familiar with the rules governing the strikes and who spoke on the condition of anonymity said that many missiles had been fired at groups of suspected militants who are not on any list. These so-called signature strikes are based on assessments that men carrying weapons or in a militant compound are legitimate targets.

Yet the most troubling part of the BIJ report—aside from the sheer number of casualties—is its count of 50 civilians killed as they tried to help earlier strike targets and 20 civilians killed at funerals of earlier targets.

But research by the Bureau has found that since Obama took office three years ago, between 282 and 535 civilians have been credibly reported as killed including more than 60 children. A three month investigation including eye witness reports has found evidence that at least 50 civilians were killed in follow-up strikes when they had gone to

help victims. More than 20 civilians have also been attacked in deliberate strikes on funerals and mourners. The tactics have been condemned by leading legal experts.

The report notes that it was able to disprove some claims that drones targeted rescuers, which would seem to support the independence of the effort and the good faith motives of those doing the research.

The researchers have found credible, independently sourced evidence of civilians killed in ten of the reported attacks on rescuers. In five other reported attacks, the researchers found no evidence of any rescuers – civilians or otherwise – killed.

And it points to Joby Warrick's highly sourced book as a very deliberate example where the US used funeral as "bait" for another drone strike.

On June 23 2009 the CIA killed Khwaz Wali Mehsud, a mid-ranking Pakistan Taliban commander. They planned to use his body as bait to hook a larger fish – Baitullah Mehsud, then the notorious leader of the Pakistan Taliban.

'A plan was quickly hatched to strike Baitullah Mehsud when he attended the man's funeral,' according to Washington Post national security correspondent Joby Warrick, in his recent book **The Triple Agent**. 'True, the commander... happened to be very much alive as the plan took shape. But he would not be for long.'

The CIA duly killed Khwaz Wali Mehsud in a drone strike that killed at least five others. Speaking with the Bureau, Pulitzer Prize-winner Warrick confirmed what his US intelligence sources had told him: 'The initial target was no

doubt a target anyway, as it was described to me, as someone that they were interested in. And as they were planning this attack, a possible windfall from that is that it would shake Mehsud himself out of his hiding place.'

Up to 5,000 people attended Khwaz Wali Mehsud's funeral that afternoon, including not only Taliban fighters but many civilians. US drones struck again, killing up to 83 people. As many as 45 were civilians, among them reportedly ten children and four tribal leaders. Taliban leader Baitullah Mehsud escaped unharmed, dying six weeks later along with his wife in a fresh CIA attack.

In short, this is a real report, based on solid investigative work.

And yet the Administration that admits it uses leaks (and therefore, implicitly, information asymmetry, since they control the classification of all this) maligns those bringing us the transparency that it refuses to offer.

Apparently now, this Administration believes that if you want to learn what is really going on in our war overseas, it amounts to sympathizing with the enemy. And that, by itself tells you something.

Update: In her interview with report author Chris Woods this morning, Amy Goodman asked him about the nasty insinuation.

AMY GOODMAN: I wanted to read to you an excerpt of a quote that just appeared in the *New York Times*. "A senior American counterterrorism official, speaking on the condition of anonymity, questioned the report's findings, saying 'targeting decisions are the product of intensive intelligence collection and observation.' The official added: 'One must wonder why an effort that has so

carefully gone after terrorists who plot to kill civilians has been subjected to so much misinformation. Let's be under no illusions—there are a number of elements who would like nothing more than to malign these efforts and help Al Qaeda succeed.'" So said an unnamed senior American counterterrorism official in response to your report, Chris Woods.

CHRIS WOODS: I think, obviously, that is a disgraceful comment from an unnamed U.S. official. We've presented our findings in good faith. It's all available on TBIJ's [website](#). Our data is transparent. We have linked to all of our sources. Our field investigators have put up their findings. We have eyewitness testimonies. We have a supported interview with the national security correspondent of the *Washington Post* confirming that his U.S. intelligence sources confirmed to him that CIA drones willingly and predictably carried out an attack on a funeral in Pakistan deliberately targeting people there. If the CIA's response—or rather, unnamed security official's response—to that is simply to accuse us of aiding al-Qaeda, then something is going significantly wrong at the CIA and in the wider U.S. intelligence community.

And the BIJ is calling on the CIA's Inspector General to investigate this anonymous smear (not like it would do any good).

The Bureau's managing editor Iain Overton announced tonight that he will be calling for the CIA's Inspector-General to investigate whether Agency officials have been abusing their anonymous status to smear the organisation's legitimate work.

The remarkable attack on the Bureau relates to its extensive investigation into CIA drone attacks on rescuers and funeral-goers in Pakistan. Working with the Sunday Times, the Bureau has published the names of 53 of at least 75 civilians reported killed in such strikes between May 2009 and July 2011.

THE ADMINISTRATION'S MANY EXCUSES FOR HIDING ITS TARGETED KILLING MEMO

Remember this article? It describes the debate within the Administration over how readily and extensively to acknowledge the US killing of Anwar al-Awlaki. As it describes, the debate was at least preliminarily resolved at a Situation Room meeting in November.

The issue came to a head at a Situation Room meeting in November. At lower-level interagency meetings, Obama officials had already begun moving toward a compromise. David Petraeus, the new CIA director whose agency had been wary of too much disclosure, came out in support of revealing the legal reasoning behind the Awlaki killing so long as the case was not explicitly discussed. Petraeus, according to administration officials, was backed up by James Clapper, the director of national intelligence. (The CIA declined to comment.) The State Department, meanwhile, continued to push for fuller disclosure. One senior Obama official who continued to raise questions about the wisdom of coming out

publicly at all was Janet Napolitano, the Homeland Security director. She argued that the calls for transparency had quieted down, as one participant characterized her view, so why poke the hornet's nest? Another senior official expressing caution about the plan was Kathryn Ruemmler, the White House counsel. She cautioned that the disclosures could weaken the government's stance in pending litigation. *The New York Times* has filed a lawsuit against the Obama administration under the Freedom of Information Act seeking the release of the Justice Department legal opinion in the Awlaki case. (The department has declined to provide the documents requested.)

It came down to what Denis McDonough, the deputy national-security adviser, cheekily called the "half Monty" versus the "full Monty," after the British movie about a male striptease act. In the end, the principals settled on the half Monty. As the State Department's Koh continued to push for the maximum amount of disclosure, McDonough began referring to that position as "the full Harold."

Note especially the stance of Kathryn Ruemmler, the White House Counsel, who argued that any disclosures on the Awlaki killing "could weaken the government's stance in pending litigation."

That is, Ruemmler argued the Administration couldn't voluntarily provide information about Awlaki's killing, because it might mean it would have to involuntarily give that information up pursuant to a lawsuit over that information. Huh?

Since November, both the NYT (on December 20, 2011) and the ACLU (yesterday) have sued to get the Awlaki memo under FOIA (the ACLU is also

suing to get the underlying evidence, including that relating to Samir Khan and Awlaki's son Abdulrahman).

So I wanted to compare the different responses different agencies gave the NYT and ACLU around the same time that many top Administration officials were advocating for some kind of transparency even while the White House Counsel was arguing that doing so might lead to transparency. Here's how the government responded to these FOIAs when (I've not noted the ACLU appeals, but all were appealed before the subsequent follow-up):

Around June 2010: OLC completes Awlaki memo

June 11, 2010: NYT's Scott Shane FOIAs DOJ OLC for memos on targeted killings

October 7, 2011: NYT's Charlie Savage FOIAs OLC for memos on targeting killings

October 19, 2011: ACLU FOIAs Anwar al-Awlaki OLC memo, underlying evidence supporting it, and information relating to Samir Khan and Abdullah al-Awalaki

October 27, 2011: OLC denies both NYT requests under FOIA exemptions (b)(1), (b)(3), and (b)(5), and, in response to Shane's request, also notes that with regards to other agencies, "neither confirms nor denies the existence of the documents" in the request

October 27, 2011: DOJ Office of Information Policy grants ACLU's request for expedited processing but determines the request fell within "unusual circumstances" so it could not meet the statutory deadline

October 31, 2011: DOD denies ACLU's request for expedited processing and also claimed "unusual circumstances"

November 2011, unknown date: Situation

Room meeting at which Principals decide to pursue a “half monty” strategy of limited release of information on Awlaki

November 4, 2011: NYT appeals its denial

November 7, 2011: USSOCOM denies ACLU’s request for expedited processing and determined the request fell within “unusual circumstances”

November 14, 2011: OLC denies ACLU’s request under FOIA exemptions (b)(1), (b)(3), and (b)(5)

November 17, 2011: CIA denies ACLU’s FOIA “pursuant to FOIA exemptions (b)(1) and (b)(3)” and claims that the “fact of the existence or nonexistence of requested records is currently and properly classified”

December 27, 2011: DOD informs ACLU it could not process the request within statutory timeframe

January 18, 2012: CIA informs ACLU it would be unable to respond to ACLU’s administrative appeal within statutory timeframe

So we’ve got three different responses, though together they may all make sense:

- An “unusual circumstances” response—which may indicate the need to search many records and/or consult another agency—response from DOD and and DOJ OIP
- A denial under exemptions (b)(1) (national defense information and (b)(3) (classified by statute) from CIA, and under those same

exemptions plus (b)(5)
(deliberative or executive
privilege) from OLC

- A Glomar (“neither confirm
nor deny”) response from CIA
and OLC

The “unusual circumstances” seems to reflect the inter-agency nature of this memo and the evidence (and, perhaps, that CIA has primary ownership over it), though in the case of the ACLU’s request for the evidence on Awlaki, it may also suggest there’s a whole bunch of materials on Awlaki.

The FOIA exemptions are utterly predictable. They basically say, “sorry, that’s classified.” And the addition of the (b)(5) from OLC is their standard nod to a deliberative privilege claim based on the pretense that the Executive may not rely on the memo.

And the Glomar response, which seems related to the CIA, would reflect the purportedly covert nature of the drone strike on Awlaki.

What I find interesting, though, is that on the same day when one office at DOJ was giving NYT a final exemption and Glomar-based decision—which suggests both that it had determined the memo to be classified but had also determined that CIA considered it covert—another DOJ office was giving ACLU the “unusual circumstances” answer, as if it had not yet determined the memo pertained to a covert program that could be withheld under FOIA exemptions.

Then there’s the fact that most agencies responded a second time to ACLU, but did not, at least according to their suit, to the NYT.

And finally, note that CIA gives ACLU a Glomar response in November, around the same time CIA Director David Petraeus and Director of National Intelligence James Clapper were supporting limited acknowledgement of the CIA’s role in Awlaki’s killing. Note, too, that NYT appealed

in early November, which may be the litigation risk that Ruemmler was worried about.

And one more issue of timing. CIA finally tells ACLU that it can't respond in timely fashion on January 18. But then within two weeks of that time, former CIA Director Leon Panetta was on TV answering questions about the Awlaki killing. Panetta's the guy who once asserted to a court that,

I am invoking the [state secrets] privilege over any information, if it exists, that would tend to confirm or deny any allegations in the Complaint [about CIA targeting Awlaki for assassination] pertaining to the CIA.

And presumably, given Klaidman's report that Petraeus was more open to releasing information on the Awlaki killing than CIA had previously been, Panetta had also refused to entertain releasing this information. So within two weeks of telling the ACLU it would take forever to get a response, Leon Panetta was on TV violating all the rules of secrecy he had insisted on for years.

THE NON-COUNTERTERRORIST DRONE LOOPHOLE: DID CLAPPER ADMIT WE TARGETED IRANIAN SCIENTISTS?

One of
the
most
interest-
ing
exchanges
in
yesterday's
Threat
Assessment



hearing occurred between Ron Wyden and James Clapper—with David Petraeus, whom Wyden calls out, observing silently (the exchange starts at 1:01).

Wyden: Let me wrap up with you Director Clapper on an issue that I've asked about before at this open hearing. General Petraeus knows about this, this is a question about the use of force and a speech that was given by Mr. Koh, Harold Koh of the State Department, a lawyer. Let me note at the beginning it's a matter of public record that the intelligence community sometimes takes direct action against terrorists and this direct action sometimes involves the use of lethal force. And as you know Director [sic] Koh gave a speech outlining our policy with respect to various terrorist groups, talked about detention, talked about the use of unmanned drones and noted that under US law, the use of force against terrorist groups is permitted by Congressional authorization, while under international law it is permitted by America's right to self defense. But in spite of having asked about this on a number of occasions, and General Petraeus, you know that I, too, share the Chair's view with respect to your working with us here on this committee and your being forthright, I've not been able to get an answer to this specific question. And I

would like to know whether that speech that Mr. Koh gave contained unstated exceptions for intelligence agencies?

Clapper: With respect to counterterrorism, it does not. So it applies to all components of the government involved in counterterrorism be it military or non-military.

Wyden: Are there other exceptions other than counterterrorist activities?

Clapper: I believe his speech dealt with counterterrorism.

Wyden: So you believe that his speech, the text of the speech—cause this would be important—applies to all agencies. It applies to the intelligence community, his entire speech, the overall thrust of the speech applies to all of the intelligence community.

Clapper: With respect to counterterrorism, yes.

Now, it seems clear that Wyden is referring to the portion of Koh's speech that deals with drone strikes, which is reproduced in full below the line.

And my impression is that Wyden—who emphasizes targeting terrorists when he asks the question—was asking whether there was an exception to the principles of distinction and proportionality for the CIA when they used drones. Or, to put it more plainly, Wyden seemed to be asking whether the CIA could use drones to target civilians.

My **guess** is that Petraeus has refused to answer that question not to hide a CIA exception for the use of drones with civilian terrorists (say, with Anwar al-Awlaki) but rather to hide the CIA involvement in targeting of civilians in other contexts.

That's the implication of Clapper's response:

“with the respect to counterterrorism, yes.” And Wyden’s expression as he delivers the question, “Are there other exceptions other than counterterrorist activities?” is worth watching.

There may be further confusion stemming from the language of Koh’s speech. While he was, in this section, specifically addressing “the Law of 9/11,” he does claim that his comments apply to “all of our operations involving the use of force.” Clapper’s caveat seems to belie that claim.

Koh’s language also addressed the use of force generally, not just those dealing with drones. We do use drones for missions outside of counterterrorism—including in drug operations, so Clapper’s caveat might suggest the CIA can target civilians in such context.

But if I had to guess, I’d say this had to deal with non-drone use of lethal force, possibly the assassinations of Iranian nuclear scientists. Was Clapper suggesting CIA targeted civilian nuclear scientists?

And while we may not have attached the bombs to Iranian civilian scientists’ cars (though our surrogates did), remember the suggestions that our drone surveillance of Iran was involved in those assassinations.

In the same way, in all of our operations involving the use of force, including those in the armed conflict with al-Qaeda, the Taliban and associated forces, the Obama Administration is committed by word and deed to conducting ourselves in accordance with all applicable law. With respect to the subject of targeting, which has been much commented upon in the media and international legal circles, there are obviously limits to what I can say publicly. What I can say is that it is the considered view of this Administration—and it has certainly been my experience during my time as Legal Adviser—that U.S. targeting practices, including lethal

operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war.

The United States agrees that it must conform its actions to all applicable law. As I have explained, as a matter of international law, the United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defense under international law. As a matter of domestic law, Congress authorized the use of all necessary and appropriate force through the 2001 Authorization for Use of Military Force (AUMF). These domestic and international legal authorities continue to this day.

As recent events have shown, al-Qaeda has not abandoned its intent to attack the United States, and indeed continues to attack us. Thus, in this ongoing armed conflict, the United States has the authority under international law, and the responsibility to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks. As you know, this is a conflict with an organized terrorist enemy that does not have conventional forces, but that plans and executes its attacks against us and our allies while hiding among civilian populations. That behavior simultaneously makes the application of international law more difficult and more critical for the protection of innocent civilians. Of course, whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses. In particular, this Administration has carefully reviewed the rules governing targeting operations to ensure that these operations are

conducted consistently with law of war principles, including:

- First, the principle of *distinction*, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack; and
- Second, the principle of *proportionality*, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.

In U.S. operations against al-Qaeda and its associated forces— including lethal operations conducted with the use of unmanned aerial vehicles— great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum.

Recently, a number of legal objections have been raised against U.S. targeting practices. While today is obviously not the occasion for a detailed legal opinion responding to each of these objections, let me briefly address four:

First, some have suggested that the very act of targeting a particular leader of an enemy force in an armed conflict must violate the laws of war. But individuals who are part of such an armed group are belligerents and, therefore,

lawful targets under international law. During World War II, for example, American aviators tracked and shot down the airplane carrying the architect of the Japanese attack on Pearl Harbor, who was also the leader of enemy forces in the Battle of Midway. This was a lawful operation then, and would be if conducted today. Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects.

Second, some have challenged the very use of advanced weapons systems, such as unmanned aerial vehicles, for lethal operations. But the rules that govern targeting do not turn on the type of weapon system used, and there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict—such as pilotless aircraft or so-called smart bombs—so long as they are employed in conformity with applicable laws of war. Indeed, using such advanced technologies can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations.

Third, some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force. Our procedures and practices for identifying lawful targets are extremely robust, and advanced technologies have helped to make our targeting even more precise. In my experience, the principles of distinction and proportionality that the United States applies are not just recited at meetings. They are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law.

Fourth and finally, some have argued that our targeting practices violate domestic law, in particular, the long-standing domestic ban on assassinations. But under domestic law, the use of lawful weapons systems—consistent with the applicable laws of war—for precision targeting of specific high-level belligerent leaders when acting in self-defense or during an armed conflict is not unlawful, and hence does not constitute “assassination.”

In sum, let me repeat: as in the area of detention operations, this Administration is committed to ensuring that the targeting practices that I have described are lawful.

DIANNE FEINSTEIN COMPLAINS ABOUT EXECUTIVE BRANCH BLABBING



In her statement at the beginning of the Threat Intelligence

Assessment hearing today, Dianne Feinstein complained that the Executive Branch continues to blab about things that are supposed to be secret (this starts around 11:00).

I'd also like to say that once again this committee has been put in a difficult position of trying to avoid any mention of classified matters when

various parts of the executive branch may be doing somewhat the opposite. I ask members to be careful in their questions and statements and to remember that public discussion of some intelligence programs and assets can lead to them being compromised.

On the particular issue of drone strikes, I will only say that I was cleared to say in our joint hearing with the House Intelligence Committee last September "And there's no issue that receives more attention and oversight from this Committee than the United States Counterterrorism efforts going on along the Afghanistan-Pakistan border. These efforts are extremely precise and carefully executed and are the most effective tools we have. Non-combatant casualties are kept to an absolute minimum."

Given the timing, given her references to both assets and programs, and given her comments about the drone strikes on the Pakistani border, I assume she's complaining about Leon Panetta's blabbing to 60 Minutes the other night. (Plus, DiFi and Panetta have had their difficulties in the past.)

You see? It's not just me that is fed up with this double standard on secrecy.

Update: Josh Gerstein talked to DiFi after the hearing, and she made it clear she was not criticizing the President.

Feinstein insisted after Tuesday's hearing that her remarks were not aimed at Obama.

"I was not criticizing the president. I was reminding the committee about protecting classified information," she said in a statement e-mailed to POLITICO. She did not elaborate on what "parts of the executive branch" she was

referring to in her public comments earlier in the day. A spokesman had no immediate response to a request for clarification.

CIA'S DRONE COWBOYS COMPLAINING ABOUT "GENERAL BETRAYUS"

Remember when it was verboten to criticize David Petraeus, particularly in anticipation of his testimony to Congress?

Apparently it's okay to do so if you run a secret killer drones program. While couched in anonymous sources, this story provides a forum for members of CIA's counterterrorism center and their congressional backers to insinuate that David Petraeus has betrayed the CIA's ability to wantonly kill Pakistanis.

The CIA is infamous for challenging outsiders, especially from the Pentagon, and Petraeus has won plaudits for not bringing his former military aides to his new job. Some officials close to the agency praise major espionage operations he has approved but say he has clashed with senior officers at the counterterrorism center, a powerful fiefdom inside the agency that helps run the covert drone war.

Those officers are frustrated by the drop-off in drone strikes in Pakistan, including an undeclared two-month moratorium that ended Jan. 11, according to several current and former U.S. officials. In interviews, one member of Congress and four senior aides from the House and Senate committees said they

were upset as well.

I guess the CIA considers trying to keep our relationship with a nuclear armed Pakistan intact a character flaw.

Now there is actually a complaint in here of concern.

Several aides on the House and Senate committees, however, say Petraeus has not always accommodated lawmakers' schedules when he plans classified briefings and has limited the briefings' duration so some questions go unanswered.

The aides, who asked for anonymity while discussing classified briefings, said he also has balked at providing some classified information that members have requested. They declined to provide details.

Mind you, Dianne Feinstein—in the article as well as her statement at the hearing (which you can watch here)—refuted the statement. Which I take to suggest that Petraeus is making ample use of the Gang of Four, briefing DiFi and Saxby Chambliss, but not other members of the committee.

LEON'S BOOK OF LAW

Glenn Greenwald and Adam Serwer already hit this part of 60 Minutes interview with Leon Panetta yesterday. But I wanted to tie Panetta's comments about how, "in his book" a citizen who wants to attack our people and kill Americans is first and foremost a terrorist.

If someone is a citizen of the United

States and is a terrorist who wants to attack our people and kill Americans **in my book that person is a terrorist. And the reality is that under our laws that person is a terrorist.** And we're required under process of law to be able to justify that despite the fact that this person may be a citizen, **he is first and foremost a terrorist** who threatens our people. [my emphasis]

Now, Panetta suggests that if someone who, in Leon's book, is a terrorist is here in the US, that person will get due process.

But the logic of the Fourth Circuit's Padilla decision the other day defies that. As I read it, the Fourth Circuit argued that once Padilla became an enemy combatant—once Leon's predecessors decided that, in their book, he was a terrorist, then he lost access to the legal means to (for example) seek redress for torture, much less to anything but habeas corpus—on the schedule the government chose, which effectively nullified it.

So while it sounds odd that all it might take is the CIA Director or the Defense Secretary to say, "in my book, he's a terrorist," that is actually how things are functioning.

AND THE DRONES START PATROLLING IRAQ, AGAIN

Back when I went on a tear about how drones undermine nation-states (both ours and those countries we use them in) I predicted we'd be using drones in Iraq again.

Iraq: While plenty of America's wars have been dubiously legitimate, Iraq certainly is at the top of that list. We trumped up a case against a sovereign nation-state (one with manufactured legitimacy internally, but no less than many of our allies in the region). In what may be the last traditional nation-state war we fight, we managed to (at least thus far and only barely) avoid breaking the country up into three or more parts and establish another leader with questionable legitimacy. In most of that, drones weren't key. But I'm betting that they will be going forward as a threat to Nuri al-Maliki that if he doesn't invite our troops to stay longer, we will feel free to use drones in his country. That's just a guess, mind you, but the evolution of our drone power (and the influence Iran has in Iraq) surely has a bearing on whether and how Iraq fully reasserts its sovereignty by kicking our troops out.

Sure enough, it's happening and Iraqis are worried about what it says about their sovereignty.

A month after the last American troops left Iraq, the State Department is operating a small fleet of surveillance drones here to help protect the United States Embassy and consulates, as well as American personnel. Some senior Iraqi officials expressed outrage at the program, saying the unarmed aircraft are an affront to Iraqi sovereignty.

The program was described by the department's diplomatic security branch in a little-noticed section of its most recent annual report and outlined in broad terms in a two-page online prospectus for companies that might bid on a contract to manage the program. It foreshadows a possible expansion of

unmanned drone operations into the diplomatic arm of the American government; until now they have been mainly the province of the Pentagon and the Central Intelligence Agency.

[snip]

A senior American official said that negotiations were under way to obtain authorization for the current drone operations, but Ali al-Mosawi, a top adviser to Prime Minister Nuri Kamal al-Maliki; Iraq's national security adviser, Falih al-Fayadh; and the acting minister of interior, Adnan al-Asadi, all said in interviews that they had not been consulted by the Americans.

Mr. Asadi said that he opposed the drone program: "Our sky is our sky, not the U.S.A.'s sky."

[snip]

The State Department confirmed the existence of the program, calling the devices unmanned aerial vehicles, but it declined to provide details. "The department does have a U.A.V. program," it said in a statement without referring specifically to Iraq. "The U.A.V.'s being utilized by the State Department are not armed, nor are they capable of being armed."

Though I gotta hand it to this drone-happy Administration. I didn't predict they'd have the tone-deafness of running these drones through the Department of State.

It says "State" right there in the name. How can you pretend to be conducting diplomacy between states when you insist on having your own robot air force (albeit unarmed) flying over theirs?

THE ADMINISTRATION'S HALF-STRIPTEASE OF ANWAR AL-AWLAKI'S ROTTING CORPSE

This article, which claims the “Obama administration is planning to reveal publicly the legal reasoning behind its decision to kill” Anwar al-Awlaki, also reveals that Administration debates about whether to do so likened such necessary transparency to a “Full Monty.”

It came down to what Denis McDonough, the deputy national-security adviser, cheekily called the “half Monty” versus the “full Monty,” after the British movie about a male striptease act.

Though it looks like, instead of real disclosure, the Administration is mooning us. They’ve decided to provide some of the legal argument—which Charlie Savage already gave us. But none of the actual proof that Awlaki was what they have claimed in anonymous quotes to journalists: an operational leader.

An early draft of Holder’s speech identified Awlaki by name, but in a concession to concerns from the intelligence community, all references to the al Qaeda leader were removed. As currently written, the speech makes no overt mention of the Awlaki operation, and reveals none of the intelligence the administration relied on in carrying out his killing. (White House spokesman Tommy Vietor declined to comment).

This is simply an asinine compromise. We all

know the Administration killed Awlaki. We all know the Administration used a drone strike to do so. Savage's article surely provides far more detail on the legal argument than they'll give in a speech.

The problem—the problem that strikes at the very heart of democratic accountability—is that the Administration plans to keep secret the details that would prove (or not) that Awlaki was what the Administration happily claims he is under the veil of anonymity, all while claiming that precisely that information is a state secret.

The Administration seems to be planning on making a big speech on counterterrorism—hey! it's another opportunity to brag again about offing Osama bin Laden!—without revealing precisely those details necessary to distinguish this killing, and this country, from that of an unaccountable dictator.

The CIA seems to have dictated to our democratically elected President that he can't provide the kind of transparency necessary to remain a democracy. We can kill you—they appear to be planning to say—and we'll never have to prove that doing so was just. You'll just have to trust us!

IF THE ONLY NEWS IS GOOD NEWS AND THERE IS NO NEWS ...?

Tara McKelvey, the woman who wrote one of the most detailed stories on drone targeting (which has subsequently gotten John Rizzo into some trouble), has a CJR piece on the problems of reporting on drones. The whole thing is worth reading, but I want to take a number of quotes McKelvey includes out of order, starting with David Ignatius, noting the Administration's

flexibility in secrecy rules.

Ignatius, of the *Post*, explained that Obama administration officials are sometimes willing to discuss drone operations in an attempt to promote the White House's counterterrorism strategy. In February 2010, for instance, Ignatius was able to write a detailed account of the escalation of drone strikes because officials were eager to demonstrate that Obama was more aggressive in his pursuit of al Qaeda than Bush was.

"These rules about covert activities can be bent when it becomes politically advantageous," Ignatius said. "When it suits them, you get quite a detailed readout."

That's a sentiment Jonathan Landay echoes.

Journalists know that finding non-official sources is crucial in covering the drone war, especially under the tight-lipped Obama administration. "The only time I'm allowed to talk to senior staff or the nsc is for stories that make the administration look good," McClatchy's Landay said.

In other words, an experienced journalist reputed to be a mouthpiece, and an experienced journalists known for bucking the Administration propaganda leading up to the Iraq War. Both in agreement that the Administration won't tell you anything unless it puts the Administration and its drone program in the best light.

Which is why I love this bit, which McKelvey puts right after a discussion about the clouded legality of the program.

A spokesman for the White House National Security Council, who spoke only on condition he not be named, rebuffed questions about why the administration

refuses to speak with reporters on the record about the program. “You’re going to have a lot of people on the outside, and they all love to talk,” he said. “We can’t do that.” And, the official added, if outsiders are talking about the drone war, “that means they don’t know very much.”

This NSC spokesperson may or may not be Tommy Vietor, who is, after all, the NSC spokesperson.

For McKelvey, this Tommy Vietor sound-alike basically claims he cannot comment. Both Ignatius (who ought to know) and Landay make it clear they would have comment if there were good news to share.

Which further adds to the evidence that where they refuse to give us evidence—as they have with Anwar al-Awlaki’s assassination—it’s because they have no good news to give.

THE OTHER ASSAULT ON THE FOURTH AMENDMENT IN THE NDAA? DRONES AT YOUR AIRPORT?



Figure 2: Planned DoD 2015 UAS Locations

Steven
Afterg
ood
notes
that
the
Army
just
issued
new
direct
ives

for the use of drones in civilian airspace. The new directives include nothing earth shattering (my favorite part is the enclosure from 2009 explaining what to do when you lose contact with one of your drones, on PDF 18—but really, what could go wrong?). But it does, as Aftergood notes, reflect a real enthusiasm for using more drones in civilian airspace.

Which brings me to a part of the NDAA debate that has remained largely undiscussed.

Days after the NDAA past, Chuck Schumer started boasting about how the NDAA would bring jobs to Syracuse, NY because the city's airport might be one of 6 sites approved as test sites for drones flying in civilian airspace.

The National Defense Authorization Act signed into law last week by President Barack Obama allows for the establishment of six national test sites where drones could fly through civil air space.

Schumer, D-N.Y., said Tuesday he pushed for the establishment of six spots, instead of the planned four, to improve the chances that Hancock Field would be included.

[snip]

Schumer said Hancock already meets FAA requirements for unmanned aerial vehicles because about 7,000 square miles surrounding the airport is

designated as “special use” airspace.

He said that “making Hancock a test site for this technology would be a boon for Central New York, creating jobs and bringing new investments to our defense contractors that provide thousands of good paying jobs.”

Curiously, the language addressing drones in civilian airspace in the NDAA, as passed, doesn’t actually say this.

SEC. 1074. REPORT ON INTEGRATION OF UNMANNED AERIAL SYSTEMS INTO THE NATIONAL AIRSPACE SYSTEM.

(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Administrator of the Federal Aviation Administration and on behalf of the UAS Executive Committee, submit to the appropriate committees of Congress a report setting forth the following:

(1) A description and assessment of the rate of progress in integrating unmanned aircraft systems into the national airspace system.

(2) An assessment of the potential for one or more pilot program or programs on such integration at certain test ranges to increase that rate of progress.

Rather, it seems to require Secretary Panetta to tell Congress whether “one or more” test ranges would “help” us get drones into civilian airspace more quickly. Perhaps the new Army guidelines are part of DOD’s preparation for the report to Congress.

That said, there is evidence that the legislative intent behind the NDAA is to push those 6 sites forward. Here’s what the managers’ statement said about this section (note, the

numbering changed as sections got squished together into a bill).

Unmanned aerial systems and national airspace (sec. 1097)

The House bill contained a provision (sec. 1098) that would require the Administrator of the Federal Aviation Administration to establish a program to integrate unmanned aircraft systems into the national airspace system at six test ranges.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require that, for any project established by the Administrator under this authority, the Administrator ensures that the project is operational not later than 180 days after the date on which the project is established.

That would seem to say that the Congressional intent, if not the letter of the law, adopted the language from the House bill, which says this:

SEC. 1098. UNMANNED AERIAL SYSTEMS AND NATIONAL AIRSPACE.

(a) Establishment- Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall establish a program to integrate unmanned aircraft systems into the national airspace system at six test ranges.

(b) Program Requirements- In establishing the program under subsection (a), the Administrator shall—

(1) safely designate nonexclusionary airspace for integrated manned and unmanned flight operations in the

national airspace system;

(2) develop certification standards and air traffic requirements for unmanned flight operations at test ranges;

(3) coordinate with and leverage the resources of the Department of Defense and the National Aeronautics and Space Administration;

(4) address both civil and public unmanned aircraft systems;

(5) ensure that the program is coordinated with the Next Generation Air Transportation System; and

(6) provide for verification of the safety of unmanned aircraft systems and related navigation procedures before integration into the national airspace system.

(c) Locations- In determining the location of a test range for the program under subsection (a), the Administrator shall—

(1) take into consideration geographic and climatic diversity;

(2) take into consideration the location of ground infrastructure and research needs; and

(3) consult with the Department of Defense and the National Aeronautics and Space Administration.

Similar language appeared in the FAA authorization that got hung up in Congress last fall.

SEC. 326. UNMANNED AIRCRAFT SYSTEMS TEST RANGES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act,

the Administrator of the Federal Aviation Administration shall establish a program to integrate unmanned aircraft systems into the national airspace system at not fewer than 4 test ranges.

(b) PROGRAM REQUIREMENTS.—In establishing the program under subsection (a), the Administrator shall—

(1) safely designate nonexclusionary airspace for integrated manned and unmanned flight operations in the national airspace system;

(2) develop certification standards and air traffic requirements for unmanned flight operations at test ranges;

(3) coordinate with and leverage the resources of the National Aeronautics and Space Administration and the Department of Defense;

(4) address both civil and public unmanned aircraft systems;

(5) ensure that the program is coordinated with the Next Generation Air Transportation System; and

(6) provide for verification of the safety of unmanned aircraft systems and related navigation procedures before integration into the national airspace system.

So in addition to the Army releasing new guidelines for drones (remember, btw, that Army Secretary John McHugh, who signed the new guidelines, used to represent Fort Drum in northern NY, which has ties to the efforts to bring drones to Syracuse and already conducts drone surveillance of the black bears in the Adirondacks) it's clear that Congress is pushing to have drones regularly operating in civilian airspace in 4-6 locations around the country. And as the map above makes clear—taken from this 2010 report—DOD plans to have drones all over

the country by 2015.

I'm not entirely certain what the status of those 6 test sites are. But it's fairly clear that Congress has decided, without any discernible debate, that we're going to have drones there and elsewhere in the near future.