

OBAMA'S RE-ELECT STRATEGY: VOTE FOR ME, OR NEWT WILL HAVE AUTHORITY TO INDEFINITELY DETAIN YOU

Ken Gude, writing for the Democratic Party's house think tank, offers a thoroughly disgusting defense of Obama signing the Defense Authorization and its detainee provisions. In his first paragraph, he asserts that the detainee provisions don't establish indefinite military detention.

Let me put this simply: The detainee provisions in the bill do not establish indefinite military detention authority for anyone captured in the United States.

Of course, that says nothing about what the provisions do for the existing system of military detention that has already been established.

Just a few paragraphs later, Gude affirms the primacy of presidential discretion over things like indefinite detention, suggesting there is nothing Congress could do to limit or guide whatever authority was granted by the (doesn't Congress pass these things?) Authorization to Use Military Force.

Any military detention authority contained in the AUMF occurs as an incident of the necessary and appropriate use of military force. Any such use of force is at the exclusive discretion of the president, subject of course to constitutional and international law constraints.

But don't worry about this breathtaking assertion of unlimited presidential authority, Gude suggests, because Obama's not a big military detention fan.

The Obama administration in word and deed has made it very clear that the president does not believe it necessary or appropriate to use military detention authority in the United States. Both Omar Farouk Abdulmutallab and Faisal al-Shazaad were arrested after attempting mass casualty terrorist attacks inside the United States. In both instances, conservatives called for putting them in military detention, but in both instances, the Obama administration chose to use the criminal justice system.

There are just two problems with this (setting aside the grand claim that nothing can impinge on Presidential discretion on these matters).

First, we are less than one year from a Presidential election. In 389 days we'll have another Presidential inauguration, whether of Obama again or someone else; Newt Gingrich currently leads GOP polls. It is absolutely irresponsible for Gude to assert that the codification of authority that Obama will sign into law doesn't raise the specter of how other Presidents will use that authority.

Yes, a future president may interpret that authority differently, but that is both a fight for another day and one that will not hinge on the 2012 NDAA. So let's put away both the rhetoric and the fear that the U.S. military will be detaining U.S. citizens captured in the United States.

I can only take this irresponsible claim to mean that it is a core part of Obama's re-elect strategy to make sure a President who doesn't

embrace indefinite military detention of American citizens—as Newt would likely do—gets re-elected.

Then there's the even bigger problem with Gude's argument.

Sure, Obama's not a fan of indefinite military detention. Sure, in key cases he chose to use the civilian legal system—and used it well.

But Obama **is** a fan of targeted killings.

And, as Charlie Savage has reported, the legal justification the Administration invented for killing an American citizen in a premeditated drone strike consists of largely the same legal justification at issue in the NDAA detainee provisions.

- The 2001 AUMF, which purportedly defined who our enemies are (though the NDAA more logically includes AQAP in its scope than the 2001 AUMF)
- Hamdi, which held the President could hold an American citizen in military detention under the 2001 AUMF
- Ex Parte Quirin, which held that an American citizen who had joined the enemy's forces could be tried in a military commission
- Scott v. Harris (and Tennessee v. Garner), which held that authorities could use deadly force in the course of attempting to detain American citizens if

that person posed an
imminent threat of injury or
death to others

In other words, Obama relied on substantially the same legal argument supporters of the NDAA detainee provisions made to argue that indefinite detention of American citizens was legal, with the addition of *Scott v. Harris* to turn the use of deadly force into an unfortunate side-effect of attempted detention.

And, oh, if you're not an imminent threat but happen to be sitting next to the guy the government has determined is one? Duck.

The example of Anwar al-Awlaki—which Gude deftly chooses to ignore—not only shows that Obama fully endorses precisely the arguments made by the defenders of the indefinite detention provisions. But that he is willing to use the authority granted under the provisions to kill, rather than detain, American citizens.

Maybe using Obama's beliefs about his detention authority really aren't such a good election strategy after all.

US KEEPS LOSING CONTROL OF ITS DRONES

Funny how these drones keep experiencing failures in areas where they're engaging in a covert war and not—say—where they're being used to arrest American citizens in North Dakota.

One of the Air Force's premier drones crashed Tuesday morning in the Seychelles, the Indian Ocean archipelago that serves as a base for anti-piracy

operations, as well as U.S. surveillance missions over Somalia.

[snip]

The Seychelles, where U.S. officials have worked closely with local officials to establish the drone base, is hardly enemy territory, and the drone that crashed Tuesday was operated by the Air Force, not the CIA, which operated the stealth RQ-170 that crashed in Iran.

Still, Tuesday's crash once again illustrates the fallibility of unmanned aerial vehicles.

I guess as drone use ramps up here in the US maybe we'll need to consult with whomever has sabotaged drones of late in multiple countries?

OBAMA TO IRAN: PLEASE GIVE OUR ASSASSINATION SURVEILLANCE DRONE BACK

Sorry, this is absurd.

"We have asked for [our Sentinel drone] back. We'll see how the Iranians respond," Obama said during a joint news conference with Iraqi Prime Minister Nuri al-Maliki after the two met at the White House.

We violate Iran's airspace, almost certainly conducting surveillance to support illegal assassinations, and we have the audacity to ask

for our legally-suspect drone back?!?!

What are we going to offer them in exchange? Manssor Arbabsiar and a number of other, more competent spies to be named later? Because doesn't the request for the drone implicitly suggest assassinations are acceptable and really shouldn't interfere with polite diplomacy?

Besides, doesn't this violate trade sanctions on Iran?

THE WILD, WILD WEST: DRONES HUNTING DOWN CATTLE RUSTLERS

This story, billed as an account of the first Predator-drone assisted arrest in the US, has all the elements we've been expecting from this development.

The drone in question belongs to the Border Patrol; presumably, it operates under the legal black hole built up around borders.

The drones belong to U.S. Customs and Border Protection, which operates eight Predators on the country's northern and southwestern borders to search for illegal immigrants and smugglers.

[snip]

Congress first authorized Customs and Border Protection to buy unarmed Predators in 2005. Officials in charge of the fleet cite broad authority to work with police from budget requests to Congress that cite "interior law enforcement support" as part of their mission.

The local sheriff used the drone to conduct sophisticated surveillance of his target, the Brossart family.

For four hours, the Predator circled 10,000 feet above the farm. Parked on a nearby road, Janke and the other officers watched live drone video and thermal images of Alex, Thomas and Jacob Brossart – and their mother, Susan – on a hand-held device with a 4-inch screen. The glowing green images showed people carrying what appeared to be long rifles moving behind farm equipment and other barriers.

What surprised me, though, was the justification for using the drone: \$6,000 worth of cows that had wandered into the family's property.

A search of the property turned up four rifles, two shotguns, assorted bows and arrows and a samurai sword, according to court records. Police also found the six missing cows, valued at \$6,000.

Now, to be fair, the cow thieves in question weren't just your garden variety cow thieves. In a move that ought to remind Conservatives why they used to embrace libertarianism, these cow thieves allegedly belong to the Sovereign Citizen Movement.

The six adult Brossarts allegedly belonged to the Sovereign Citizen Movement, an antigovernment group that the FBI considers extremist and violent. The family had repeated run-ins with local police, including the arrest of two family members earlier that day arising from their clash with a deputy over the cattle.

It'd be nice if the story considered this angle in more detail. Was the sheriff quicker to use this drone because he was targeting the closest

thing his district has to terrorists? Is this part of the (also entirely predictable) focus on domestic terrorism for local law enforcement that doesn't have any Muslim extremists to hunt?

SERIAL ABUSER OF EXECUTIVE BRANCH “FLEXIBILITY,” JOHN BRENNAN, MAKING VETO CASE ON DETAINEE PROVISIONS

I have already said I think Obama needs to veto the Defense Authorization because of the detainee provisions. And I have argued that the Administration needs to lay the groundwork for doing so right now, preferably by fear-mongering about how much less safe presumptive military detention would make us.

Obama claims he's still going to veto the Defense Authorization because of these detainee provisions. Good. I think he should. But if he really plans to do so, someone needs to be fear-mongering 24/7 about how much less safe these provisions will make us (and they will).

But I'm dismayed the Administration has chosen John Brennan, of all people, to do so. (h/t Ben Wittes)

The Administration has chosen someone who served as a top CIA executive during the period it developed its torture program to go out and argue the Executive Branch needs “flexibility” in detention to collect intelligence.

And so, what we've tried to do in this administration is to maintain as much flexibility as possible. And **anything that restricts our flexibility in terms of how we want to detain them**, question them, prosecute them is something that counterterrorism professionals and practitioners really are very concerned about.

[snip]

What we want to do is to extract the intelligence from them so that we can keep this country safe. We cannot hamper this effort. It's been successful to date and this legislation really puts that at risk. [my emphasis]

We let a President have that kind of unrestricted flexibility on how to detain suspected terrorists and he used it to order Brennan's agency to engage in torture.

But it's not just with torture that John Brennan has been party to the Executive Branch's abuse of this kind of unfettered "flexibility" in the past.

As I've pointed out, one of the problems (for the Administration) with the AUMF-affirming language in the Senate detainee provisions is that it may circumscribe the Administration's ability to claim that terrorists with no ties to al Qaeda are legitimate military targets. That broader interpretation, relying on the Iraq AUMF, was implemented in 2004 to authorize things that presumably were already being done with the illegal wiretap program. When that May 2004 opinion was written, John Brennan oversaw the targeting—relying on that expansive definition—for the illegal wiretap program.

And then there's the Administration's insistence that no court should be able to review their decisions about who is and is not an enemy under the AUMF and whether those enemies represent an imminent threat. They prevented such a review

with Anwar al-Awlaki, in part, by invoking state secrets over the precise terms at issue in the detainee language. Yet after the Administration killed Awlaki, Administration officials spilled state secrets repeatedly, at times solely to boast about the kill. Brennan even provided details covered under state secrets declarations on the record. The Administration's badly hypocritical approach to secrecy in the case of Awlaki, particularly its failure to prosecute John Brennan for leaking state secrets, makes it clear their state secrets invocation had nothing to do with national security, but instead had to do with remaining free from any oversight—with retaining the maximum “flexibility,” if you will—over precisely the issues at the core of the detainee provisions. And as with torture and illegal wiretapping, John Brennan was at the center of that gross abuse of executive power as well.

There are some superb reasons to veto the Defense Authorization because of the detainee provisions: largely because DOJ has proven best able to interrogate and prosecute terrorists in the last decade. And there are some horrible reasons to do so: to allow the Executive Branch to continue to wield expanded powers with almost no oversight.

John Brennan is, in this Administration at least, the personification of all the horrible reasons.

Update: The AP reports the Administration is conducting a “full court press” to get changes to the bill. But look at what they point to to justify their “flexibility:”

The administration insists that the military, law enforcement and intelligence agents need flexibility in prosecuting the war on terror. Obama points to his administration's **successes in eliminating** Osama bin Laden and **al-Qaida figure Anwar al-Awlaki**. Republicans counter that their efforts are necessary to respond to an evolving,

post-Sept. 11 threat, and that Obama has failed to produce a consistent policy on handling terror suspects. [my emphasis]

Frankly, they'd probably be able to assassinate Awlaki under the new bill. But it's telling they point to it-based as it is on their ability to interpret the AUMF in secrecy and with no oversight-as their justification for "flexibility."

"THIS ISN'T THE ASSASSINATION SURVEILLANCE DRONE YOU'RE LOOKING FOR"

[YouTube]vzcWPKAv20w[/YouTube]

Before you read this David Sanger/Scott Shane piece reporting that the RQ-170 Sentinel drone that just went down in Iran was, "among other missions, [] looking for tunnels, underground facilities or other places where Iran could be building centrifuge parts or enrichment facilities," I invite you to review what David Sanger has been writing for the last few months. Sure, he's been the key person orchestrating the IAEA Iran report story, going back months. There's also this story, curiously mixing reporting on the capture of the drone with a report citing sources describing surveillance photos of the Iranian missile testing base conveniently blown up while Iran's top missile expert was there.

And then there's this story from last month, which is or was titled "The Secret War with Iran." It suggests how the assassins targeting Iran's nuclear scientists knew exact details of their daily commutes, and then went on to

describe the centrality of drones to our surveillance efforts against Iran.

COMMUTING to work in Tehran is never easy, but it is particularly nerve-racking these days for the scientists of Shahid Beheshti University. It was a little less than a year ago when one of them, Majid Shahriari, and his wife were stuck in traffic at 7:40 a.m. and a motorcycle pulled up alongside the car. There was a faint “click” as a magnet attached to the driver’s side door. The huge explosion came a few seconds later, killing him and injuring his wife.

On the other side of town, 20 minutes later, a nearly identical attack played out against Mr. Shahriari’s colleague Fereydoon Abbasi, a nuclear scientist and longtime member of the Islamic Revolutionary Guards Corps. Perhaps because of his military training, Mr. Abbasi recognized what was happening, and pulled himself and his wife out the door just before his car turned into a fireball. Iran has charged that Israel was behind the attacks – and many outsiders believe the “sticky bombs” are the hallmarks of a Mossad hit.

[snip]

Iran may be the most challenging test of the Obama administration’s focus on new, cheap technologies that could avoid expensive boots on the ground; drones are the most obvious, cyberweapons the least discussed. It does not quite add up to a new Obama Doctrine, but the methods are defining a new era of nearly constant confrontation and containment. Drones are part of a tactic to keep America’s adversaries off balance and preoccupied with defending themselves. And in the past two and a half years, they have been used more aggressively than ever. There are now five or six

secret American drone bases around the world.

And oh yeah. Sanger was part of the team that claimed US and Israeli credit for StuxNet.

So David Sanger, the (American **and** Israeli) intelligence community's chief mouthpiece to boast about their latest victories against Iran, by-lined this story from Boston (rather than his home base of DC) to tell us the Sentinel drone was surveilling Iran's suspected nuclear sites, using its isotope-sniffing powers.

In addition to video cameras, independent experts say the drone almost certainly carries communications intercept equipment and sensors that can detect tiny amounts of radioactive isotopes and other chemicals that can give away nuclear research.

But the real advantage of the Sentinel drone, Sanger and Shane tell us, is the ability to see who's onsite when.

While an orbiting surveillance satellite can observe a location for only a few minutes at a time, a drone can loiter for hours, sending a video feed as people move about the site. Such a "pattern of life," as it is called, can give crucial clues to the nature of the work being done, the equipment used and the size of the work force.

Actually, we knew that. Here's the kind of information the Sentinel presumably gave us about Osama bin Laden's compound.

Agents, determining that Kuwaiti was living there, used aerial surveillance to keep watch on the compound, which consisted of a three-story main house, a guesthouse, and a few outbuildings. They observed that residents of the compound

burned their trash, instead of putting it out for collection, and concluded that the compound lacked a phone or an Internet connection. Kuwaiti and his brother came and went, but another man, living on the third floor, never left. When this third individual did venture outside, he stayed behind the compound's walls. Some analysts speculated that the third man was bin Laden, and the agency dubbed him the Pacer.

In our assassination of Osama bin Laden, it seems, we used the Sentinel to learn the daily routine of everyone in the compound. Just the kind of information we've used to assassinate key Iranian scientists.

Don't get me wrong. I'm sure the Sentinel **is** looking for secret nuclear or other military sites to bomb, "among other missions." But I also suspect the reason government sources have been so forthcoming with confirmation about the Sentinel and its role in hunting nuclear sites is to distract from its role in hunting human beings. Not to mention any Israeli role in using information collected using the Sentinel to carry out these assassinations on the ground.

We're all still pretending these Iranians, whose assassinations and attempted assassinations depended on knowing key details about their day to day travels, just died in freak accidents (Sanger even cites sources making that claim about the missile base!). Meanwhile, our spooks would like to take this opportunity to boast about the Sentinel's ability to track nuclear sites.

You see, these nuclear-isotope sniffing drones are not the assassination surveillance drones you're looking for.

Update: Iran just released video of the drone.

TWO DRONE QUESTIONS: HOW DID IRAN GET IT? WHAT WILL THE DAMAGE BE?

As I noted in an update to this post, the US has now admitted that the drone Iran claimed to down is, in fact, one of its new-fangled RQ-170 Sentinels. Sources have admitted anonymously that CIA was using the drone for reconnaissance, implicitly of Iran.

Which leaves a number of questions. First, how did the drone go down?

Marc Ambinder quotes a source suggesting the US lost communications with the drone, after which it glided to land inside Iran.

Controllers lost contact with the prized stealth unmanned aerial drone, the RQ-170 "Sentinel", last week over western Afghanistan, said one government official who spoke on condition of anonymity. Based on its projected glide path, officials assume it fell just inside the Iranian border.

But as he notes, if it had just lost communication with its controllers, it should have either returned to base or self-destructed.

The story that the drone was not flying over Iran, but flew into it as it came to the ground, is repeated in this CNN piece.

The officials said they did not believe the mission involved flying the aircraft directly over Iran because the reconnaissance capability of the RQ-170 Sentinel drone would allow it to gather information from inside Iran while

remaining on the Afghanistan side of the border. The officials also for the first time confirmed to CNN it was an RQ-170 drone that was lost.

A third U.S. official confirmed that when the drone crashed, the United States briefly considered all potential options for retrieving the aircraft or bombing the wreckage, but those ideas were quickly discarded as impractical. There was also satellite surveillance over the site, which helped confirm the location of the wreckage before the Iranians retrieved it.

Of course, the US has reason to want to deny it had violated Iran's airspace, though I don't doubt the drone has significant surveillance powers.

In any case, satellite surveillance must be how this anonymous official confirms the drone came down largely intact.

Another U.S. official with access to intelligence said that losing the Sentinel is a major security breach. The official, who was not authorized to publicly speak about the information, wouldn't say how the drone fell into Iranian hands, but confirmed that the downed drone was largely intact.

"It's bad – they'll have everything" in terms of the secret technology in the aircraft, the official said. "And the Chinese or the Russians will have it too."

Which would seem to rule out some of the speculation of a number of experts quoted by the LAT, who still can't seem to explain how the drone was brought down intact, but it did not return home (as it would have been programmed to do) or self-destruct. Moon of Alabama offers some thoughts here.

Now, I still think it's possible—as some of these sources suggest—that this might be an intentional ploy on our part. Though I can't see doing that with a Sentinel.

Which leads me to a point a few of these sources note. Iran would only be able to make so much use of the drone (aside from politically). It would likely need Russia's or China's help to reverse engineer it.

So I wonder: Is it possible that one of the countries everyone agrees would have much more capability to to reverse engineer the technology—Russia and/or China—might have been involved in downing the drone? After all, both are getting fed up with our drive to war against Iran. And, as Ambinder reveals, the event has resulted in the grounding of all the Senintels.

An investigation is under way and the rest of the small fleet of classified UAVs have been grounded. They number less than 10 and are piloted by the 30th Reconnaissance Squadron at Creech Air Force Base in Nevada.

Downing this drone would seem to be useful to Iran in several possible ways. First, the PR victory, particularly if it can refute the American claim the drone wasn't over Iranian airspace. Next, if it can reverse engineer the stealthy and communications technology, probably with help, it can cut into American advantage on drone technology. It seems that downing the drone has already stopped the Americans from using other Sentinels to surveil it. And here's one question: What would it take for Iran to demonstrate what the drone was surveilling? That is, could it do more than just prove the US had violated its airspace, but tie the US back to some of the attacks within Iran?

Update: Here's another question. Why the fuck is the government telling us Iran that the drone has been watching what they claim to be Hezbollah training camps before?

The RQ-170 stealth drone that crashed in Iran last week has been used by the CIA in the past to spy on Iran's nuclear facilities and Hezbollah training camps inside Iran, U.S. officials told NBC News on Tuesday.

Unless that's another feint to distract from who would be most interested in that "Hezbollah camp"?

Update: More uncanny leaking on the CIA's activities in the area.

According to these officials, the U.S. has built up the air base Shindad, Afghanistan, with an eye to keeping a long-term presence there to launch surveillance missions and even special operations missions into Iran if deemed necessary.

I sort of wonder whether David Petraeus hasn't come out of his undisclosed location?

DID IRAN HACK OUR DRONE?

I've been saying for some time that America's hubris about drones will end as soon as one of our antagonists figures out how to hack them.

Which is why it's interesting that Iran has updated its claims to have "shot down" an American drone to suggest they had "brought it down." (Note, I found this statement on the Mehr website, but not the Fars one.)

The wreckage of the Lockheed-Martin RQ-170 Sentinel stealth drone was largely intact after it was downed, the Fars news agency said.

"Iran's army has downed an intruding RQ-170 American drone in eastern Iran," Arabic-language al-Alam TV said, quoting an anonymous source.

"The spy drone, which has been downed with little damage, was seized by the armed forces," the news network added.

The cyber warfare unit managed to take over controls of the drone and bring it down, a military official said, according to the TV.

An unnamed military official also told the Fars that Iran's response "will not be limited to the country's borders."
[my emphasis]

And after some initial doubts that the Iranian claims were correct, ISAF has now admitted that they lost control of a drone last week.

The UAV to which the Iranians are referring may be a US unarmed reconnaissance aircraft that had been flying a mission over western Afghanistan late last week. The operators of the UAV lost control of the aircraft and had been working to determine its status.

Though the US remains coy over whether DOD was operating the drone (suggesting an Afghan mission) or the CIA was (suggesting a non-Afghan mission).

Although the Sentinel was developed for the Air Force, the U.S. official declined to confirm whether it was the U.S. military or the U.S. intelligence community operating the drone at the time of the incident.

Mind you, lurking in the background are the two recent attacks on Iran—the assassination of Hassan Moqaddam and the explosion in Isfahan.

With both those previous explosions, Iran has officially offered conflicting stories about whether or not there was an explosion or why. If the drone was conducting reconnaissance of missile runs over Iran, both sides might say Iran “brought it down” to avoid discussions of where the drone was operating.

Remember, though: less than two months ago, Wired revealed that someone had gotten keylogger software onto Creech Air Force Base’s system in Nevada. So someone already infiltrated the Air Force drone system. It’s just not clear who did so.

Update: Also remember the probable disinformation from a few weeks back saying that the Israelis deliberately let Hezbollah take down one of its drones over Lebanon, which it then detonated to blow up a weapons depot. One reason the ISAF might admit to losing a drone is if it wasn’t their drone.

Update: This appears to confirm the Iranians were right. Though I would suggest both sides still might be lying about aspects of this.

NIGHT RAIDS, DRONES AND RAYMOND DAVIS STILL IN AF-PAK NEWS

A vitally important loya jirga, or grand gathering, is underway in Afghanistan with leaders from all over the country converging to share their views on the future of the Afghanistan-US relationship. Afghan President Hamid Karzai has announced that a prerequisite for any deal with the US is an end to night raids. Perhaps because of the importance of the meetings in Afghanistan, today saw a particularly large drone attack just across the border in Pakistan, with at least 15 killed in

the attack. Raymond Davis also makes a surprise re-appearance in today's news, with former Pakistan Foreign Minister Shah Mehmood Qureshi providing more details on his resignation when he was under pressure for refusing to grant diplomatic immunity to Raymond Davis.

The loya jirga starts today and the Taliban has vowed to attack it:

About 2,000 Afghan community and political leaders will gather on Wednesday in Kabul under tight security for four days of deliberations on the country's most pressing issues, including ties with main ally the United States.

The meeting, known as a loya jirga, or grand assembly, cannot make laws, and whatever it decides has to be approved by parliament, but the subjects up for debate are among the most sensitive: the scope of a U.S. military presence after a 2014 deadline for foreign combat troops to leave and the idea of peace talks with the Taliban.

The Taliban, who have long fought to oust foreign forces, have dismissed the meeting as a ruse to cement what they see as foreign interference and have already tried to disrupt it. They have vowed to target participants and said they had a copy of the jirga security plan.

Afghan President Hamid Karzai is using the occasion to say that no agreement with the US is possible without an end to night raids:

President Hamid Karzai set the conditions for his country's strategic partnership with the United States, saying on Wednesday that Afghanistan would allow long-term American bases here as long as American troops stopped conducting operations at night,

searching homes or detaining Afghans.

Karzai's comments came at the opening of a large assembly, known as a loya jirga, which convened more than 2,000 delegates from around the country to discuss Afghanistan's future relationship with the United States, as well as the prospect of negotiating with the Taliban.

"We want to have a strong partnership with the U.S. and NATO, but with conditions," Karzai said. "We want our national sovereignty, and an end to night raids and to the detention of our countrymen."

Karzai flew by helicopter from his palace to the jirga venue across town, a sign of the level of concern about possible Taliban attacks during the conference, which is scheduled to run for at least four days. Afghan security forces blocked several roads in Kabul and searched cars and pedestrians for explosives; government offices and many shops were closed.

Night raids have long been a sore spot. As I noted back in September, targeting for the raids appears to have "improved" to the point where it is now claimed "only" 20% of raids target innocents rather than civilians. Given the long-term association of night raids with mistreatment and torture of Afghan civilians when they are detained in night raids, it comes as no surprise that Karzai would couple the call for an end to night raids with a call to end US detention of Afghan civilians. (Of course there also is the problem of torture of Afghans in Afghan prisons as well, but we won't go there for now.)

The insistence on ending night raids will force the US to face a difficult decision. Night

raids are a favorite tool and were dramatically increased by David Petraeus after the Obama administration took over. Despite the increase in the number of night raids and the US insistence that the raids are a vitally important tool, Reuters notes that violence in Afghanistan is at its worst level since the US invasion over ten years ago. Will the US give up its favorite tool, which it continues to cling to long after it has been conclusively demonstrated to be an abject failure?

As noted above, the Taliban have indicated that they intend to attack the loya jirga. Perhaps because of this important gathering of influential figures, one of the largest drone attacks in recent months took place today in South Waziristan:

A salvo of missiles fired by US drones destroyed a Pakistani Taliban base on Wednesday, killing at least 15 suspected militants in Pakistan's tribal badlands on the Afghan border, officials said.

Up to 10 missiles slammed into the sprawling compound in the Baber Ghar area of South Waziristan, killing between 15 and 18 militants, most of whom were reported to be local Taliban fighters, the Pakistani security officials said.

Five US drones carried out the attack, one of the officials told AFP.

"The target was a base of Pakistan Taliban. We have reports that 16 to 18 militants were killed in the attack," the official told AFP in the northwestern city of Peshawar.

The story also quotes Pakistani officials that "foreign", meaning al Qaeda or Uzbek Islamist militants, may be among the dead.

Meanwhile, former Pakistan Foreign Minister Shah Mehmood Qureshi provides more details on the end

of his time as Foreign Minister. His loss of the position had been noted and attributed to his reluctance to grant immunity to Raymond Davis in a quote from the New York Times in this post of mine around the time it was announced, but now we learn more:

Former Pakistan Peoples Party (PPP) MNA Shah Mehmood Qureshi said on Tuesday that he resigned as foreign minister after refusing to bow down to pressure over giving diplomatic immunity to Raymond Davis.

Talking to reporters at the Multan airport on Tuesday, Qureshi said that the Raymond Davis incident had taken place on January 27 and he had resigned on January 30.

He further said he did not step down because he wasn't given the foreign ministry, adding that he refused to give immunity to the CIA contractor because 'he was not an ambassador'.

"[The Davis incident] is in front of the whole nation. I was being greatly pressurised to give him immunity and I refused to do it," said the former PPP stalwart.

From other recent reports I saw on Qureshi, it appears that he is leaving the PPP party and looking to form a new political party. Given the way in which the Raymond Davis incident brought huge crowds of Pakistanis into the streets, Qureshi may well have found in the Raymond Davis episode a useful rallying point for his efforts to start a new party.

JOHN RIZZO LATEST TARGET FOR DOJ PROBE INTO LEAKING

It pains me to defend John Rizzo. After all, his willful dumbness—or more likely, outright deceit—played a key role in our country’s approval of torture.

Still, I have mixed feelings about investigating—and probably reprimanding, but not prosecuting—him.

The Justice Department is investigating whether a former top U.S. intelligence official, John Rizzo, improperly disclosed classified information about the CIA’s drone campaign, one of the spy agency’s most secretive and politically sensitive programs.

People familiar with the matter say that the CIA’s general counsel’s office opened the probe in March, shortly after *Newsweek* published an article in which Rizzo — who had retired in 2009 after serving as the CIA’s acting general counsel — outlined an array of specific details about how CIA officials choose terrorists for drone strikes and which American officials sign off on actually carrying them out.

[snip]

Investigations into current or former senior CIA officials like Rizzo are exceptionally rare, and people familiar with the investigation said they expected this one to end with some sort of formal reprimand, and possibly a financial penalty such as a decrease in his government pension, rather than with his imprisonment. Until the Justice Department decides what it wishes to do, however, the CIA cannot take any action.

Rizzo may have spoken on the record for this article out of pique that his torturers, but not Obama's drone killers, had come under criticism (plus, I'd dispute that the drone strikes haven't come under criticism).

But this kind of information is actually crucial for citizens in a democracy to know:

How CIA staffers determine whether to target someone for lethal operations is a relatively straightforward, and yet largely unknown, story. The president does not review the individual names of people; Rizzo explains that he was the one who signed off.

[snip]

Under another Bush order, signed several years later, a variety of people who worked in terrorist camps could be targeted, and not just named terrorism suspects; at that point, the pool of potential candidates reviewed by CIA lawyers became much larger. Despite the secrecy surrounding these orders, their scope has become clear. "The authority given in these presidential findings is surely the most sweeping and most lethal since the founding of the CIA," William C. Banks, director of Syracuse University's Institute for National Security and Counterterrorism, told a House committee.

The hub of activity for the targeted killings is the CIA's Counterterrorist Center, where lawyers—there are roughly 10 of them, says Rizzo—write a cable asserting that an individual poses a grave threat to the United States. The CIA cables are legalistic and carefully argued, often running up to five pages.

[snip]

The cables that were "ready for prime time," as Rizzo puts it, concluded with

the following words: "Therefore we request approval for targeting for lethal operation." There was a space provided for the signature of the general counsel, along with the word "concurred." Rizzo says he saw about one cable each month, and at any given time there were roughly 30 individuals who were targeted. Many of them ended up dead, but not all: "No. 1 and No. 2 on the hit parade are still out there," Rizzo says, referring to "you-know-who and [Ayman al-] Zawahiri," a top Qaeda leader.

The NJ notes that Leon Panetta has made revealing comments on the record. I'd go further and observe that the descriptions of Panetta's approval of strikes offered in Joby Warrick's book suggest someone else has shared similar levels of detail on drone strike decision-making.

So are we investigating the Secretary of Defense, too?

And at the same time, if Rizzo is simply reprimanded for his on-the-record leaking, while whistleblowers like Jeffrey Sterling are investigated for years and prosecuted, it won't serve justice any more than simply ignoring Rizzo's obvious exposure of information that the government has declared state secrets over.

The truth of the matter is there are few secrets in Washington. Rather, there's just the profoundly undemocratic brokering of information serving to disempower citizens and protect the national security establishment. There's no way to make that system look like it operates under rule of law, because as it exists today, it is fundamentally arbitrary.

So, sure, if John Rizzo were punished, I'd take some pleasure that he was punished for ... something. But ignoring the crimes of torture while pretending our secrets exist under some

kind of legal regime is just silly.