

THE KANGAROO COURT UNPLUGGED

[Carol Rosenberg](#), [Jason Leopold](#), [Charlie Savage](#), and [Ryan Reilly](#) all have updates on the Gitmo Military Commission's efforts to pretend they control the proceedings of the court room, and not someone like John Brennan or the CIA.

All of them note that Judge James Pohl promised that Monday's censorship won't happen again. Savage adds an interesting detail: the suggestion that the censorship represented a disagreement between the Military Commission and the censor—presumed to be the CIA.

"This is the last time," Colonel Pohl said, that any party other than a security officer inside the courtroom who works for the commission "will be permitted to unilaterally decide that the broadcast will be suspended."

He added that while some legal rules and precedents governing the military commissions were unclear, there was no doubt that only he, as the judge, had the authority to close the courtroom. While officials may disagree about whether classified information had been improperly disclosed, he made clear he would not tolerate any outside party having control over a censorship button in his case.

"The commission will not permit any entity except the court security officer to suspend the broadcast of the proceeding," Colonel Pohl said.

"Accordingly I order the government to disconnect any ability of a third party to suspend broadcast of the proceeding, and I order any third party not to suspend proceedings." [my emphasis]

This actually raises an interesting parallel

with Article III Courts. There, DOJ has repeatedly insisted that courts have no authority to determine what is classified or not. On [rare occasions](#), a Court will overrule the government.

This conflict appears to arise from the same kind of disagreement, one made stark because of the censorship button. But ultimately, the Executive Branch was again insisting that only it can say, legally, what counts as classified.

Rosenberg raises a parallel issue: claims by DOJ lawyer Joanna Baltes, who oversees classification issues, that the Original Classification Authority in question was part of the Military Commissions. Pohl disagrees.

“An OCA does not work for the commission,” he said, the Pentagon term for the war court, “and has no independent decision-making authority on how these proceedings are to be conducted.” On Tuesday, civilian 9/11 prosecutor Joanna Baltes cast the role of the OCA as an approved extension of the military commissions.

“The OCA, original classification authority, reviews closed-circuit feed of the proceedings to conduct a classification review to ensure that classified information is not inadvertently disclosed,” she said in a note to the judge. “When the parties do press the mute button on the microphone, no audio is transmitted through the closed feed.”

Rosenberg raises one more important point: CIA screwed up during one of the first moments that the 40-second delay ordered by Pohl was in place.

Monday’s outside censorship episode occurred on the first day of proceedings after the judge formally approved the 40-second audio delay in the Sept. 11

trial, rejecting an American Civil Liberties Union argument that it transformed a live court into a “censorship chamber.”

Boy, the CIA sure wasted no time in validating the ACLU’s concerns?

As Reilly lays out, the incident has only raised the concerns of the Defense Attorneys.

“Who is pulling the strings? Who is the master of puppets? We have more questions than we have answers,” said Walter Ruiz, an attorney for Mustafa al Hawsawi, an alleged al Qaeda money courier.

David Nevin, a lawyer for KSM, said it would “open a number of questions” if indeed someone based in the U.S. had the ability to cut off the feed of the courtroom facility. Martins had declined to say whether the secret censor was based either in the U.S. or was located somewhere on Guantanamo Navy Base.

James Harrington, a lawyer for Ramzi Binalshibh, said a federal judge would have never put up with someone else having the ability to cut off access to his courtroom.

“I have been practicing for over 40 years in federal courts in the United States, if this had happened before any federal judge that I know of, this proceeding would have been stopped. There would have been hell to pay. Hell to pay,” Harrington said.

It’s going to be very hard to unring this bell, not matter how assiduously General Mark Martins tries to establish its independence (and last week’s fight over the inclusion of conspiracy charges had already damaged that).

JOHN BRENNAN'S KANGAROO COURT

Congratulations to Barack Obama, whose [invisible hand censor](#) has made Gitmo even more of a kangaroo court than it was under Bush.

As Jim laid out, over the last two days of Gitmo hearings, we saw (thanks to livetweeters like Carol Rosenberg, Jason Leopold, and Daphne Eviatar) someone improperly cut the feed from the court room to the journalists for 3 minutes, just as Khalid Sheikh Mohammed's lawyer, David Nevin, started to read from his unclassified motion to preserve the black sites. After it happened, Judge James Pohl was rather angry about what he saw as an improper use of the censorship system. Today, it became clear that the OCA—the original classification authority—pressed the censor button, via some AV means that Judge Pohl either didn't fully understand or want to discuss.

In other words, CIA has ultimate control over his court room.

For the last day, I've been predicting that Moral Rectitude Transparency and Assassination Czar John Brennan was responsible for the improper censorship. It was almost certainly some CIA minion Brennan will manage not long after his February 7 confirmation hearing rather than Brennan himself. Though remember—the legal record indicates that the National Security Council, and not CIA, [asked to have torture](#) made into a Special Access Program in the first place, though before most of the 9/11 detainees being tried were tortured (the exception, I think, is Ramzi bin al-Shibh). So either John Brennan in his guise as Obama's NSC counterterrorism advisor or his rising CIA Director—ultimately, it was his portfolio censoring unclassified information in the

trial.

But it's worth noting that this is the second time in a week that CIA has managed to dictate our legal process. Last Friday, John Kiriakou was sentenced for indirectly revealing to these same defense lawyers the identity of two of their client's interrogators (one who actually engaged in the torture itself). DOJ originally decided that knowledge, by itself, did not merit charges. But CIA appealed to ... John Brennan, and Patrick Fitzgerald was brought in and ultimately [Kiriakou was delivered up as an example](#) to cow others who might expose details of the torture program.

And then yesterday, you had a lawfully cleared defense motion being discussed in court, and CIA overruled the determination the trial judge had made, and ensured that journalists could not hear even that unclassified motion. Judge Pohl has deferred the discussion about preserving the black sites as evidence until next month, and it's not clear whether the defendants or the journalists will be permitted to attend that hearing.

We shall see, next month, whether the CIA has taken over this judicial determination, as they did the judgement on the John Adams Project.

RATHER THAN CLOSE GITMO, WE'LL JUST INTERCEPT MORE MEDICAL GOODS FOR IRAN

A lot of people are talking about [this story](#), reporting that the Envoy in charge of shutting down Gitmo will be reassigned.

The State Department on Monday reassigned Daniel Fried, the special envoy for closing the prison at Guantánamo Bay, Cuba, and will not replace him, according to an internal personnel announcement. Mr. Fried's office is being closed, and his former responsibilities will be "assumed" by the office of the department's legal adviser, the notice said.

The announcement that no senior official in President Obama's second term will succeed Mr. Fried in working primarily on diplomatic issues aimed at repatriating or resettling detainees appeared to signal that the administration does not currently see the closing of the Guantánamo Bay prison as a realistic priority, despite repeated statements that it still intends to do so.

But few are talking about where Fried is being reassigned: to the sanctions department.

Mr. Fried will become the department's coordinator for sanctions policy and will work on issues including Iran and Syria.

Granted, both trying to persuade third countries to take detainees and convincing countries to join our ever-intensifying sanctions regime against Iran involve the same skill sets.

Still, as the sanctions against Iran cause increasing difficulties for Iran's citizens, I think it worth noting how we've change our human rights priorities.

CROWD OF UNILATERAL LAWYERS APPLAUD UNILATERAL OPERATOR

Sarah Cleveland? Not a judge. Greg Craig? Not a judge. William Dodge? Not a judge. Jeh Johnson? Not a judge. David Kris? Not a judge. David Martin? Not a judge. Daniel Meltzer? Not a judge. And Trevor Morrison?

Also not a judge.

Nevertheless, these eight lawyers—all of whom served the function of interpreting the law for the Executive Branch within the Executive Branch for Obama (and, in Kris' case, for Bush)—[assure you](#) that John Brennan will uphold our laws.

Throughout his tenure as Assistant to the President for Homeland Security and Counterterrorism in the Obama Administration, John Brennan has been a persistent and determined leader in support of adherence to the rule of law, a principled commitment to civil liberties and humanitarian protection, and transparency. On a broad range of issues, he has endeavored to ensure that the national security practices of the United States Government are based on sound long-term policy goals and are consistent with our domestic and international legal obligations, as well as with broader principles of democratic accountability. John Brennan has been a steadfast champion of the President's commitment to closing the detention facility at Guantánamo, and has urged that our Article III courts remain a vital tool in our counterterrorism toolbox. He has stood firmly with the President's efforts to ensure that interrogations are conducted in accord with the law and our values. And he has worked to ensure that the responsible

and effective pursuit of our counterterrorism objectives will not depend simply on the good instincts of officials, but will instead be institutionalized in durable frameworks with a sound legal basis and broad interagency oversight.

[snip]

John Brennan understands that adherence to the Constitution and the rule of law serve, rather than undermine, our national security interests. Time and again, he has demonstrated seasoned wisdom and judgment in responding to our nation's greatest national security threats, and he has consistently reaffirmed his core commitment to conducting our national security and counterterrorism policy in a fashion that comports with our deepest values.
[my emphasis]

Sure, there are a few tells—such as the boast that his pursuit of counterterrorism objectives will be institutionalized in a broad interagency—not interbranch—oversight. Or, on the reverse, the claim that John Brennan—whose [solution to the National Counterterrorism Center's failure to fulfill minimization requirements](#) was just to open up all Federal databases to NCTC without that minimization—has a “principled commitment to civil liberties.”

But mostly, it's the structural problem here. Regardless of what John Brennan himself believes—and all the public evidence suggests these lawyers are too close to judge and perhaps [just a little seduced by the old spook](#)—this Administration doesn't stand for any of these things.

More importantly, this Administration has refused just about every opportunity to have someone else—lawyers and judges who hadn't counseled these policies from the start—weigh

these issues. The Administration has shown great disdain for both [democratic accountability](#) and [Article III courts](#). It has ensured that interrogations—both [those conducted under Bush](#) and [those conducted in dark prisons under Obama](#)—never be tested for whether they accord with the law. Indeed, Obama’s Administration has gone to great lengths to [hide our torture](#) from international oversight and even [from litigants in our own courts](#).

So even assuming John Brennan is the nice guy these lawyers say he is—an assumption that defies the evidence—they’re still damning Brennan with the same illegitimate argument the Obama Administration has always relied on:

Trust us.

They are emphasizing precisely why John Brennan’s success in an Administration that has refused even basic oversight should not be sufficient for confirmation to lead a secretive agency.

And while in any other week I might be inclined to grant David Kris’ word great weight, not this week. After all, Kris [warned](#) we might get into trouble with Hamdan’s material support for terrorism conviction years ago. Nevertheless, the Obama Administration is treating Gitmo with the same [Kangaroo arrogance](#) that Bush did, refusing to take the DC Circuit’s ruling on Hamdan as law, overriding their own prosecutor at Gitmo. This Administration—Brennan’s Administration—is defiant of even the warnings Kris offered years ago. So when Kris and other lawyers boast that Brennan will be a great leader consistent with Obama’s policies...

He is also exceptionally qualified to provide leadership and direction to the Agency, consistent with President Obama’s national security objectives.

... It’s shouldn’t exactly count as a glowing endorsement.

Sure, this letter to Dianne Feinstein in support of Brennan's nomination will work. It'll provide cover for all the evidence that Brennan is none of these things. At the very least, it'll force a few Democrats on the Senate Intelligence Committee to consider whether they're prepared to admit that Obama's policies exhibit none of this respect for rule of law. Which they aren't, yet. So it'll serve its purpose.

The last actual judge who got a glimpse at the Obama Administration's claim to abide by the rule of law [had this to say](#):

I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping reasons for their conclusion a secret.

John Brennan is the knave of this Alice in Wonderland system of legal justice.

I take that as a far better read of Brennan's fitness to be CIA Director than the word of the Queen of Hearts' other cards up her sleeve.

Update: Conor Friedersdorf does [more fact-checking](#) of the claims in the letter.

**ANOTHER YEAR, AND
ANOTHER DETAINEE
KILLED, BUT OBAMA'S
INTENT IS STILL FOUND**

IN BAGRAM

Today marks yet another anniversary for our prison in Gitmo. Over the last year, the most notable change has been that—after Obama’s DOJ [succeeded in gutting habeas corpus](#) so they could keep Adnan Latif, against whom they had no credible evidence, detained—Latif died under [unexplained circumstances](#). Laura Poitras has [a powerful video](#) documenting Latif’s torment to mark today’s anniversary. Jason Leopold also [has a story](#) with new details on Latif’s death.

And while I do think the Administration’s willingness to so twist the law to keep Latif is itself witness to Obama’s real intent on indefinite detention, I still think the argument I made last year—that Bagram is the true exhibit of Obama’s fondness for review-free detention—stands. Here’s last year’s Gitmo post in its entirety, with updates below.

On a near daily basis in the last week or so, Jason Leopold has tweeted some quote from the daily White House press briefing in which a journalist asks Jay Carney a question about detention, to which Carney responds by insisting the Administration still intends to close Gitmo.

Q One other topic. Wednesday is apparently the 10th anniversary of the prison in Guantanamo Bay, and I’m wondering what the White House says now to critics who point to this as a pretty clear broken promise. The President had wanted to close that within a year. That hasn’t happened for a lot of the history that you know of. And now it’s like there’s really no end in sight. How do you respond to the criticism that this is just a big, broken promise?

MR. CARNEY: Well, the commitment that the President has to closing Guantanamo Bay is as firm today as it was during the campaign. We all are aware of the

obstacles to getting that done as quickly as the President wanted to get it done, what they were and the fact that they continued to persist. But the President's commitment hasn't changed at all. And it's the right thing to do for our national security interests.

That has been an opinion shared not just by this President or members of this administration, but senior members of the military as well as this President's predecessor and the man he ran against for this office in the general election. So we will continue to abide by that commitment and work towards its fulfillment.

And that response usually succeeds in shutting the journalist up.

No one has, as far as I know, asked the more general question: "does the Administration plan to get out of the due process-free indefinite detention business?" That question would be a lot harder for Carney to answer—though the answer, of course, is "no, the Administration has no intention of stopping the practice of holding significant numbers of detainees without adequate review." Rather than reversing the practice started by the Bush Administration, Obama has continued it, even re-accelerated it, expanding our prison at Bagram several times.

That question seems to be absent from discussions about Gitmo's anniversary, too. Take [this debate from the NYT](#).

Deborah Pearlstein [takes solace](#) in her assessment that Gitmo has gotten better over the last decade.

In 2002, detention conditions at the base were often abusive, and for some, torturous. Today, prisoners are generally housed in conditions that meet international standards, and the prison operates under an executive order that

appears to have succeeded in prohibiting torture and cruelty. In 2002, the U.S. president asserted exclusive control over the prison, denying the applicability of fundamental laws that would afford its residents even the most basic humanitarian and procedural protections, and rejecting the notion that the courts had any power to constrain executive discretion. Today, all three branches of government are engaged in applying the laws that recognize legal rights in the detainees. Guantánamo once housed close to 800 prisoners, and most outside observers were barred from the base. Today, it holds 171, and independent lawyers, among others, have met with most detainees many times.

But she doesn't mention that the Administration still operates a prison alleged to be abusive, even torturous, still rejects the notion that courts have any power to constrain executive discretion over that prison. And that prison holds over 3,000 men in it!

Sure, Gitmo has gotten better, but that only serves to distract from the fact that our detention practices—except for the notable fact that we claim to have ended the most physical forms of torture—have not.

David Cole [scolds](#) those in Congress who “don't seem troubled at all about keeping men locked up who the military has said could be released, or about keeping open an institution that jeopardizes our security,” yet doesn't mention that Bagram does the same. Nor does he note [the part of the Administration's NDAA signing statement](#) that suggested Congress' salutary effort to expand detainee review would not necessarily apply to Bagram. How can it all be Congress' fault when Obama isn't fulfilling the letter of the law providing more meaningful review to those we're holding at Bagram?

Even the brilliant Vince Warren [focuses](#) on the “legal black hole” that is Gitmo, without mentioning the bigger legal black hole that is Bagram.

Among the four participants in the debate, only Eric Posner even [mentions](#) Bagram, suggesting that that’s one less optimal alternative to keeping prisoners at Gitmo.

To be sure, there are other options. Detainees could be placed in prison camps on foreign territory controlled by the U.S. military, where they lack access to U.S. courts and security is less certain.

But then Posner misconstrues the issue.

Some critics believe that the whole idea of a war on terror is misconceived, that Congress could not have lawfully declared war on Al Qaeda, and that therefore suspected members of Al Qaeda cannot be detained indefinitely like enemy soldiers but must either be charged in a court or released. This position has been rejected repeatedly by the courts, but even if it were correct, Guantánamo would remain a legitimate place to detain enemy soldiers picked up on “hot” battlefields wherever they may be now or in the future – places like Afghanistan, Iraq, Libya and maybe soon Iran, to name a few.

There’s a difference between what is legal under international law developed for very different wars and what is just or what is the best way to conduct that war. And the problem with Gitmo (mitigated somewhat over the decade)–and the problem with Bagram, still–is that we’re spending unbelievable amounts of money to detain and abuse people that we haven’t even adequately reviewed to make sure we need to detain them. That’s not a smart way to conduct a war,

particularly not one its backers insist will never end, particularly one that depends on our ability to win support among Afghans and other Muslims.

The only thing that was and is problematic about Gitmo that is not also problematic about Bagram is the publicity surrounding it (presumably, though, just here and in Europe—I imagine Afghans, Pakistanis, and al Qaeda members know as much about Bagram as they do about Gitmo). That is, by treating—and allowing the Administration to treat—Gitmo as the problem, rather than due process-free and possibly abusive indefinite detention generally, we're all acting as if the problem is that people know we're conducting due process-free indefinite detention, not that we're doing it at all. We're letting the Administration off easy with its claims that mean old Congress has prevented it from closing Gitmo, when Bagram offers proof that it wants to do so not for the right reasons—because it is wrong, because it damages our ability to claim to offer something better than corrupt regimes—but because what America has become and intends to stay is embarrassing, politically inconvenient.

I understand that this anniversary will attract general attention to Gitmo. I'm thrilled that, for once, people are listening to the reporters and activists and lawyers and guards and especially the detainees who have fought to close it. But by allowing the myth that Gitmo is the problem to go unchallenged, and not our due process-free indefinite detention generally, we're simply pretending that unjust and stupid actions that occur outside of the glare of the press don't matter as much as those that make the news.

The updates to this story are not good. As Jim White [has documented](#), we have slow-walked our obligation to turn over the prison to Afghanistan because they refuse to agree to indefinite trial-free detention. The

Administration [continues to successfully fight efforts](#) to give the detainees at Bagram habeas review. And Yunus Rahmatullah—who in December 2011 seemingly won a habeas case brought in the UK—[was denied his petition](#) last year when the Brits declared the US simply wouldn't honor its international agreements and release him. And all these actions come [while defying](#) Congress' requirement that DOD detainees get some kind of meaningful review.

The Obama Administration is dishonoring agreements with multiple allies and defying Congress to sustain his system of due process free indefinite detention.

You will hear apologists today claim that Obama hasn't closed Gitmo because Congress won't let him. But his actions with Bagram prove his true intent.

THE LAWYERS THAT STAYED, THE LAWYERS THAT LEFT

Charlie Savage [covers](#) a very troubling development in the case of Ali al-Bahlul, a Yemeni who is serving a life sentence for serving as Al Qaeda's videographer.

After Hamdan had his conviction vacated by the DC Circuit last year because material support was not a war crime at the time of his support for al Qaeda, Bahlul's conviction was put in jeopardy too. As Savage earlier reported, there was a debate among the national security lawyers. And in spite of the fact that almost everyone disagreed with Eric Holder on this count, Holder made them press forward anyway.

The Obama administration, after a [high-level debate among its legal team](#), told

a federal appeals court on Wednesday that the conviction of a Guantánamo Bay prisoner by a military commission in 2008 was valid even though the charges against him – including “conspiracy” and “material support for terrorism” – were not recognized as war crimes in international law.

Attorney General Eric H. Holder Jr. decided to press forward with the case, fighting the appeal of a guilty verdict against the prisoner, a Yemeni man named Ali al-Bahlul. In an unusual move, Mr. Holder overruled the recommendation of the solicitor general, Donald B. Verrilli Jr., who had wanted to drop the case because the appeals court had [rejected the same legal arguments](#) in another case several months ago, according to officials familiar with the deliberations.

The chief prosecutor of the military commissions system, Brig. Gen. Mark Martins, had also urged the Justice Department to drop the case and pointedly did not sign the [22-page brief](#) to the court on Wednesday. It concedes that the judges must side with Mr. Bahlul at this stage because of the earlier ruling in the other case, but argues that the earlier ruling was wrong.

It sure appears that Eric Holder is just counting on getting the same kind of batshit crazy ruling he got in Latif, so as to sustain his legally unjustified detention.

What’s especially interesting about this, however, is the Kremlinology. Back in early December over the course of two days time, both Jeh Johnson and Harold Koh [resigned](#). It felt very much like a protest, or a refusal to be part of something that struck them as legally unsound (I thought then—as still suspect—it was

partly a response to John Brennan's halt of the effort to put drones on a sound legal footing).

And now we know that around that time, the Attorney General was overriding not just their advice, but that of most of the others involved in this, including the Solicitor General and the Military Commission Chief Prosecutor.

Yesterday's brief, incidentally, was signed by the Acting Deputy General Counsel at DOD, not Johnson (of course).

So Johnson and Koh are gone. And Eric Holder? The Administration [just announced](#) he will stay into the second term. (And, not incidentally, yesterday I floated the suggestion that Lisa Monaco, who sided with Holder on this fight, would be named to replace FBI Director Mueller later this year; a number of smart people suggested that was a smart prediction.)

Update: In the [WaPo version of this story](#), Steve Vladeck suggests that if the government really planned to push forward with an appeal of this to SCOTUS (that is, to reverse the ruling in Hamdan II), the language in the brief would have been stronger.

Incidentally, I wonder yet again about [the case of the three Somalis in this context](#). Is this why they added a conspiracy charge to their indictment, to establish that as a precedent in this situation?

CLUE: IT WAS THE DRUGS IN THE SOLITARY CONFINEMENT

Charlie Savage [confirms](#) what [Jason Leopold had suggested](#) earlier: Adnan Latif died from too much psychiatric drugs.

A Yemeni detainee who was found dead in September at the military prison at Guantánamo Bay, Cuba, died from an overdose of psychiatric medication, according to several people briefed on a Naval Criminal Investigative Service inquiry.

But while a military medical examiner labeled the man's death a suicide, how the prisoner obtained excess drugs remains under investigation, according to American and Yemeni officials.

Savage's sources suggest that Latif was stockpiling the drugs himself, perhaps in a bodily orifice.

One official, however, discounted [David Remes'] theories, saying investigators were working from the premise that Mr. Latif pretended to swallow his drugs for a period and hid the growing stash on his body. Prison monitoring policies – including how closely guards inspect detainees' mouths after giving any medication and search their private areas – are now facing review.

Though of course, that would have required Latif to have brought them with him from the hospital ward to the solitary confinement ward, which would mean he managed to get the drugs by both the administration period but also the admission into solitary.

Savage also doesn't mention a few details from Leopold's earlier article. Shaker Amer told David Remes that Latif had been told he'd be injected with a drug detainees say turns them into zombies for a month.

Amer contends Latif was told on September 6, two days before his death, he would be given an "ESP injection," that other prisoners claim "makes you a zombie" and "has a one-month afterlife,"

according to unclassified notes of the meeting between Remes and Aamer.

More interesting still—given the points I raised above about how Latif would have managed to get drugs into solitary with him—is this detail.

Another prisoner said a female psychologist accompanied Latif from the hospital to Camp 5, where one prisoner told Remes the minimum stay is three months, “regardless of the magnitude of the offense.”

The female psychologist said she would communicate Latif’s concerns about being housed in Camp 5 to “higher-ups.”

Mind you, this psychologist at least sounds sympathetic. Moreover, this detail would seem to be unknowable to other detainees—how would they know what she had told Latif?—unless the psychologist had spoken to other detainees.

Finally, there’s this: Savage’s sources (as were some of Leopold’s) are citing the NCIS investigation, not the autopsy. But that’s not supposed to be done for nine months. Now perhaps NCIS doesn’t expect to have an explanation for how Latif got or stashed the drugs for another 7 months at least. Or perhaps the NCIS investigation will take that long only to make sure [Latif’s remains will be good and decomposed](#) by the time it’s done.

But as we discuss the minutia of how a detainee managed to overdose in closely guarded solitary, remember this: He was almost certainly innocent, and he surely should not have remained in Gitmo after habeas review. Because of that legal injustice, we’re left playing clue about how a disturbed man died in America’s prison camp.

THE EVIDENCE EXPLAINING LATIF'S DEATH? "NOW BADLY DECOMPOSED"

On October 4, I [asked](#) with disgust whether the government planned to hold Adnan Latif's body until after the election.

Latif died on September 8—26 days ago, or 44% the period until the election. If the sole explanation for the delay is that the US is unwilling to turn over an explanation of how Latif died, it makes it far more likely that Latif died of something other than suicide.

So are they going to hold Latif on ice until the election? Is that the idea?

On October 18, when Jason Leopold [explained](#) the delay in revealing the cause of Latif's death, I [suggested any delay in repatriating Latif's](#) would prevent an independent assessment of why he died.

Meanwhile, no one can perform independent analysis on Latif's body, because the government has stashed it at Ramstein Air Base in Germany. The US and Yemeni governments continue the same story shared with ProPublica: the Yemenis won't accept the body until they get a report on why he died, the US hasn't provided that, so the body decays in US custody.

[snip]

Tick tock.

Tick tock.

Latif died 40 days ago. Just 19 days remain before the election. Between

them, the US and Yemeni governments have forestalled the time when the US has to admit a man—the sole evidence against whom was a flawed intelligence report written while Pakistanis were trying to convince us to pay a bounty for Latif—died of unnatural causes in their custody.

And when, 3 days after Obama's reelection and 62 days after Latif's death the government finished (but did not release) the autopsy results, I [repeated my suspicion](#) that the delay was designed to obscure the real cause of death.

This is all so predictable it really raises questions about what kind of unnatural causes killed Latif.

What caused a death at Gitmo that was scandalous enough it had to be buried until after the election?

With utterly predictable timing, [Leopold reports](#) the government has told Yemen—but not the American people, officially—how Latif died.

Suicide, they say, in seeming contradiction to early reports that said there were no signs of self-harm.

But here is the even more predictable kicker. No one can check their claims, because Latif's body has been decomposing during the entire 79 day delay since he died.

Latif's body has been held for nearly three months at Ramstein Air Base in Germany. US officials have said Latif's remains have been handled according to Muslim precepts, which precluded taking steps to preserve his body and organs, now badly decomposed. Therefore, his family will not be able to seek an independent autopsy.

"This will be very tough for [Latif's] family," the Yemeni government official

| said about the condition of Latif's remains. [my emphasis]

To prevent any accounting for the death of a probably innocent man imprisoned for over 10 years, the most advanced government on earth has just let that man's body rot.

And rot.

And rot.

For over one fifth of a year.

Until no one could prove or disprove that the US government's own treatment (or prior head wounds the government insisted, in an effort to continue to detain him in spite of a dearth of real evidence against him, were never that serious) killed this man.

Rotten. Rotten. Rotten.

AS PREDICTED, GOVERNMENT "FINISHES" LATIF AUTOPSY AFTER ELECTION

Thirty-five days ago, I [predicted](#) the government would hold Adnan Latif's body on ice until after the election.

| So are they going to hold Latif on ice until the election? Is that the idea?

Not long after, Jason Leopold [revealed](#) they did, indeed, have Latif on ice—at Ramstein Air Base—purportedly because the Yemeni government refused to accept the rotting corpse until they

also got an autopsy report. I [noted](#),

Tick tock.

Tick tock.

Latif died 40 days ago. Just 19 days remain before the election. Between them, the US and Yemeni governments have forestalled the time when the US has to admit a man—the sole evidence against whom was a flawed intelligence report written while Pakistanis were trying to convince us to pay a bounty for Latif—died of unnatural causes in their custody.

Surprise surprise! Leopold [reports](#) today that the government has now finished the autopsy and may turn it over to Yemen today (after which presumably they will finally accept Latif's body, too).

The US government plans to turn over a long-awaited and recently-completed autopsy report to Yemeni Embassy officials in Washington, DC as early as today, but no one will say when or if the results will be made public.

An official at the Yemen Embassy, who declined to be named, said the embassy will not comment on the autopsy report's conclusions or whether it determined how Latif died. Instead, the report will immediately be forwarded to government officials in Yemen's capital, Sana'a. Someone there will decide "what the next step" will be, the embassy official said.

Not surprisingly, the delay pisses off Latif's family.

Latif's brother, Muhammed, said his family is distraught because they have been unable to properly mourn his older sibling and they are desperate to learn

about the details of his death.

He questioned whether the delay was due to the presidential election.

“When will America apply the principles it claims to uphold?” Muhammed asked.

“When will the American people demand the US government uphold the law?

America is playing politics with a dead person. America doesn’t care about our rights, my brother’s rights or human rights. Yet, America claims they are favoring human rights all over the world. It’s hypocrisy.”

This is all so predictable it really raises questions about what kind of unnatural causes killed Latif.

What caused a death at Gitmo that was scandalous enough it had to be buried until after the election?

NASHIRI ASKS FOR THE TARGETING PACKAGE ON THE OTHER USS COLE MASTERMIND

Things just got interesting in the pre-trial hearing for Abd al Rahim al-Nashiri in Gitmo. According to [Charlie Savage](#) and [Carol Rosenberg](#), he has asked for the targeting package used to kill Abu Ali al-Harithi in Yemen in November 2002.

While I have no confidence he’ll get the package, he has very good reason to demand it. Here’s [what I wrote](#) about the al-Harithi killing two and half years ago.

I find it rather interesting that that 2002 assassination was rationalized in the name of killing al-Harithi, accused of organizing the USS Cole bombing. That strike happened not long after the US started torturing a guy—Rahim al-Nashiri—whom we’re about to try in military commission for organizing the USS Cole bombing. [10/24/12: Correction, we actually started torturing Nashiri in earnest 13 days later] (And remember, al-Nashiri had been in custody in Dubai for a month by the time the US took custody.) Who was the mastermind of the Cole bombing, then? al-Harithi, who doesn’t even merit a mention in the [9/11 Commission report](#) (though reports from when he was killed said he was [among the 12 most senior](#) al Qaeda figures), or al-Nashiri, who does, and is about to be tried for it? Note, too, that the Bush Administration did not announce it had custody of al-Nashiri until [several weeks later](#) in November.

Now compare al-Harithi, with his loosely accused role in the Cole, with Kamal Derwish, whom the US [accused](#) of recruiting a number of Lackawanna youth into al Qaeda. Not only was Derwish accused of being an ongoing threat—the standard purportedly used to put Americans on kill lists now. But he was accused of training Americans in al Qaeda. Which is not all that different than what the government is accusing al-Awlaki of now.

And note, too, that Priest and maybe Miller [ed. changed [per MD’s comment](#)] both now report that the CIA knew Derwish was in the car when they targeted (they say) al-Harithi. When Miller [first reported](#) this in 2002, he didn’t mention Derwish’s presence (nor did [Pincus](#)). When Priest [broke](#) the story of Derwish’s presence in the car, she

stated it was unclear whether CIA knew he was there or not.

It was unclear whether the CIA operatives who fired the missile from hundreds of miles away knew that an American citizen was among their targets. It also was unclear whether that would have made any difference.

I guess I'm suggesting that, first of all, it would seem unnecessary to kill a guy for planning the Cole bombing if you knew you had the guy who—you say—planned the Cole bombing in custody. But that claiming a tie between him and the Cole bombing might provide the excuse to target a car carrying your real target, Derwish.

Basically, one of two things is likely true: al-Harithi is the mastermind of the Cole strike, and we knew that before we started torturing Nashiri, in the name of his role as the USS Cole mastermind, in earnest. Or, Nashiri is the real mastermind of the Cole bombing, in which case the al-Harithi story was probably a cover story so we could kill an American citizen, Kamal Derwish, with no due process.

I suspect the second is true (though Nashiri has also asked for the FBI investigative file on the attack; it's rather stunning he hasn't gotten it yet—maybe this is the reason he's being inappropriately tried in a military commission?). In which case this is a kind of graymail, the knowledge that the US can't turn over the targeting package for al-Harithi because it would show Derwish was the real target.

In any case, it was an interesting legal move.