

EXTRAJUDICIAL EXECUTION OF SAMIR KHAN ARGUABLY MORE SIGNIFICANT THAN AWLAKI

By this time in the day, the early morning report of the killing of Anwar Awlaki is old news. From ABC News:

Senior administration officials say that the U.S. has been targeting Awlaki for months, though in recent weeks officials were able to pin down his location.

“They were waiting for the right opportunity to get him away from any civilians,” a senior administration official tells ABC News.

And today they got him. Awlaki was killed by a drone delivered Hellfire missile, via a joint CIA and JSOC operation, in the town of Kashef, in Yemen’s Jawf province, approximately 140 kilometres east of Sanaa, Yemen’s capital. But not only Awlaki was killed, at least three others, including yet another American citizen, Samir Khan, were killed in the strike.

That’s right, not just one, *but two*, Americans were summarily and extrajudicially executed by their own government today, at the direct order of the President of the United States. No trial, no verdict, just off with their heads. Heck, there were not even charges filed against either Awlaki or Khan. And it is not that the government did not try either, there was a grand jury convened on Khan, but no charges. Awlaki too was investigated for charges at least twice by the DOJ, but none were found.

But at least Awlaki was on Barrack Obama’s “Americans That Are Cool to Kill List”. Not so

with Samir Khan. Not only is there no evidence whatsoever Khan is on the classified list for killing (actually two different lists) my survey of people knowledgeable in the field today revealed not one who believed Khan was on any such list, either by DOD or CIA.

So, the US has been tracking scrupulously Awlaki for an extended period and knew with certainty where he was and when, and knew with certainty immediately they had killed Awlaki and Khan. This means the US also knew, with certainty, they were going to execute Samir Khan.

How did the US then make the kill order knowing they were executing a US citizen, not only extrajudicially, but not even with the patina of being on the designated kill list (which would at least presuppose some consideration and Yoo-like pseudo-legal cover)?

Did Barack Obama magically auto-pixie dust Khan onto the list with a wave of his wand on the spot? Even under the various law of war theories, which are not particularly compelling justification to start with as we are not at war with Yemen and it is not a "battlefield", the taking of Khan would appear clearly prohibited under both American and International law. As Mary Ellen O'Connell, vice chairman of the American Society of International Law, relates, via Spencer Ackerman at Wired's Dangerroom:

"The United States is not involved in any armed conflict in Yemen," O'Connell tells Danger Room, "so to use military force to carry out these killings violates international law."

O'Connell's argument turns on the question of whether the U.S. is legally at war in Yemen. And for the administration, that's a dicey proposition. The Obama administration relies on the vague Authorization to Use Military Force, passed in the days after 9/11, to justify its Shadow Wars against terrorists. Under its broad definition,

the Authorization's writ makes Planet Earth a battlefield, legally speaking.

But the Authorization authorizes war against "nations, organizations, or persons [the president] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001." It's a stretch to apply that to al-Qaida's Yemen affiliate, which didn't exist on 9/11. But when House Republicans tried to re-up the Authorization to explicitly bless the new contours of the war against al-Qaida, the Obama administration balked, fearing the GOP was actually tying its hands on the separate question of terrorist detentions.

"It is only during the intense fighting of an armed conflict that international law permits the taking of human life on a basis other than the immediate need to save life," O'Connell continues. "In armed conflict, a privileged belligerent may use lethal force on the basis of reasonable necessity. Outside armed conflict, the relevant standard is absolute necessity."

So did al-Awlaki represent an "absolute" danger to the United States? President Obama, in acknowledging Awlaki's death on Friday morning, didn't present any evidence that he did.

And therein lies the reason the US killing of Samir Khan may be even more troubling than the already troubling killing of al-Awlaki. There is no satisfactory legal basis for either one, but as to Khan there was NO process whatsoever, even the joke "listing" process utilized for Awlaki. The US says it took care to not harm "civilians", apparently that would mean Yemeni civilians. American citizens are fair game for Mr. Obama, list or no list, crime or no crime, charges or no charges. Off with their

heads!

People should not just be evaluating today's fresh kills as to Awlaki, Samir Khan should be at the tip of the discussion spear too.

THE CHIEF OF STAFF WHO MIGHT HAVE BEEN

There are a number of details from Ron Suskind's new book revealed by an AP and a NYT preview of it, the most alarming (but not surprising) that TurboTax Timmeh Geithner managed to save Citibank by basically ignoring Obama's order to break it up.

The book, by Ron Suskind, a former Wall Street Journal reporter, quotes White House documents that say Mr. Obama's decisions were routinely "re-litigated" by the chairman of the National Economic Council, Lawrence H. Summers. Some decisions, including one to overhaul the debt-ridden Citibank, were carried out sluggishly or not at all by a resistant Treasury secretary, Timothy F. Geithner, according to the book.

[snip]

In the book, Mr. Geithner denies that he obstructed any presidential directive. A senior Treasury official said a government restructuring of Citibank would have occurred only if the Treasury had been left with a significant ownership stake in the bank after it emerged from a financial stress test.

A pity Obama didn't fire Timmeh long before it came time to panic over the fact the Administration had gone so easy on the banks. A pity, too, Obama just begged his insubordinate Treasury Secretary to stick around.

But I'm just as interested in Suskind's revelation that Obama didn't want Rahm at first.

The book says one of Obama's top advisers, former chief of staff Rahm Emanuel, was not the president's first choice for the position. According to Suskind, Emanuel's name was not even on the initial short list, which included White House aide Pete Rouse.

Folks on the Hill are now bitching about Bill Daley. Though I think they're crazy to miss Rahm, who may have been nicer to the Hill but was also ineffective. Me, I thought Rouse was the best of the three and wonder what it was that led Obama to pass up that choice and—in what was one of his first announcements—pick Rahm instead. It's not like Rouse wasn't available; he has been with the Administration throughout the Administration.

There was still a lot wrong with the execution of this Administration, such as the insubordinate Treasury Secretary that Obama didn't fire. But a decent Chief of Staff might have at least made it more effective.

WILLIAM WELCH & DOJ'S DISHONEST INTELLIGENCE WITNESS AGAINST JEFF STERLING

In a comment to Marcy's *The Narratology of Leaking: Risen and Sterling* post yesterday, MadDog related this nugget regarding the Sterling case from a Steve Aftergood article in Privacy News:

I know EW's post's focus was on Sterling's defense team's strategy, but I'd be remiss in not commenting on this

tidbit from Steven Aftergood's post:

"...In addition, a former intelligence official now tells prosecutors that portions of his testimony before a grand jury concerning certain conversations with Mr. Risen about Mr. Sterling were "a mistake on his part." As a result, prosecutors said (8 page PDF), Mr. Risen himself is "the only source for the information the government seeks to present to the jury."..."

I wondered just what this paragraph meant. Did it mean, as I assumed, that one of the prosecution's key witnesses, a former intelligence official, had in fact recanted the former intelligence official's grand jury testimony?

Here is just what the prosecution blithely said on the matter from page 5 of their supplement (8 page PDF):

"...Fifth, the testimony of the "former intelligence official" referenced in the Court's Opinion has changed. The former official will now only say that on one occasion, Mr. Risen spoke with him about the defendant and stated that the defendant had complained about not being sufficiently recognized for his role in Classified Program No. 1 and in his recruitment of a human asset relating to Classified Program No. 1, and that on a separate occasion, Mr. Risen asked him generic questions about whether the CIA would engage in general activity similar to Classified Program No. 1. This former official, however, cannot say that Mr. Risen linked the second conversation with the defendant, although both conversations occurred within several months of each other. The former official termed his grand jury testimony, which linked the two conversations together, as a mistake on his part. In addition, the former

official further modified his testimony to say that although Mr. Risen had acknowledged visiting the defendant in his hometown, Mr. Risen's trip to see the defendant was not the main purpose of his travel, but rather a side trip.

The testimony of this former official had been cited by the Court as providing "exactly what the government seeks to obtain from its subpoena [to Mr. Risen]: an admission that Sterling was Risen's source for the classified information in Chapter Nine." Memorandum Opinion (Dkt No.148) at 24. The former official's testimony will not now provide such a direct admission, further underscoring the government's contention that for the reasons discuss in its Motion, Mr. Risen is the only source for the information the government seeks to present to the jury..."

So, that got me thinking, what is the status of the "former intelligence officer" in question? Is he still on the witness list? Who is it, and why is he "former"? Has he been charged with false statements to a government officer under 18 USC 1001? Has he been charged with perjury under 18 USC 1623? Is there a criminal investigation regarding the duplicity underway? What is being done?

Because, giving the government's prosecutors the benefit of the doubt that they did not misrepresent or puff the "former intelligence officer's" statements and testimony to start with, which is a pretty sizable grant for a William Welch run show, then it seems pretty clear that the "former intelligence official" is now saying that he either testified to things he did not, in fact know at the time, or he embellished/lied to the grand jury and the attending prosecutors.

The problem with the above is, the "former intelligence official is not entitled to any

protection or benefit of the doubt for a “recantation” under 18 USC 1663(d). Here is the relevant portion on this subject from the US Attorney’s Office Criminal Resource Manual:

Recantation was never a defense to perjury in the common law, and is not a complete defense in a Section 1621 prosecution. *United States v. Norris*, 300 U.S. 564, 573-74 (1937). Recantation in such cases is relevant only as to whether the defendant intended to make a willfully false statement. *Id.*

Section 1623(d), however, makes recantation a bar to a perjury prosecution in certain cases that meet either three or four requirements. First, the recantation must be made “in the same continuous court or grand jury proceeding” in which the original false declaration was made. Second, the recantation must unambiguously admit that the prior statement was false. A request to clarify or supplement testimony is not enough to satisfy the statutory requirement. Finally, recantation bars prosecution only if the admission occurs at a time when the false declaration has “not substantially affected the proceedings, and it has not become manifest that such falsity has been or will be exposed.” *United States v. Fornaro*, 894 F.2d 508, 511 (2d Cir. 1990); *United States v. Scivola*, 766 F.2d 37, 45 (1st Cir. 1985); *United States v. Moore*, 613 F.2d 1029, 1039 (D.C. Cir. 1979), cert. denied, 446 U.S. 954 (1980). Thus, if the witness has knowledge that the false testimony “has been or will be exposed,” no effective recantation can thereafter be made. *United States v. Denison*, 663 F.2d 611, 615 (5th Cir. 1981). Similarly, if the grand jury has acted in reliance upon the false testimony, no recantation is possible. The United States Court of

Appeals for the Eighth Circuit, however, viewed the last two requirements in the disjunctive when it allowed a defendant an opportunity to show either that the proceedings were not substantially affected or that the falsity will be exposed. *United States v. Smith*, 35 F.3d 344, 347 (8th Cir. 1994). Because recantation is a jurisdictional bar to prosecution, Fed.R.Crim.P. 12(b)(2) requires that it be shown before trial. *United States v. Fornaro*, 894 F.2d 508, 511 (2d Cir. 1990).

There are two problems here. First, there is no evidence from the government's description in its motion that the "former intelligence officer" made a clear admission his/her testimony was false or did anything other than hemming, hawing and modifying. Secondly, and most importantly, it is simply impossible to say that the false testimony of the "former intelligence official" "has not substantially affected the proceedings". Remember, even the prosecutors, in their motion, stated unequivocally:

The testimony of this former official had been cited by the Court as providing "exactly what the government seeks to obtain from its subpoena [to Mr. Risen]: an admission that Sterling was Risen's source for the classified information in Chapter Nine."

It is pretty amazing that here is the Obama DOJ prosecution team, persecuting yet another clearcut whistleblower, whom they ought to be protecting, and doing so with such inconsistent and malignant gimmicks. Welch and DOJ have accused Mr. Sterling of egregious crimes of dishonesty and betrayal, and put up a dishonest unidentified "former intelligence officer" in front of the grand jury to get the indictment. And now Welch and the DOJ not only want to continue their wrongheaded prosecution, but want

to invade the sanctity of the press, Jim Risen, which has already been noted by Judge Leonie Brinkema, to bail their sorry behinds out of their predicament.

So, what is going on with the investigation and/or prosecution of this vaunted “former intelligence officer”? Because, save for there being some meaningful activity in that regard, it just looks like another case of a contrived, manipulated and contorted prosecution by a team led by a man, William Welch, famous for just that.

Oh, and as a late arriving parting shot, it turns out that William Welch, who was rather unceremoniously removed from his post at DOJ’s Public Integrity Section (PIN) in the aftermath of the Ted Stevens disaster and court ordered investigation into his conduct, as a news release, pointed out by Shane Harris, about a public official being sentenced in Massachusetts, contains this little plum in its last paragraph:

The case was investigated by the FBI, with assistance from the Massachusetts Inspector General’s Office and the Lowell Police Department. It is being prosecuted by Senior Litigation Counsel William M. Welch II and Kevin Driscoll of the Criminal Division’s Public Integrity Section, with assistance from the U.S. Attorney’s Office, Public Corruption Unit.

What were once vices in the Department of Justice are now just unending bad habits under the Administration of Barack Obama and Eric Holder. Nothing has changed.

OBAMA & HOLDER PUSH AZ USATTY BURKE OUT OVER ATF GUNRUNNER COCK-UP

Coming across the wire this morning was this stunning announcement by the Department of Justice:

Statement of Attorney General Eric Holder on the Resignation of U.S. Attorney for the District of Arizona Dennis Burke 08/30/2011 01:01 PM EDT

"United States Attorney Dennis Burke has demonstrated an unwavering commitment to the Department of Justice and the U.S. Attorney's office, first as a line prosecutor over a decade ago and more recently as United States Attorney," said Attorney General Holder.

Say what? Maybe I am not as plugged in as i used to be, but holy moly this came out of the blue. What is behind the sudden and "immediate" resignation of Dennis Burke, an extremely decent man who has also been a great manager of the Arizona US Attorney's Office through some of the most perilous times imaginable? The USA who has piloted the office in dealing with such high grade problems such as those stemming from SB1070, to traditional immigration issues, to the Giffords/Loughner shooting tragedy, the corruption and malfeasance of the Maricopa County Sheriff's Office to voting rights and redistricting controversies brought on by the ever crazy Arizona Legislature, has now resigned in the blink of an eye? Really?

Why?

The GunWalker mess. Also known as "Project GunRunner" and "Operation Fast and Furious" (yes, the idiots at ATF actually did call it

that). From the Arizona Republic:

Burke's resignation, effective immediately, is one of several personnel moves made in the wake of a federal gun-trafficking investigation that put hundreds of rifles and handguns from Arizona into the hands of criminals in Mexico. Burke's office provided legal guidance to the federal Bureau of Alcohol, Tobacco and Firearms on the flawed initiative called Operation Fast and Furious.

The news comes on the same day as a new acting director was named to oversee the Bureau of Alcohol, Tobacco, Firearms and Explosives following congressional hearings into Fast and Furious, an operation that was aimed at major gun-trafficking networks in the Southwest.

Irrespective of the name attached to the program – I have always known it as the GunWalker operation, so i will stick with that – is has been a first rate clusterfuck from the outset. And, unlike so many things bollixing up the government, it cannot be traced back to the Bush/Cheney Administration; this beauty was the product of the Obama and Holder Department of Justice. In fact, the entire effort was, believe it or not, a byproduct of the vaunted Obama Stimulus Package, known as the American Recovery and Reinvestment Act of 2009.

What this ill fated venture accomplished instead was to stimulate deadly gun possession and crimes of violence in Mexico. Again, from the Arizona Republic:

Questions about the Fast and Furious program began to emerge in the spring as a member of Congress began pressing ATF officials for answers about an operation that was designed to track small-time gun buyers until the guns reached the hands of major weapons traffickers along

the southwestern border.

Instead, ATF agents ended up arresting low-level suspects and nearly 2,000 of the weapons were unaccounted for, with nearly two-thirds of those guns likely in Mexico, according to testimony federal firearms investigators gave to a House committee in June.

Investigators also confirmed that two of the weapons connected to the ATF operations were found at the scene of a December gunbattle near Rio Rico, Ariz., that left Border Patrol Agent Brian Terry dead.

Terry's slaying effectively ended the operation.

Dozens of so-called straw buyers have been arrested, and more than 10,000 guns confiscated. However, the ATF came in for criticism from the Justice Department's Office of Inspector General last year because Project Gun Runner was catching only the straw buyers – small fish in the smuggling business.

At a news conference in February, the ATF in Phoenix announced that 34 suspects had been indicted and that U.S. agents had seized 375 weapons as part of Operation Fast and Furious. None of those arrested was a significant cartel figure.

In short, it is, and has been, a cock-up of epic proportions. Who has paid the accountability price for this operational disaster? Well, two weeks ago, on August 16, the Los Angeles Times had this to report:

The ATF has promoted three key supervisors of a controversial sting operation that allowed firearms to be illegally trafficked across the U.S. border into Mexico.

All three have been heavily criticized for pushing the program forward even as it became apparent that it was out of control. At least 2,000 guns were lost and many turned up at crime scenes in Mexico and two at the killing of a U.S. Border Patrol agent in Arizona.

The three supervisors have been given new management positions at the agency's headquarters in Washington. They are William G. McMahon, who was the ATF's deputy director of operations in the West, where the illegal trafficking program was focused, and William D. Newell and David Voth, both field supervisors who oversaw the program out of the agency's Phoenix office.

Now, to be fair, the ATF complained about the LAT report, and the paper has issued a correction as follows: "The ATF said in a statement Aug. 17 that the three supervisors were "laterally transferred" from operational duties into administrative roles, and were not promoted."

So McMahon, Newell and Voth were "laterally transferred" instead of being promoted. well, that's convincing. The three men most responsible for the operational program still have cushy federal jobs at their regular status and pay grade, and Dennis Burke and the acting head of ATF are going to take the fall for it all. How nice.

Now, to be fair, as the sitting US Attorney for Arizona, Dennis Burke would have had to provide some legal guidance for the project and, perhaps, sign off on related warrant applications; but that is a far cry from being the one who designed the program and ran it operationally which, by all appearances, was done straight out of ATF and DOJ Main. Burke appears to be a convenient fall guy for an Obama Administration too craven to stand up for its own mistakes in DC. Former high level prosecutor

and US Senator Dennis DeConcini had this to say:

If his resignation is tied to Fast and Furious, it's ridiculous. It would be absolutely outrageous for 'Justice Main' to take it out on Dennis and make him the fall guy," DeConcini said. "It's just typical Washington cronyism. It just shows you how incompetent government can be to save themselves. It appears they screwed up, based on congressional hearings.

Without downplaying that the Arizona US Attorney's Office would have had some involvement in the Gunwalker fiasco, it is extremely hard to see how DeConcini is off the mark with his assessment.

Why is the Obama Administration selling out a man like Dennis Burke? Because the Gunwalker fiasco is really that big of a total cock-up, they own every ounce of it, and would rather paint a scapegoat than own up to it. The mess has not gotten more play in the news and political discourse because the Obama Administration and Holder Department of Justice have done everything within their power to tamp down any investigation and/or discussion of the case because it really is that ugly.

Shamefully, the only sources of dedicated inquiry to date have come from Darrell Issa at House Oversight and Chuck Grassley at Senate Judiciary.

Sen. Charles Grassley, R-Iowa, ranking minority member of the Senate Judiciary Committee, has pressed the ATF for two months to disclose details of Project Gun Runner and to justify a policy that allowed weapons into a nation where there were more than 36,000 drug-related murders in four years.

Last month, William McMahon, the head of ATF's Western region, testified that the agency had good intentions when it

launched Operation Fast and Furious in 2009. But looking back, there are things ATF would have done differently, he said.

Appearing before the House Oversight and Government Reform Committee, McMahon said he was committed to dismantling criminal networks on both sides of the border and that “in our zeal to do so, and in the heat of battle, mistakes were made. And for that I apologize.”

Say what you will, Darrell Issa and Chuck Grassley are right to be asking questions on the GunWalker affair, and others, including our fine Democrats, should be too. The Obama Administration should quit obfuscating, and trying to divert attention by sacrificing scapegoats, and make a full accounting for a failed program. Dennis Burke is owed that.

THE UNSTATED CONSTITUTIONAL PROBLEMS WITH OBAMA “USING THE 14TH”

As about everyone knows by now, the great debate is still ongoing on the issue of



the debt ceiling. The frustration of those on the left with the intransigence of the

Republican Tea Party, coupled with the neutered Democratic Congress, has led many to call for President Obama to immediately “invoke the 14th”. The common rallying cry is that legal scholars (usually Jack Balkin is cited), Paul Krugman and various members of Congress have said it is the way to go. But neither Krugman nor the criers in Congress are lawyers, or to the extent they are have no Constitutional background. And Balkin’s discussion is relentlessly misrepresented as to what he really has said. “Using the 14th” is a bad meme and here is why.

The Founders, in creating and nurturing our system of governance by and through the Constitution provided separate and distinct branches of government, the Legislative, Executive and Judicial and, further, provided for intentional, established and delineated checks and balances so that power was balanced and not able to be usurped by any one branch tyrannically against the interest of the citizenry. It is summarized by James Madison in Federalist 51 thusly:

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments.

....

We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other – that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

which must be read in conjunction with Madison

in Federalist 47:

The accumulation of all powers,
legislative, executive, and judiciary,
in the same hands, whether of one, a
few, or many, and whether hereditary,
selfappointed, or elective, may justly
be pronounced the very definition of
tyranny.

This is the essence of the separation of powers and checks and balances thereon that is the very root foundation of our American governance. It may be an abstract thing, but it is very real and critical significance. And it is exactly what is at stake when people blithely clamor to “Use the 14th!”.

Specifically, one of the most fundamental powers given by the Founders to the Article I branch, Congress, was the “power of the purse”. That was accomplished via Article I, Section 8, which provides:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States...

and

To borrow money on the credit of the United States;

The call to “Use the 14th” is a demand that the President, the embodiment of the Article II Executive Branch, usurp the assigned power of the Article I Congress in relation to “borrow money on the credit of the United States”. This power is what lays behind the debt ceiling law to begin with, and why it is presumptively Constitutional. It is Congress’ power, not the President’s, and “invoking the 14th” means usurping that power. Due to “case and controversy” and “standing” limitations, which would require another treatise to discuss fully,

there is literally likely no party that could effectively challenge such a usurpation of power by the Executive Branch and an irretrievable standard set for the future. The fundamental separation and balance of powers between the branches will be altered with a significant shift of power to the Executive Branch.

This is not something to be done lightly or if there is any possible alternative available. Indeed, the only instance in which it could be rationally considered would be if all alternatives were exhausted. That does NOT mean because the GOPTeaers are being mean and selfish. It does NOT mean because you are worried about some etherial interest rate or stock market fluctuation that may, or may not, substantially occur. It does NOT mean because your party's President and Congressional leadership are terminally lame. That, folks, is just not good enough to carve into the heart of Constitutional Separation of Powers. Sorry.

And for those that are thinking about throwing "experts" such as Jack Balkin in the face of what I have argued, go read them, notably Jack himself, who said before invoking the 14th, first the President would have to prioritize what was paid by existent resources, those that could be liberated and revenues that did still come in:

...certainly payments for future services – would not count and would have to be sacrificed. This might include, for example, Social Security payments.

....

Assume, however, that even a prolonged government shutdown does not move Congress to act. Eventually paying only interest and vested obligations will prove unsustainable – first because tax revenues will decrease as the economy sours, and second, because holders of government debt will conclude that a government that cannot act in a crisis is not trustworthy.

If the president reasonably believes that the public debt will be put in question for either reason, Section 4 comes into play once again. His predicament is caused by the combination of statutes that authorize and limit what he can do: He must pay appropriated monies, but he may not print new currency and he may not float new debt. If this combination of contradictory commands would cause him to violate Section 4, then he has a constitutional duty to treat at least one of the laws as unconstitutional as applied to the current circumstances.

So, contrary to those shouting and clamoring for Obama to "Use the 14th", it is fraught with peril for long term government stability and function, and is not appropriate to consider until much further down the rabbit hole. It is NOT a quick fix panacea to the fact we, as citizens, have negligently, recklessly and wantonly elected blithering corrupt idiots to represent us. There is no such thing as a free lunch; and the "14th option" is not what you think it is.

As a parting thought for consideration, remember when invasion of privacy and civil liberties by the Executive Branch was just a "necessary and temporary response to emergency" to 9/11? Have you gotten any of your privacies and civil liberties back? Well have ya?

UPDATE: Joberly added this in comments, and a quick perusal of legislative intent materials and the limited case interpretation seems to indicate it is spot on:

Thanks to Bmaz for his post and for his Comments # 3 and # 34. I'm no lawyer, just a history teacher who has taught Civil War & Reconstruction for some time. This is not the time and place for a history essay on the context of Section 4 ("validity of the public debt"

clause) of the 14th amendment; instead, let me just point to the so-far-ignored Section 5 of the amendment: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." None of the first dozen amendments to the Constitution had anything like this clause; for the most part, the first dozen limited Congress in what it could enact (think "Congress shall make no law..."). The 13th Amendment, passed by Congress in March 1865 was the first to affirm that Congress had the power to enforce a constitutional right. The 14th amendment repeated that. In short, Section 5 put Congress specifically in charge of making sure of the "validity of the public debt," and definitely not the president. That was no accident. The Congress that passed the 14th Amendment had zero confidence in the president (Andrew Johnson) in carrying out congressional policy. The last thing they wanted over the winter of 1865-66 was to give Pres. Johnson any more power that he could abuse. But abuse he did and the next House, elected in 1866, impeached him. I'm with Bmaz on this one.

[Note: I actually did this post at the request of our good friend Howie Klein at his blog Down With Tyranny and it is cross posted there as well]

THE UGLY TRUTH ON WHAT WAS REALLY

“LEFT AT THE ALTAR”

I was away during the dueling banjos press conferences of Barack Obama and John Boehner this afternoon. Apparently it was quite the show. Despite stating repeatedly how he was “left at the altar” by his Orange Glo golfing chum Boehner, President Obama seemed to get surprisingly effusive praise from pundits on the left for his speech.

Indicative of the praise is this tweet from Keith Olbermann:

You know my criticisms of this POTUS. In this news conference he has been absolutely effing kickass, and properly pissed off.

David Corn of Mother Jones tweeted:

O was as passionate and as close to angry as he gets. #debtageddon

And Corn is now on Lawrence O’Donnell’s show on MSNBC, where Lawrence the “Eleventy Dimensional Chess Scold” himself just said of Obama’s presser:

“It was a brilliantly effective appearance for his reelection.”

And there is the problem isn’t it? Obama really was, and is, worried more about his reelection than he is the welfare of the country and the entirety of its citizens who are not members of his cherished moneyed elite and financial sector magnates.

The details seemed to ebb and flow over the last few days, but this from Bloomberg sums up the basics of what Obama was willing to pull the trigger on:

Two congressional officials said the White House told Democratic leaders it was pursuing a deal to cut spending, including on Social Security and

Medicare, and a tax overhaul that could raise \$1 trillion. That provoked an angry reaction yesterday from Senate Democrats, who said they feared they might be asked to swallow steep reductions in programs and trims to entitlement benefits with no assurance of higher tax revenue.

Right. What Obama was caterwauling about being “left at the altar” was his willingness, nee burning desire, to make huge cuts in spending and social safety net programs, in return for the **possibility** of a tax reform later.

And, make no mistake, Mr. Obama is absolutely desperate to make that deal in order to get the debt ceiling issue off the table until sometime after his reelection campaign. His “Grand Bargain” is shit for the economy, shit for almost all Americans safety net now and in the future; it is only good for the howling idiots in the Tea Party sphere and, of course, the reelection campaign of Barack Obama.

So THAT is what was “left at the altar”, and why Barack Obama was suddenly so apoplectically passionate about it. And, yes, it must be stated Boehner, Cantor and the Tea GOP are even more craven and lame than Obama here, but that is pretty weak tea to hang your hat on if you are a sentient being. And that, folks, was the way it was on the day the debt ceiling fell to the floor.

But, fear not trepidatious Americans, Mr. Obama is going to try to save your future and his “grand bargain” again tomorrow! Gee, what dedication.

UPDATE: Paul Krugman understands the ugly truth here, having issued an article today entitled “What Obama Was Willing To Give Away”. Exactly.

[The wonderful and appropos graphic is by the one and only @TWolf10]

IS ANWAR AL-AWLAKI THE UNNAMED “NATIONAL OF THE UNITED STATES” IN WARSAME INDICTMENT?

So, is it truly the case that Awlaki is indeed the unnamed “national of the United States” here in the Warsame indictment? I don’t know for certain, but it sure as heck fits the facts as we know them and the depraved refusal of the American government to talk about or let the public know its basis for impunity in marking an American citizen for extrajudicial termination with prejudice.

BIN LADEN FOUND BY TROLLING THE WEEDS, NOT BY TORTURE

Goldman and Apuzzo have done good work on their story about the analyst who caught bin Laden, but the story is also an instructive primer on what didn’t work, to wit: torture.

OBAMA’S “EVOLUTION”

ACCELERATES: DOJ FORMALLY DECLARES DOMA UNCONSTITUTIONAL

In a late filing in the Northern District of California (NDCA) case of Golinski v. US Department of Personnel Management, the Department of Justice has formally stated that the Defense of Marriage Act (DOMA) is unconstitutional.

NEW YORK'S ENLIGHTENMENT & SOME THOUGHTS ON PERRY PROP8 CASE

New York gets it done on marriage equality, and it will have many profound, and positive, ramifications for the Perry Prop 8 case.