US MILITARY RENEGES ON AL-QOSI'S PLEA AGREEMENT

When Ibrahim al-Qosi agreed to a plea deal with the government, the original deal was that he'd spend a secret two year sentence (rather than the 14 year sentence announced to the public) in communal quarters. At the last minute, the judge in the case learned there's no way to do that at Gitmo, though she did recommend that he serve his time in communal quarters.

Well, guess what? After 60 days since then of living communally, the military has moved him to isolation, having not found a way to accommodate the Convening Authority's recommendations.

> The convicted Osama bin Laden's former cook who pleaded guilty to material support to terrorism was moved from a communal living camp in Guantanamo to live in isolation, in disregard for recommendations of the Military Commission's Convening Authority and to his plea deal, sources told Al Arabiya.
>
> [snip]
>
> "As has been the practice with previous detainees convicted by a Military Commission and serving punitive sentences, al-Qosi is no longer housed with detainees held solely as a function of the law of war," said Pentagon spokeswoman Maj. Tanya Bradsher.
>
> [snip]
>
> Al-Qosi was left in camp 4 as a result of a 60-day sentence deferment period that expired on Sunday and that was requested by the Convening Authority and in anticipation of a possible review of Pentagon rules
>
> Moving al-Qosi does not directly breach

> the plea agreement but undermines recommendations of the Convening Authority requiring communal living for Al-Qosi.

Al-Arabiya's Muna Shikaki notes that this will make it a lot harder for the Administration to craft any more plea deals. Why plead if it means conditions will get worse and if you can't really trust the terms of the deal?

But I'm just as curious what this means for al-Qosi's Double Secret sentence: the two years versus the fourteen years. Al-Qosi has no leverage over the government at this point. If they're not going to make an effort to keep him in communal quarters, what kind of guarantee does he have they'll let him go in two years?

CONFIRMED: OFFICIAL ADMINISTRATION POLICY IS TO CONTINUE FORECLOSURES

The Federal Housing Administration Commissioner, David Stevens, has joined David Axelrod in stating that the Administration sees no reason to halt all foreclosures. That's not a surprise in itself—it was pretty clear that Axe's statement reflected official Administration policy.

But I'm particularly interested in how Stevens justified this position in an email sent to the WaPo.

> "We believe freezing foreclosures for all banks in all states, whether we have reason to believe them to be in error or not, is simply not the prudent step to

> take in this fragile housing market," he said.
>
> With approximately one in four homes sold in the second quarter in foreclosure, administration officials worry that a moratorium could have a significant impact on the economic recovery.
>
> "While we understand the eagerness to make sure that no American is foreclosed upon in error, we must be careful not to over-reach and apply a remedy that will make the underlying problem of foreclosures worse," he added.

First, note where Stevens places the benefit of the doubt. If the Administration has no reason to believe foreclosures to be in error, then it will assume they are not. That, in spite of the mounting evidence that the paperwork problem for homes sold during the bubble is systemic.

Foreclosures have been halted in places where there is an easy means (judicial foreclosures) to expose the fraud underlying the bubble era housing sales, or for companies (like Bank of America) that were pressured to vouch for the whole system. But there is no reason to believe the loans Wells Fargo acquired from Wachovia are any more sound than what BoA has on its books; on the contrary, they're probably worse. But the Administration position is that we should just carry on with the foreclosures, ignoring the evidence of systemic fraud.

Which is probably, itself, just an effort to avoid admitting to the evidence of systemic fraud.

While the interim paragraph in Stevens' response to the WaPo is not a direct quote, it seems that he is saying the Administration doesn't want to halt all foreclosures because they don't want the housing market to lose a quarter of its sales. That is, they seem to believe that the housing market will freeze up if it doesn't have

a ready supply of below market properties to entice buyers who otherwise would be unable or uninterested in buying.

Now, first of all, it's not entirely clear that the housing market hasn't effectively frozen up in any case. Things are so volatile it's not clear that this quarter would resemble the second quarter in any case.

But given everything else, is it really a good idea to encourage reluctant buyers to buy now? (I say that with a house on the market.)

The calculation also seems to have a crazy understanding of what is causing the ongoing foreclosure problem. Partly, foreclosures are being driven by the lack of jobs—something that won't be significantly affected whether foreclosures are halted or not (I assume that, given that new construction has been stagnant for a year, a freeze on foreclosures won't reflect new unemployment in that segment).

Then there's the fact that mortgages are still far overvalued for houses sold during the bubble. A moratorium on foreclosures won't affect that in the least.

The other factor that's driving ongoing foreclosures—that is leading to a festering problem—is the continued decline in housing prices. One of the things driving that is the continued stream of foreclosures coming on the market, driving overall values down. Another is the neglect of banks who take over houses in foreclosures, driving neighborhood property values down. Another is overall lack of confidence in valuations of the market. How is the worry that a house you're buying might not have clean title going to improve confidence in the market, really? And ultimately, the reason the foreclosure problem has continued to fester is the lack of any systemic effort to revalue the market at a level fair to all parties—the failure to modify enough loans to restore some stability in neighborhoods and therefore the market.

Keeping foreclosures with dubious title in the market will change none of these factors. If anything, it'll make it worse.

The Administration seems to believe it just needs to keep churning foreclosures through the system at a steady, though not heavy, rate, and eventually this whole thing will blow over. But this foreclosure fraud issue is a sign that's not going to work. More importantly, it's a convenient time to do what should have been done, find a solution that is equitable for everyone, rather than trying to preserve the fiscal condition of the banks at the expense of the real people.

But thus far, the Administration doesn't seem ready to regard it as such.

Update: Yves Smith hits this, noting that it doesn't matter whether there's a moratorium imposed, the title companies will effectively impose one.

> And we further get another lie, that it's the foreclosure freezes imposed by banks, and the prospect of more at the state level, that might affect REO sales. That's another Big Lie; the most pressing impediment, and it's not getting better any time soon, is title insurers withdrawing from foreclosure sales from banks that have admitted to having affidavit problems. Other title insurers are reported to be writing qualified policies on foreclosure sales.
>
> The other disturbing but revealing report of the morning is the new Obama administration straw man: that it's not backing a national foreclosure freeze. First, as bank expert Chris Whalen points out, this is eventually going to happen, but on a state-by-state basis. not nationally. But second, look at the deplorable logic. Per the Washington Post, boldface ours:

> > The Obama administration does not support a nationwide moratorium on foreclosures at this time, Federal Housing Administration Commissioner David Stevens said Sunday in an e-mail response to questions.
>
> > "We believe freezing foreclosures for all banks in all states, **whether we have reason to believe them to be in error or not**, is simply not the prudent step to take in this fragile housing market," he said.
>
> The statement couldn't be more clear. "Markets" as in bank/corporate interests uber alles, no concern with the rule of law.

THE OBAMA ADMINISTRATION WANTS TO RUIN YOUR NEIGHBORHOOD

According to this story, the Administration (in the voice of David Axelrod) sees no need to halt foreclosures while the authorities sort out the mess caused by the fraud committed by loan servicers.

> > "It is a serious problem," said David Axelrod, who contended that the flawed paperwork is hurting the nation's housing market as well as lending institutions. But he added, "I'm not sure about a national moratorium because

> there are in fact valid foreclosures that probably should go forward" because their documents are accurate.

So Axe says "valid foreclosures" should go forward even while he admits that the servicers' fraud is affecting the housing market.

Think about what that means. He says that foreclosures that are "valid" should go forward even as we learn more and more news about the huge numbers of foreclosures for which there may be no valid paperwork.

So the bank gets a house in foreclosure with purportedly valid paperwork. And then what?

Particularly in non-judicial states, where no one really reviews the paperwork, who is going to reassure potential buyers for that property that the title is valid?

Frankly, as someone in the market right now, I've begun looking critically at properties that were sold at any point during the housing boom—particularly those houses built and sold during the bubble. Because nobody knows whether that house has a clean title. And I'm not even shopping foreclosures.

In other words, until someone can do something to distinguish the clean titles from the crappy ones, savvy home buyers aren't going to—and shouldn't—be buying foreclosures.

But Axe says it's a good idea to continue to force homeowners out of their home, even as the market for those homes will disintegrate until the title problem is fixed (and in his comment, he concedes the market is already being affected by this). It's going to be harder and harder for banks—never enthusiastic property owners—to find buyers to take those homes off their hands. So those lawns will go unmowed, the houses will get vandalized, property tax won't get paid, and—voila!—all of a sudden your home value is declining, too, making it much more likely you'll walk away or do something to get out of

the dead weight caused by the festering foreclosure problem.

This is just more of the same extend and pretend: put American homebuyers at risk while pretending that the banks did nothing legally inadequate or (more likely) fraudulent during the housing bubble, all in an effort to enable them to avoid paying any consequences for their mistakes during the bubble.

GREG MANKIW PROVES RAISING TAXES IS A WIN WIN

Oh sure, in this NYT op-ed, Greg Mankiw shamelessly fiddles with numbers to try to show that raising taxes on rich people like him will be bad for the economy. But you don't even have to point out the obvious flaws in his math [Update: Kevin Drum shows some of those flaws here] to read this op-ed as an unrestrained argument in favor of raising taxes on the rich.

For starters, Mankiw claims he'll stop writing NYT op-eds if his federal taxes go up.

> I am regularly offered opportunities to earn extra money. It could be by talking to a business group, consulting on a legal case, giving a guest lecture, teaching summer school or writing an article. I turn down most but accept a few.
>
> [snip]
>
> HERE'S the bottom line: Without any taxes, accepting that editor's assignment would have yielded my children an extra $10,000. With taxes, it yields only $1,000. In effect, once

> the entire tax system is taken into account, my family's marginal tax rate is about 90 percent. Is it any wonder that I turn down most of the money-making opportunities I am offered?

So if we raise taxes, less of this kind of transparent bullshit with numbers will appear on the NYT op-ed page.

WIN!

Moreover, if Mankiw stops writing these crappy op-eds, it'll open up an opportunity for someone **else** to write op-eds for the NYT. That person, according to Mankiw's logic, would have to be someone less wealthy than him (because Mankiw shows no sane rich person would write an NYT op-ed for only $523 of savings). And since that person is by definition not rich, she will probably spend more of the $1000 the NYT would pay her right away, rather than pass it on to her kids as Mankiw says he will do with his pay for writing this NYT op-ed.

WIN!

I've seen no more compelling, succinct argument for why we should raise taxes. Not only will it result in more money flowing through the economy immediately, but it'll save us from having to read the ramblings of rich people like Mankiw, David Broder, and Tom Friedman.

REMEMBER CRAMDOWN?

Remember cramdown? It was a proposed change to bankruptcy law that would have allowed judges to modify the mortgages on primary homes for people entering bankruptcy. Supporters of the change argued that cramdown would provide an important

stick to force lenders into modifying loans—and in so doing help millions of people stay in their homes. Here's how DDay described the thinking behind the House cramdown legislation that passed in March 2009.

> Under the proposal, the banks would be allowed to work out their terms with borrowers first, before resorting to a bankruptcy judge. This is how it worked in the House version of cramdown, which passed in March 2009; the homeowner had to negotiate a voluntary loan mod with the lender before going to the bankruptcy judge. And this may have worked, but only because, for the servicers, cramdown would have loomed in the background as a big stick, forcing a negotiation with a level playing field for the borrower.

In other words, cramdown was meant to give homeowners and the government leverage over servicers and lenders to voluntarily modify mortgages.

I ask whether you remember cramdown, because it doesn't show up in this WaPo story at all. The WaPo allows some anonymous administration officials to claim they couldn't do anything about the abuses now being exposed in the foreclosure process because they wanted servicers' voluntary help on modification programs (basically, the famously unsuccessful HAMP).

> In an interview this week, a senior administration official confirmed that the White House and Treasury Department had received warnings that the mortgage industry employed inexperienced staffers to oversee foreclosures, had problems handling documents and communicating with borrowers, and often failed to comply with regulations.
>
> But the government had struggled to

> address shortcomings in the industry, the official said, because the administration was also seeking the servicers' help with modifying the home loans of millions of borrowers to help them avoid foreclosure.
>
> In addition, a Treasury official said the federal government's power to tackle problems in the servicer industry is limited because foreclosure law is largely the domain of states.
>
> Both officials, who were not authorized to speak on the record but were providing the administration's views on the matter, said problems in the foreclosure process were largely the result of mortgage servicers being overwhelmed.

The massive foreclosure fraud that is about to seize up the economy again wasn't the Administration's fault, these anonymous sources want you to know, because they couldn't do anything about it when they first got warning of it. Oh, and the servicers aren't engaged in fraud, these anonymous sources want you to know, they're just overwhelmed (never mind that if they're overwhelmed, it's partly because they refuse to hire enough people to do foreclosures right, presumably because that would hurt profitability).

Key to this story of the Administration's helplessness is the claim that the only tool they had to get servicers to modify loans was the servicers' good will. Basically, they're saying that they had to let the servicers (who are also some of the biggest banks) engage in what amounts to fraud, because it was the only way they had to get servicers to participate in HAMP.

Setting aside the fact that a relative handful of people have actually gotten modifications under HAMP (which suggests the Administration

was willing to overlook the problems they knew existed in the foreclosure process in exchange for helping just a few people), the claim that allowing those problems to remain was the only way to get banks to participate in HAMP is simply not true.

Or it didn't have to be.

Back in July 2009, when the Administration was sitting on its hands as cramdown failed in the Senate and as Dick Durbin was observing that the banks own the Senate, the Treasury Department's Assistant Secretary for Financial Stability, Herb Allison, testified to Congress that the Administration had all the tools it needed to slow the flood of foreclosures.

> As housing foreclosures top the 1.5-million mark this year, the Obama administration has openly abandoned cramdown as a strategy for tackling the crisis.
>
> That approach — which would empower homeowners to avoid foreclosure through bankruptcy — was once a central element of the administration's plans to stabilize the volatile housing market. Some financial analysts say the strategy would prevent 20 percent of all foreclosures. But, appearing before a Senate panel Thursday, two White House officials said that current policies are enough to address the problem.
>
> "We have enough tools," Herbert Allison, the Treasury Department's assistant secretary for financial stability, told members of the Senate Banking Committee. "The challenge is to roll them out." The tools Allison invoked are several federal programs that offer financial incentives to mortgage lenders and servicers — the companies that buy the rights to manage loans — to modify the terms of mortgages in efforts to help homeowners escape foreclosure.

Fifteen months ago, according to the Assistant Treasury Secretary, the Administration had all the tools it needed. Now, as the problem of foreclosure fraud is about to explode, a Treasury official and a senior Administration official claim they didn't have the right tools, they were helpless.

Now, you can argue whether the Administration would have ever been able to get Bad Nelson and Mary Landrieu to vote for cramdown (me, I sort of think comments like Allison's and Obama's silence gave the Senators cover to screw homeowners).

But you can't argue one point: after fifteen months of trusting banksters to do the right thing for homeowners hasn't worked out so well, the Administration is changing its story about whether it needed more tools to motivate those banksters.

TRASH TALK: DOES ANY QB STILL HAVE THE TOUCH OR TIMING FOR RANDY MOSS?

On the plane from Edinburgh to London the other day, I sat next to two guys who were heading to talk to some football team called Arsenal to teach them how to promote their brand worldwide like the NY Giants do.

So forgive me if the following post betrays how far out of "touch" I have been wrt American football in the last week.

Best as I understand it, here is the big news. Randy Moss got traded to Minnesota for next to nothing. Now, backstage, I noted that this might not make that big a difference to the success of

the Pats. After all, I said, Tom Brady's deep accuracy has been off since he blew his knee out. But the boys I mentioned this to suggested that the timing indicated something else might better explain why Brady lost his deep touch for Moss. Meanwhile Moss' new QB has his own "touch" issues. And when asked about those touch issues, the Geezer responded he "had his hands full … trying to get some timing down with our guys."

Poor Randy Moss. No one has touch or timing for him.

Ahem.

Good thing we have football to distract us from this Randy Moss soap opera.

All you need to know about the college kids is that the Spartans are going to have to try to stop Denard Robinson in the Big House. There is some game of interest in Florida, I'm sure. But I'm not entirely sure what that's about. Go Wolvereenies!

As for Pro Ball (the Giants kind, not the Arsenal kind), the highlight of the week is definitely the touchy Geezer's Monday Night Football return to New Jersey; let's hope he finds his timing to beat the Jets.

Though I think a game with two QBs who still have touch will be more interesting: Aaron Rogers heads to Donovan McNabb's new home. Rogers will out-touch McNabb in this one.

While we're talking about the NFC North, the Rams-Detroit game will be quite interesting, as two teams beginning to turn around horrible programs. With Stafford still out, I think Rams will notch another win.

But the surprise game of the weekend pits the only undefeated team in the league—the leader of the AFC West—against the team tied for last place in the AFC South. That's right. KC in Indy can't be assumed to be a blowout in Peyton's favor. (Well, on second thought, given that it's in Indy, I take that back.)

On that note, let me raise an issue I've been thinking about for some time. BillBel traded Moss for a 3rd round pick, presumably on the assumption that, with two picks in each of the first four rounds of next year's draft, he can build the team of the future (right—as Tom Brady and his diminishing deep touch continues to age). The old BillBel might well have been able to do that. But I've always wondered how much BillBel's past shrewd personnel decisions had to do with Scott Pioli, and how much had to do with BillBel. I dunno. At this point in the season, I'd take Scott Pioli with those two picks a round in next year's draft over BillBel and Brady's diminishing deep touch.

Let the trash begin.

"YOU LIE!"

I spent a good part of a book beating up on George Bush for lying in an address to Congress in an effort to generate support for a policy that was being challenged on the merits.

So while I'm not suggesting that protecting a secret deal with health insurance companies is as despicable as starting a war of choice by crafting careful lies to Congress—it's nowhere close—when I read BT's piece…

> We now know that the White House, in secret negotiations with industry lobbyists, quietly killed the public option in July 2009. But when the President gave a nationally-televised, joint address to Congress on **September 9, 2009**, he implied that the public option was still on the table.
>
> > **…an additional step we can take to keep insurance companies honest is by making a not-for-profit public option available**

> > **in the insurance exchange**. Let me be clear – it would only be an option for those who don't have insurance. No one would be forced to choose it, and it would not impact those of you who already have insurance. In fact, based on Congressional Budget Office estimates, we believe that less than 5% of Americans would sign up. […]
>
> **It would also keep pressure on private insurers to keep their policies affordable and treat their customers better, the same way public colleges and universities provide additional choice and competition to students without in any way inhibiting a vibrant system of private colleges and universities.**
>
> **It's worth noting that a strong majority of Americans still favor a public insurance option of the sort I've proposed tonight.**

… I couldn't help but remember Joe Wilson's accusation, right in the middle of that address to Congress, "You lie!" Wilson got the individual assertion wrong, but he called the theater for what it was.

All of which, in turn, reminded me of discussions noting that the bloggers who were most supportive of Obama's health care reform were the same bloggers who had been most credulous about Bush's claim for the necessity of war with Iraq.

Again, just on the basis of expanding Medicaid to millions of new people and smart changes to Medicare, there's absolutely no comparison

between Obama's health care reform with the merits of the war Bush was pushing with his lies.

But it does make me wonder why this theater ever works at all anymore, as Presidents continue to taint their once-cherished soap boxes with false statements that quickly become exposed as such.

COURT DOCKETS ARE BECOMING THE 21ST CENTURY MEMORY HOLE

Dafna Linzer has two important pieces on the habeas petition of Abdul Rahim Mohammed Uthman which should both be read in full. This one describes how the government's case against Uthman, which alleges that he was one of Osama bin Laden's guards, relies on the following testimony:

- A statement from Hakim Abd Al Karim Amin Bukhari describing him as a member of OBL's security detail. In his opinion on the case, Judge Henry Kennedy Jr treated that statement with skepticism because he believed it may have come second-hand from information Bukhari learned at Gitmo, and because Bukhari had become psychotic while at Gitmo, which rendered his statements about other detainees—according to a

military psychologist—unreliable.

- A witness statement from Abdul Rahman Ma'ath Thafir al Amri, based on a photograph, identifying Uthman as "Yasser Al-Madani." As Linzer points out, calling him "al-Madani" would label him as a Saudi, not as the Yemeni he is. Al Amri killed himself three years ago after a hunger strike at Gitmo.
- A statement from Salim Hamdan identifying Uthman as "Hudayfah al-Adani," which is one of the few things Kennedy accepted as credible.
- A statement from Yemeni detainee Sharqawi Abdul Ali al Hajj identifying Uthman as an OBL bodyguard. Before making that statement at Gitmo, Hajj was tortured in Jordan over a period of 19 months in Jordan. Kennedy ruled that Hajj's statement was too closely tied to the torture he experienced in Jordan to be considered reliable.
- A statement from Yemeni detainee Sanad Yislam al Kazimi saying a photo of Uthman looked like Hadayfah

> al-Yemeni, whom Kazimi claims to have seen in Kabul several months before Uthman arrived in Afghanistan. Kazimi claims to have been severely tortured in Dubai and Kabul in 2003. As a result, Kennedy deemed his statement, like Hajj's, to be too closely tied to torture to be treated as credible.

Go read Linzer's piece for much more on the thin case against Uthman. And note, Uthman is one of the 48 men the government claims it has reason to hold indefinitely.

The other piece provides background on how Linzer was able to piece together all those details from Kennedy's opinion. As she describes, DOJ accidentally submitted Kennedy's opinion without redacting it. Only after she pulled a copy of it did DOJ remove it from PACER entirely and—a day later—replace the opinion with a significantly altered version.

> A day after his March 16 order was filed on the court's electronic docket, Kennedy's opinion vanished. Weeks later, a new ruling appeared in its place. While it reached the same conclusion, eight pages of material had been removed, including key passages in which Kennedy dismantled the government's case against Uthman.
>
> [snip]
>
> The alterations are extensive. Sentences were rewritten. Footnotes that described disputes and discrepancies in the government's case were deleted. Even the date and circumstances of Uthman's arrest were changed. In the first

> version, the judge said Uthman was detained on Dec. 15, 2001, in Pakistan by Pakistani authorities. Rewritten, Kennedy said in the public opinion that Uthman admitted being captured "in late 2001 in the general vicinity of Tora Bora," the cave complex where bin Laden was thought to be hiding at that time.

Linzer's story provides a detailed background of what happened with this opinion: how DOJ tried to reclaim all the copies of it, how Kennedy had to insist on an opinion being published at all, how they forced Kennedy to write another version, how DOJ has since released the government's appeal of Kennedy's order with information redacted in his opinion left unredacted in their appeal.

Particularly troubling is Linzer's description of how the completely altered opinion falsely suggests Uthman was present at Tora Bora with Osama bin Laden, even while it hides evidence that he was turned over by Pakistanis implicated in turning over Arabs for bounty.

> Kennedy's original opinion noted that Uthman was seized in Parachinar; that he reached the town after an eight-day trek from the Afghan town of Khost, nowhere near Tora Bora; and that his journey to Pakistan began around Dec. 8, 2001. Those facts make it difficult to portray Uthman as a fighter in a battle that took place between Dec. 12 and Dec. 17 at Tora Bora. Two footnotes in the original opinion note that the government does not contest that Uthman was taken into custody in Parachinar.
>
> Both were removed in the second opinion and Kennedy substituted wording to write instead that Uthman admitted he was seized "in late 2001 in the general vicinity of Tora Bora, Afghanistan."
>
> The intent of this editing may have been

> to conceal the role of the Pakistanis in capturing al-Qaida fighters although those details were long ago declassified. But the effect was to link Uthman more closely to the retreat of bin Laden and his inner circle through Tora Bora.

Now all of this is disturbing enough. But I'm particularly interested in the way DOJ tried to hide the fact that the opinion had been altered.

> Even the court docket was altered. When the opinion was originally posted on March 16, the docket noted Kennedy's grant of the writ of habeas corpus to the petitioner. Today, the entry for March 16 simply reads: "Document Entered In Error Erroneously."

That is, the government is using classification to conduct legal spin, and then it is hiding all evidence they have done so. This is the same DOJ, of course, that is disappearing all evidence of the proceedings against high level Colombian terrorists extradited for drug-related infractions (but not terrorism), and in the process, removing them from Colombia's reconciliation process. While it's not clear whether the government is doing the latter just to protect an ongoing investigation or doing it to protect the members of the Colombian government with ties to these right wing terrorists, the way in which the government has turned the court docket into a memory hole seems to be playing a central role in completely arbitrary designations of who is and who is not a terrorist.

The war on terror has become capricious enough. But as the docket increasing gets treated like Orwell's memory hole, it plays a key role in the government's ability to sustain its arbitrary claims about what makes a person a terrorist.

THE AMERICAN DATA OCTOPUS

Data octopus. That's how one European Parliament official described the US' continued grab for unfettered access to more and more European data. (h/t WM)

> "The Americans want to blackmail us," said an agitated Alexander Alvaro, home affairs spokesman of the Germany's Free Democratic Party (FDP) in the European Parliament. The Americans have become "like a data octopus," he said, as if their tentacles were reaching out to all the world's data.

Alvaro's reference to "blackmail" refers to the US' link of the Visa Waiver program—which allows citizens from a particular country to enter the US without a visa—with access to criminal investigation databases.

> "Participation in the United States' 'Visa Waiver' program," Austrian Chancellor Werner Faymann wrote in a letter to the Viennese parliament, has been "linked to additional requirements for the exchange of information," including "an agreement to exchange data relating to the detection of terrorists." In other words, no data, no visa waiver.

The US is negotiating such deals, one by one, with individual countries. It seems to be an effort to undercut demands for more stringent protection of European data from the EUP, which previously demanded concessions from the US on the SWIFT program (though one of those concessions—for an approved EU bank data overseer who would monitor US access of SWIFT

data—seems to be held up at the nominating stage).

I'm rather curious by this use of leverage. After all, to a point, the visa waiver program is a matter of convenience to international travelers, particularly business travelers. But after a point, it would just be a disincentive to do business with the US. We've already lost large numbers of the best researchers, as visa restrictions simply convinced them to study elsewhere. Is the US risking the same with business travelers?

Perhaps the most interesting revelation in this Spiegel article on the current tensions is that European investigators have repeatedly forced private companies to turn over their complete databases.

> This attitude, [Sophie in 't Veld] said, is now beginning to rub off on European investigators. Time and again executives come to in 't Veld in her role as chair of the European Parliament's Civil Liberties, Justice and Home Affairs committee to tell her confidentially that they have been illegally forced to hand over "their complete customer data."

This would seem to follow the pattern used under Dick Cheney's illegal wiretap program. But given the higher data protection laws in Europe, would seem to be even more incendiary.

At least one EU expert voiced the same thought I had as I traveled through Europe during what was purportedly a time of heightened security—the security warnings of a terrorist threat to Europe sure seem like they are being treated as scaremongering.

> Last weekend, the US issued a travel warning for Europe on the basis of possible imminent terrorist attacks. Germany Interior Minister Thomas de Maizière, however, has warned against

> scaremongering. There is apparently no concrete evidence of imminent attacks in Germany. But perhaps, speculates one European Union security expert, it was just a little “background music” for the real questions to be discussed in the trans-Atlantic talks: How deeply can American terrorism investigators peer into European computers, how extensively can they monitor European bank accounts, tap into Blackberrys or listen in on Skype calls?

When Brian Ross first reported this, even he admitted that the US had no details of a real attack (I’m still looking for that video). But continued leaks to the ever-useful but unreliable Ross focused on tourists in major European airports. I just flew through Heathrow, undoubtedly one of the targets of any plot targeted at US tourists in major European airports. While American Airlines appeared to have heightened security, Delta had none, not even for those flying, as I was, on the same flight that the underwear bomber attempted to take down in December. Frankly, no one at the airport seemed even aware that there was a heightened alert. And if the fearmongering is designed to make European countries worried about the travel trade, then why not raise concerns about airports?

Ultimately, if the US achieves (or, more likely, continues to sustain) what it is seeking in these negotiations—unilateral control over much of the world’s data—then it can fearmonger like this at will, since only it will be able to claim to have a view of all the data points. Yes, there are undoubtedly real benefits to terror investigators to have access to data (balanced, no doubt, by the problem of having too much data to adequately scan). But this unquenchable thirst for more data sure seems to be as much about power as anything else.

OF COURSE THE INTELLIGENCE AUTHORIZATION WOULD HAVE A SIGNING STATEMENT

Because that's just how these carefully crafted bills are treated by Presidents guarding their Executive Power.

DDay pointed me to the signing statement that Obama issued in conjunction with the new Intelligence Authorization. There are three key points, IMO.

Presidents still control all the secrets

One thing Obama does is reaffirm the President's right to control all the secrets.

> Section 331's requirement to provide a "general description" of a covert action finding or notification provides sufficient flexibility to craft an appropriate description for the limited notification, based on the extraordinary circumstances affecting vital interests of the United States and **recognizing the President's authority to protect sensitive national security information**. [my emphasis]

I'm not all that surprised or bugged by this. Basically, he seems to be saying that the members of the Intelligence Committees who just won the right to be briefed on covert operations will have to be very creative to understand the statements crafted with "sufficient flexibility" to keep them in the dark. But hell, this is still a damn sight better than it was.

Note, though, that Obama insists—as most of the legal filings we read here do—that the President retains all of the authority over secrets (presumably including deciding when to leak them broadly to people with no clearance).

Congress still won't get to see OLC memos

I'm rather more intrigued by this statement, which I take to suggest that the Administration will share the "legal basis" (as in, "the AUMF") for covert ops, but won't share documents over which the Administration claims a privilege (which in the past has included OLC documents).

> Also, as previously indicated, my Administration understands section 331's requirement to provide to the intelligence committees "the legal basis" under which certain intelligence activities and covert actions are being or were conducted as not requiring disclosure of any privileged advice or information or disclosure of information in any particular form.

This is pretty important, given that last we heard there were OLC documents authorizing FBI wiretaps and drone strikes that—as far as we know—remain totally secret. Which still means the President will insist on writing law for himself until the Courts tell him differently.

Congress may never know the results of John Durham's investigation

Then there's this bit, which would clearly include John Durham's investigation of the former and some still current members of the intelligence community (heck, it might even include John Brennan's role in Dick Cheney's illegal wiretap program).

> In accordance with longstanding executive branch policy, my Administration understands section 405's requirement that the Inspector General make an immediate report to

> congressional committees regarding investigations focused upon certain current or former IC officials **as not requiring the disclosure of privileged or otherwise confidential law enforcement information**.

Not only does this say that Obama refuses to let the Inspector General tell Congress whether there will be any accountability for torture, or even (given the broad claims the Administration made to shield Dick Cheney's Plame testimony) what Durham found after he has closed his investigation, but it also suggests that the IC IG may not tell Congress things that CIA's IG told Congress in the past. For example, this would cover some of the deaths by torture which were investigated but not prosecuted. So long as DOD or DOJ could claim to be investigating them, it seems, the IC IG would not necessarily tell Congress of the investigation.

Perhaps more troubling, this statement would seem to shield all of FBI's investigative work—things like surveilling peace activists and conducting data mining of its massive databases.

I'm going to do some more research on what Obama's trying to do with his statement about whistleblowers.

> Moreover, the whistleblower protection provisions in section 405 are properly viewed as consistent with President Clinton's stated understanding of a provision with substantially similar language in the Intelligence Authorization Act for Fiscal Year 1999. See Statement on Signing the Intelligence Authorization Act for Fiscal Year 1999: Public Papers of the Presidents of the United States, William J. Clinton, 1998 (p. 1825).

But I assume it sharply limits the rights of intelligence community whistleblowers.

This is not as bad as some of Cheney's signing statements. But it's clear that the President wants to avoid oversight of his super duper powers.