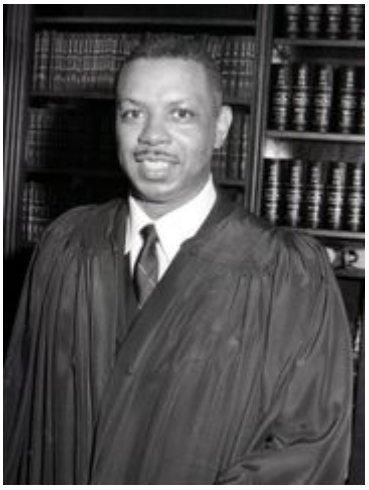
RIP DAMON KEITH, THE ONCE AND FOREVER CRUSADER FOR JUSTICE



It is with a heavy heart I report that one of the finest, and most righteous, judges in American history has passed away. Judge Damon Jerome Keith was a giant. In a field of giants, Judge Keith stood tall as a special giant. I wish I knew a better and smarter way to put it, but I do not. Damon Keith was not just born on the Fourth of July, but literally tutored by Thurgood Marshall, and never forgot the lessons he learned.

From the Detroit News (Please, do read the whole obituary; you will be glad you did):

> Long-serving federal Judge Damon Keith, who decided cases that involved some of America's most controversial political and social issues, died early Sunday morning, family members said. He was 96.
>
> Keith, a grandson of slaves whose judicial career spanned five decades and 10 presidents, decided cases that involved some of America's most controversial political and social issues, from school desegregation to government surveillance of citizens.

I will come back to it in a bit, but Damon Keith was central to a lot of what this blog did when we started.

> One of Keith's rulings, in 1970, led to the busing of students in the Pontiac schools to racially desegregate the

> district, sparking a backlash.
>
> Keith recalled receiving death threats, and the year after his decision, 10 Pontiac school buses were firebombed by members of the local Ku Klux Klan.
>
> Keith also ordered the U.S. government, under President Richard Nixon, to stop wiretapping defendants without judicial approval in a case involving the anti-war group the White Panthers and the bombing of a CIA building in Ann Arbor.

Damon Keith issued a lot of decisions, up until nearly his dying day, as evidenced by his participation in a Sixth Circuit decision finding tire chalking to be a 4th Amendment violation, issued just a mere six days ago. When he was 96 years old. Damon Keith was a stand up man and judge, that never flinched up to the end. That is a hero.

A few of you have been around long enough to remember when Marcy and I used to occasionally do Book Salons while we were still at FDL. The proudest one I ever did was shortly before we left, and was hosting the Salon and discussion for “Crusader For Justice”, the incredible book by Trevor Coleman and Peter Hammer, about the life, and love of law of Damon Keith. It is an incredible book about an incredible man. Please find it and read it, you will be a better person for having done so.

As Professor Henry Louis (Skip) Gates said in his blurb for Crusader For Justice:

> No one will ever forget Judge Keith’s bold declaration in Detroit Free Press v. Ashcroft: “Democracies die behind closed doors”. Nor will they forget his contributions to achieving social justice and racial justice through his decisions involving discrimination, national security, and civil liberties. Judge Keith came from humble roots in Detroit. Having suffered racial

> injustice first hand, he had the bravery to take the phrase “equal justice under law” literally. Life experience matters, which is why diversity on the bench cannot be forsaken. Crusader For Justice, above all else, is the story of judicial courage – the story of a man unafraid to do what he knew was right.

As I said back in 2011 in the into to that Book Salon:

> Fittingly, Damon Jerome Keith was born on the Fourth of July, in 1922. But Crusader For Justice opens with Keith, a graduate of Howard University Law School, working as a janitor while studying for the bar exam. The humble willingness to work to achieve is a mirror for the subsequent journey through the childhood, family background, military service in WWII and educational progression of a social justice giant. But the true Damon Keith starts to emerge with his work with the Detroit NAACP, which he helped grow to stability and significance.
>
> From a friendship with a young Senator from Massachusetts named John F. Kennedy through the pain of the ashes from the Detroit fires and riots of 1967 summer, Coleman and Hammer portray the growing conscience for justice and equality in Keith that leads to his appointment in late 1967 to the federal bench in the Eastern District of Michigan by Lyndon Johnson.
>
> From there, the real heart of the judicial lion roars.

Again, this is from when we did a Book Salon for “Crusader For Justice”. I cannot tell you what a great and important book it is, about a truly great and important man.

Okay, now, just for a moment, going to get back to why Damon Keith was so important to this blog. It was not just me and Marcy. Nope. It was Mary. And it is pretty fitting that, as we approach Derby Day, we get back to Mary. She wrote a three part explainer on the "Keith Case". The formal caption was always "United States v. United States District Court". That IS the "Keith Case". Because of Judge Damon Keith. Here are the pertinent, and seminal, posts from Mary back in 2010.

Part One

Part Two

Part Three

There is a lot to digest here. I understand this. But, if you do, you will be better off for having done so.

Thank you. Thanks forever to Mary. And thank you Judge Damon Jerome Keith. This nation owes you a debt of gratitude.

BRETT KAVANAUGH CALLED JOHN YOO HIS "MAGIC BULLET"

Brett Kavanaugh found John Yoo's withdrawal from 9th Circuit consideration a 60 question mark emergency.

---

10 YEARS OF

EMPTYWHEEL: KEY NON-SURVEILLANCE POSTS 2008-2010

Some key posts from the first three years of emptywheel.

WERE SHITTY SAIC SYSTEMS THE CAUSE OF THE CIA'S CHINA DISASTER?

The NYT story on CIA losing Chinese assets sure sounds like what John Reidy, an intelligence contractor whistleblower first exposed in 2005, was complaining about: the failure to secure a communications system at the intersection of assets and the CIA.

DOES VICE PRESIDENT PENCE BELIEVE HE HAS DECLASSIFICATION AUTHORITY?

Since 2003, the Vice President has had authority to classify information, which Dick Cheney may have believed gave him authority to declassify things like Valerie Plame's identity. Has Mike Pence been using that authority?

LORETTTA LYNCH IS A DUBIOUS NOMINEE FOR ATTORNEY GENERAL

Loretta Lynch is an excellent nominee for Attorney General, and her prior actions in whitewashing the blatant and rampant criminality of HSBC should not be held against her, because she didn't know that at the time she last whitewashed that criminal enterprise, right?

No. Nothing could be further from the truth.

This is a cop out by Lynch's advocates. Lynch either knew, or damn well should have known. She signed off on the HSBC Deferred Prosecution Agreement (DPA), if she was less than fully informed, that is on her. That is what signing legal documents stands for….responsibility. Banks like HSBC, Credit Suisse, ING etc were, and still are, a cesspool of criminal activity and avoidance schemes. Willful blindness to the same old bankster crimes by Lynch doesn't cut it (great piece by David Dayen by the way).

But, all the above ignores the Swiss Alps sized mountains of evidence that we know Lynch was aware of and blithely swept under the rug by her HSBC DPA. So, we are basically left to decide whether Lynch is a bankster loving toady that is her own woman and cravenly whitewashed this all on her own, or whether she is a clueless stooge taking orders to whitewash it by DOJ Main. Both

views are terminally unattractive and emblematic of the oblivious, turn the other cheek to protect the monied class, rot that infects the Department of Justice on the crimes of the century to date.

And that is only scratching the real surface of my objections to Lynch. There are many other areas where Lynch has proven herself to be a dedicated, dyed in the wool "law and order adherent" and, as Marcy Wheeler artfully coined, "executive maximalist". Lynch's ridiculous contortion, and expansion, of extraterritorial jurisdiction to suit the convenient whims of the Obama Administration's unparalleled assault on the Rule of Law in the war on terror is incredibly troubling. Though, to be fair, EDNY is the landing point of JFK International and a frequent jurisdiction by designation. Some of these same questions could have been asked of Preet Bharara (*see, e.g. U.S. v. Warsame*) Loretta Lynch has every bit the same, if not indeed more, skin in the game as Bharara, whether by choice or chance.

Lynch has never uttered a word in dissent from this ridiculous expansion of extraterritorial jurisdiction. Lynch's record in this regard is crystal clear from cases like *US v. Ahmed, Yousef, et. al.* where even Lynch and her office acknowledged that their targets could not have "posed a specific threat to the United States" much less have committed specific acts against the US.

This unconscionable expansion is clearly all good by Lynch, and the ends justify the means because there might be "scary terrists" out there. That is just dandy by American "executive maximalists", but it is toxic to the Rule of Law, both domestically and internationally (See, supra). If the US, and its putative Attorney General, are to set precedents in jurisdictional reach on common alleged terroristic support, then they ought live by them on seminal concerns like torture and war crimes under international legal norms. Loretta Lynch has demonstrated a

proclivity for the convenience of the former and a toady like disdain for the latter.

And the same willingness to go along to get along with contortion of the Rule of Law in that regard seems beyond certain to extend to her treatment of surveillance issues and warrant applications, state secrets, over-classification, attack on the press and, critically, separation of powers issues. Those types of concerns, along with how the Civil Rights Division is utilized to rein in out of control militarized cops and voting rights issues, how the OLC stands up to Executive overreach, whether OPR is allowed to continue to shield disgraceful and unethical AUSAs, and whether she has the balls to stand up to the infamously insulated inner Obama circle in the White House. Do you really think Loretta Lynch would have backed up Carolyn Krass and OLC in telling Obama no on the Libyan War Powers Resolution issue?

For my part, I don't think there is a chance in hell Lynch would have stood up to Obama on a war powers, nor any other critical issue, and that is a huge problem. Krass and Holder may have lost the Libyan WPR battle, but at least they had the guts to stand up and say no, and leave a record of the same for posterity.

That is what really counts, not the tripe being discussed in the press, and the typically preening clown show "hearing" in front of SJC. That is where the rubber meets the road for an AG nominee, not that she simply put away some mobsters and did not disgrace herself – well, beyond the above, anyway (which she absolutely did) – during her time as US Attorney in EDNY. If you are a participant in, or interested observer of, the criminal justice system as I am, we should aspire to something better than Eric Holder. Holder may not have been everything hoped for from an Obama AG when the Administration took office in January of 2009, but he was a breath of fresh air coming off the AG line of the Bush/Cheney regime. Loretta Lynch

is not better, and is not forward progress from Holder, indeed she is several steps down in the wrong direction. That is not the way to go.

The fact that Loretta Lynch is celebrated as a great nominee by not just Democrats in general, but the so called progressives in specific, is embarrassing. She is absolutely horrible. If Bush had put her up for nomination, people of the progressive ilk, far and wide, would be screaming bloody murder. Well, she is the same person, and she is a terrible nominee. And that does not bode well for the Rule of Law over the remainder of the Obama Administration.

And this post has not even touched on more mundane, day to day, criminal law and procedure issues on which Lynch is terrible. And horrible regression from Eric Holder. Say for instance pot. Decriminalization, indeed legalization, of marijuana is one of the backbone elements of reducing both the jail and prison incarceration rate, especially in relation to minorities. Loretta Lynch is unconscionably against that (See, e.g., p. 49 (of pdf) et. seq.). Lynch appears no more enlightened on other sentencing and prison reform, indeed, she seems to be of a standard hard core prosecutorial wind up law and order lock em up mentality. Lynch's positions on relentless Brady violations by the DOJ were equally milquetoast, if not pathetic (See, e.g. p. 203 (of pdf) et. seq.). This discussion could go on and on, but Loretta Lynch will never come out to be a better nominee for Attorney General.

Observers ought stop and think about the legal quality, or lack thereof, of the nominee they are blindly endorsing. If you want more enlightened criminal justice policy, to really combat the prison state and war on drugs, and to rein in the out of control security state and war on terror apparatus, Loretta Lynch is a patently terrible choice; we can, and should, do better.

DID OBAMA ORDER TOTAL INFORMATION SHUTDOWN ON AFGHANISTAN?

In a stunning and blatantly obvious move to try to hide its failed efforts in Afghanistan, the military suddenly decided back in October that they would classify any and all information on the capabilities of Afghan National Security Forces (ANSF) despite data having been provided to the Special Inspector General for Afghanistan Reconstruction (SIGAR) for the 24 quarterly reports that preceded the one dated October 30, 2014 (pdf). Initial digging on that classification decision appeared to put the classification decision in the hands of ISAF Joint Command. The head of ISAF Joint Command then broke his own classification of ANSF capability a few days later when he proclaimed that ANSF is a “hugely capable fighting force” in a news briefing.

The timing for this classification couldn’t have been worse. US forces were in the final stages of the handoff of Afghan security to ANSF and Barack Obama eventually relied on butchered semantics to proudly proclaim that the war was over, despite a residual fighting force to which he had secretly given expanded combat powers.

Today, though, the classification of ANSF capability last quarter looks less like an arbitrary move by the Commander of ISAF Joint Command and more like a total information shutdown on Afghanistan. Perhaps Lt. Gen. Anderson just got the call for a shutdown before everyone else. In the SIGAR quarterly report released today (pdf), we learn that the military now has classified “nearly every piece of data used by the inspector general to assess the

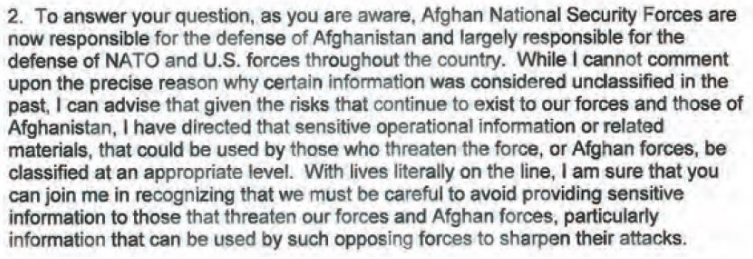
Afghan security forces." In an appendix to the report, SIGAR lists the more than 140 questions that the military previously responded to openly but now says the answers are classified. Here is a sampling that SIGAR provided in the email sent out releasing the report:

> —The over 140 SIGAR questions that received classified or otherwise restricted responses are listed starting on page 211. Sample of questions:
> —Please provide a broad definition of the terms "unavailable" and "present for duty." (page 211)
> —Total amount of funding that the United States has expended on Afghan National Army food from Afghan Security Forces Fund (ASFF) for the current year. (page 211)
> —How has the $25 million authorized by Congress for women in the Afghan army been used? (page 212)
> —Total amount of funding that the United States has expended on Afghan National Police salaries from ASFF for the current year. (page 212)
> —Please provide details of DOD/NATO-funded contracts to provide literacy training to the ANSF, including: a. the cost of the contract(s) and estimated cost(s) to complete (page 213)
> —Please confirm that the Combined Joint Interagency Task Force-Afghanistan (CJIATF-A) is dissolved. (page 215)
> —Please offer an assessment of the anticorruption initiatives of Afghan Ministry of Defense and Afghan Ministry of Interior (page 215)

As the New York Times article linked above points out, the military also initially tried to classify the number of US forces present in Afghanistan and only relented on that point when it was pointed out that the number had already been released by the Obama Administration.

The "explanation" offered by the Commander of US

troops in Afghanistan, General John F. Campbell, is far from satisfactory. Here is an excerpt from his letter to SIGAR explaining the sudden expansion of classification:


2. To answer your question, as you are aware, Afghan National Security Forces are now responsible for the defense of Afghanistan and largely responsible for the defense of NATO and U.S. forces throughout the country. While I cannot comment upon the precise reason why certain information was considered unclassified in the past, I can advise that given the risks that continue to exist to our forces and those of Afghanistan, I have directed that sensitive operational information or related materials, that could be used by those who threaten the force, or Afghan forces, be classified at an appropriate level. With lives literally on the line, I am sure that you can join me in recognizing that we must be careful to avoid providing sensitive information to those that threaten our forces and Afghan forces, particularly information that can be used by such opposing forces to sharpen their attacks.

Campbell then had the temerity to add later in his letter that he is "committed to maximum transparency in our operations". Just wow. That sounds like Obama declaring himself the most transparent President ever, and then going on to rely on expanded classification coupled with unprecedented levels of prosecution of whistleblowers.

But instead of just looking like a move Obama would make, perhaps it did come at his behest. Not only is the military clamming up on virtually all information out of Afghanistan, it appears that the State Department is as well. From page 147 of SIGAR's report:

> Despite the requirement of Public Law 110-181 that federal agencies provide requested information or assistance to SIGAR, the State Department did not answer any of SIGAR's questions on economic and social-development this quarter, and failed to respond to SIGAR's attempts to follow up.

Had only one Federal agency, the Defense Department, suddenly shut down the flow of information, it would have been easy to believe that they were ones trying to hide their own failures. But now that a second agency, the State Department, has shut down information flow at the same time, and won't even provide an explanation for their move, it seems clear to me that the order to shut down information flow had to come from above. With both the Defense

Department and State Department going silent, could such an order have come down from anyone other than Obama himself? The failure that is our Afghanistan war has entered its fourteenth year, has spanned two presidents and is now being summarily swept under the rug by the Most Transparent Administration Ever®.

Postscript: For more evidence on just how failed the Afghanistan effort has been, recall that John Kerry's brokered extra-constitutional National Unity Government was over three months late in finally announcing a full slate of 19 cabinet nominees. Sadly, the slate included poorly screened candidates and the Afghan Parliament yesterday rejected 10 of those nominees while voting to confirm only 9.

WHAT STATE SECRETS DOES UANI HAVE? HOW DID THEY GET THEM?

In the aftermath of publication of the Pentagon Papers, the Nixon Administration was so incensed that they both broke into and wiretapped the office of Daniel Ellsberg's psychiatrist, Lewis Fielding, in an attempt to get material with which to smear Ellsberg. Ellsberg and his attorneys eventually learned of the illegal wiretap and sued Attorney General John Mitchell. Mitchell and the government were provided some shielding in *Ellsberg v. Mitchell* by the concept of state secrets.

Glenn Greenwald noted that when he was running for office, Barack Obama disparaged the Bush Administration's use of the doctrine of state secrets and the expansion of its use to dismiss entire cases rather than to simply suppress individual pieces of information. And yet, once Obama got into office, Greenwald pointed out

that the Obama Administration used the exact same tactic to get dismissal of *Mohamed v. Jeppesen Dataplan*, in which a victim of CIA rendition and torture attempted to sue the company used as a front for arranging rendition flights.

These two cases, along with other highpoints of government malfeasance in using state secrets to hide criminal behavior or simple errors by the government such as *Al-Aulaqi v. Obama* and *Al-Haramain v. Bush* all appear as case law on which the Justice Department rests its arguments in a filing (pdf) in a case in which Greek shipping executive Victor Restis is suing United Against Nuclear Iran (under their legal name of American Coalition Against Nuclear Iran, Inc.) for damages caused by UANI's spreading of information that Restis argues is false and defaming. As I pointed out earlier, this information was spread by UANI as part of their "name and shame" campaign aimed at companies they felt were helping Iran to avoid sanctions put into place to prevent Iran developing nuclear weapons. The government's argument is fairly straightforward, even though the government is not a named party in the suit:

> The United States has reviewed the pleadings and record in this case in order to determine whether discovery and further litigation is likely to risk disclosure of information in which the Government has a specific governmental privilege and whether the claims and defenses in this action can be adjudicated without the need for or risk of disclosure of privileged information.
>
> The Government has concluded that information that would be at risk of disclosure in discovery and further proceedings is properly subject to the state secrets privilege and should be excluded from this case. Further, because information subject to the state secrets privilege is inherently at risk

> of disclosure in further proceedings, the Government also seeks dismissal of this lawsuit. The reasons for these determinations are set forth in classified declarations submitted in support of the United States' assertion of the state secrets privilege solely for the Court's ex parte, in camera review (the "State Secrets Privilege Declarations").

So just what is this state secrets information that could be exposed in the case? Here (pdf) is how attorneys for Restis describe the basis for UANI's accusations:

> Plaintiffs soon learned through a journalist to whom Defendants had spread these false allegations that Defendants were relying on two patently fraudulent documents whose authenticity or credibility Defendants have never attempted to defend, despite ample opportunity to do so. Nevertheless, in an effort to bolster its false allegations, Defendants repeatedly and publicly claimed that these statements were based on "numerous documents and statements," "highly credible confidential sources," as well as "valid research, credible documents, distinguished relationships, and preeminent sourcing."

Hmmm. Relying on documents that are "patently fraudulent". That sounds a lot like the forged Iraq yellowcake document to me. And Restis' team has an idea for how the documents came into UANI's possession (from the same filing):

> Plaintiffs have reason to believe that the documents were forged by Anastasios Pallis, a Greek businessman who had a falling out with Plaintiff Mr. Restis when the latter discovered that the former had stolen millions of Euros from

> him and then reported Pallis to authorities. Plaintiffs understand that Mr. Pallis provided these documents to UANI through Meir Dagan, a member of UANI's Advisory Board and former director of Israeli intelligence.

Elsewhere, the Restis team lays out (pdf) some of the evidence for forgery:

> The Purported "Cambis Letter" Mischaracterized and Relied Upon By UANI Is a Patently Suspect and Unreliable Source.
>
> This document is patently suspect and unreliable for multiple reasons, including but not limited to, the following readily apparent facts:
>
> - The letter is written in English and not in Greek, the language Greek businessmen use to communicate with each other.
> - The signature written in Roman letters does not appear to be authentic.
> - The purported "letter from Cambis" to "Prof Kazantzis" inexplicably and nonsensically refers to each individual in the third person.
> - The purported letter nonsensically says several Iranian officials were arriving in Athens to "initiate and conclude a strategic agreement with FBB" on the same day the letter is dated and purportedly delivered to FBB.
> - The purported letter nonsensically goes on to say that these Iranian officials expected an appointment at FBB the very next morning to "invest in FBB by acquiring a substantial stake in the equity of the Bank."
> - The letterhead on which the purported letter is written demonstrates its lack of authenticity. In fact, the watermark on the purported document has not been used by Athene Consulting House for a

> number of years, and would not have appeared on genuine company letterhead in 2012.
> The purported letter refers to the "Iranian Ministry of Oil," a nonexistent entity. A businessman with purportedly long-standing connections to the Iranian Ministry of Petroleum would know the organization and refer to it by its correct name.

So somehow a former associate of Restis has a falling out with him and then creates a couple of fraudulent documents that he gives to the former head of Mossad for use in smearing Restis and his firm. Where do US state secrets come into play here? The most obvious route involves a scenario similar to that with the forged yellowcake document. Just as US intelligence services took advantage of that obviously forged document to build a case for Iraq attempting to develop nuclear weapons, we are left to wonder about how US intelligence services could have been involved in this forged document being created and then delivered to a group involved in the name and shame campaign. We are essentially forced to pose the questions in this way since it is the government that is arguing state secrets are likely to be exposed in further litigation of the case when it is clear that the Restis team is concentrating its efforts on these forged documents, their origin and their route in getting to UANI.

There is one other aspect to this case that I want to touch on. When UANI first made their accusations, they were trying to make the claim that Resitis and his shipping company were actually involved in black market shipping of Iranian oil despite the sanctions limiting sales. That was a patently ludicrous claim, since, as we saw recently with tankers full of Kurdish oil, there is very close monitoring of all oil tankers and it would have been immediately obvious if Restis was sending tankers to Iran to break sanctions. As UANI

scrambled to defend themselves, they eventually came up with “evidence” of non-tanker ships belonging to Restis’ firm being in Iran. However, it turns out that these ships were there legally and they were delivering humanitarian goods from US relief agencies.

In the end, not only did UANI’s accusations of sanction-breaking oil shipments turn out to be unfounded, their shaming of Restis’ firm likely interfered with legitimate shipments of humanitarian goods. I can’t help wondering if this was a desired outcome of the entire operation.

But here is where things start to get really strange. Let’s go back to that bit from Restis’ attorneys where they say that Anastasios Pallis forged the key documents. It turns out that Pallis is quite the piece of work. In addition to the Restis claim that Pallis embezzled from his FBB bank, Pallis has bigger problems (quoted story is from December, 2013):

> The wanted businessman Anastasios Pallis surrendered himself to the police and prosecutor today, accompanied by his lawyer. A warrant for Mr. Pallis’ arrest on was issued after a police raid on his property unveiled an arsenal of firearms and scores of Nazi paraphernalia, such as uniforms, banners and sculptures.
>
> The police investigations into Mr. Pallis’ property in Voula revealed a wealth of military-grade weapons in a museum he maintained. The police are also investigating the content of 25 shipping containers belonging to him, where assault rifles, ammunition and other weapons are believed to be stored.
>
> Prior to the discovery of the weapons caches and his possible implication with Golden Dawn, a warrant was issued for Mr. Pallis’ arrest in connection to a FBB loan scandal, for which he faced

> charges of embezzlement and money laundering.

Wow. So not only was Pallis a business associate of Restis in shipping and the bank (where Restis accused Pallis of embezzling, setting off much of this), but the two were partners in a newspaper with Golden Dawn associations. Be sure to click through to the first link above for Pallis for a picture of his Nazi museum.

Now on to another character in the charges and counter-charges. Note that the forged letter described above is purported to come from Dimitris Cambis. He turns up in this Reuters article from February, 2013, where he is shown to own several aged ships that were implicated in ship-to-ship transfers of Iranian oil:

> Iran is using old tankers, saved from the scrapyard by foreign middlemen, to ship out oil to China in ways that avoid Western sanctions, say officials involved with sanctions who showed Reuters corroborating documents.
>
> The officials, from states involved in imposing sanctions to pressure Iran to curb its nuclear program, said the tankers – worth little more than scrap value – were a new way for Iran to keep its oil exports flowing by exploiting the legal limitations on Western powers' ability to make sanctions stick worldwide.
>
> Officials showed Reuters shipping documents to support their allegation that eight ships, each of which can carry close to a day's worth of Iran's pre-sanctions exports, have loaded Iranian oil at sea. Publicly available tracking and other data are consistent with those documents and allegations.
>
> "The tankers have been used for Iranian crude," one official said. "They are part of Iran's sanctions-busting

> strategy."
>
> Dimitris Cambis, the Greek businessman who last year bought the ships – eight very large crude carriers, or VLCCs – to carry Middle East crude to Asia, flatly denied doing any business with Tehran or running clandestine shipments of its oil to China.

Hmm. Notice what happened there? "Officials" showed Reuters "documents" that implicated Cambis. Unlike the similar attempt against Restis, though, in this case it appears that the accusations stuck, and the US even sanctioned Cambis in March of 2013, presumably on the basis of this verifiable information.

So Cambis is exposed in February of 2013 and sanctioned the next month. Note that the UANI accusations against Restis were first made public in May of 2013, so that would fit with a timeline of Cambis presumably being "flipped" and disclosing incriminating evidence against someone who seems to have been a competitor in the same business, even though it seems pretty clear that the information released to date is fabricated.

What I haven't found is the date on which Restis and Pallis had their falling out. Recall that it is Pallis who is accused of fabricating the Cambis documents. While Pallis' home wasn't raided until October of 2013 and he didn't surrender to authorities until December, there is one other major development on the timeline for these players. In July of 2013, Restis was arrested on charges of embezzling from FBB. He blamed a "former employee" for the accusations against him, who has to be Pallis, when he was arrested. But with Restis' arrest coming in July, that would be consistent with his falling out with Pallis occurring several months earlier, allowing Pallis to fabricate documents for the May, 2013 UANI accusations.

What still remains missing in all of this is

just how US state secrets became involved, especially with regard to how they came into UANI's possession and are now at risk of disclosure in the litigation. While I tend to buy the bulk of the allegations against Cambis and Pallis, I still haven't seen anything convincing tying Restis to illicit activity with Iran. (In the US, making a sweetheart deal to prop up his other companies as his bank was going under in the meltdown of the Greek banking sector seems very unlikely to have been prosecuted based on what we saw from our own banking meltdown in 2008.) Recent history in the federal court system, though, says we are very unlikely to ever get those details filled in, as the US is virtually guaranteed success in its effort to get Restis' case against UANI shut down forever. In the end, we won't get to find out if Restis did cooperate with Iran, if he was falsely attacked merely by someone wishing to divert blame from himself, or taken down for some other reason that state secrets won't allow us to know.

Postscript: Marcy provided me with much information about this case, obtained the case documents for me and took part in a number of very helpful discussions in plowing through the information presented here. For all of that, I am quite grateful.

WHERE THE BODIES ARE BURIED: A CONSTITUTIONAL CRISIS FEINSTEIN BETTER BE READY TO WIN

In a piece at MoJo, David Corn argues the Senate

Intelligence Committee — CIA fight has grown into a Constitutional crisis.

> What Feinstein didn't say—but it's surely implied—is that without effective monitoring, secret government cannot be justified in a democracy. This is indeed a defining moment. It's a big deal for President Barack Obama, who, as is often noted in these situations, once upon a time taught constitutional law. Feinstein has ripped open a scab to reveal a deep wound that has been festering for decades. The president needs to respond in a way that demonstrates he is serious about making the system work and restoring faith in the oversight of the intelligence establishment. This is more than a spies-versus-pols DC turf battle. It is a constitutional crisis.

I absolutely agree those are the stakes. But I'm not sure the crisis stems from Feinstein "going nuclear" on the floor of the Senate today. Rather, I think whether Feinstein recognized it or not, we had already reached that crisis point, and John Brennan simply figured he had prepared adequately to face and win that crisis.

Which is why I disagree with the assessment of Feinstein's available options as laid out by Shane Harris and John Hudson in FP.

> If she chooses to play hardball, Feinstein can make the tenure of CIA Director John Brennan a living nightmare. From her perch on the intelligence committee, she could drag top spies before the panel for months on end. She could place holds on White House nominees to key agency positions. She could launch a broader investigation into the CIA's relations with Congress and she could hit the agency where it really hurts: its pocketbook. One of the senator's other committee assignments is

> the Senate Appropriations Committee, which allocates funds to Langley.

Take these suggestions one by one: Feinstein can only "drag top spies" before Congress if she is able to wield subpoena power. Not only won't her counterpart, Saxby Chambliss (who generally sides with the CIA in this dispute) go along with that, but recent legal battles have largely gutted Congress' subpoena power.

Feinstein can place a hold on CIA-related nominees. There's even one before the Senate right now, CIA General Counsel nominee Caroline Krass, though Feinstein's own committee just voted Krass out of Committee, where Feinstein could have wielded her power as Chair to bottle Krass up. In the Senate, given the new filibuster rules, Feinstein would have to get a lot of cooperation from her Democratic colleagues to impose any hold if ever she lost Senate Majority Leader Harry Reid's support (though she seems to have that so far).

But with Krass, what's the point? So long as Krass remains unconfirmed, Robert Eatinger — the guy who ratcheted up this fight in the first place by referring Feinstein's staffers for criminal investigation — will remain Acting General Counsel. So in fact, Feinstein has real reason to rush the one active CIA nomination through, if only to diminish Eatinger's relative power.

Feinstein could launch a broader investigation into the CIA's relations with Congress. But that would again require either subpoenas (and the willingness of DOJ to enforce them, which is not at all clear she'd have) or cooperation.

Or Feinstein could cut CIA's funding. But on Appropriations, she'll need Barb Mikulski's cooperation, and Mikulski has been one of the more lukewarm Democrats on this issue. (And all that's assuming you're only targeting CIA; as soon as you target Mikulski's constituent agency, NSA, Maryland's Senator would likely

ditch Feinstein in a second.)

Then FP turns to DOJ's potential role in this dispute.

> The Justice Department is reportedly looking into whether the CIA inappropriately monitored congressional staff, as well as whether those staff inappropriately accessed documents that lay behind a firewall that segregated classified information that the CIA hadn't yet cleared for release. And according to reports, the FBI has opened an investigation into committee staff who removed classified documents from the CIA facility and brought them back to the committee's offices on Capitol Hill.

Even ignoring all the petty cover-ups DOJ engages in for intelligence agencies on a routine basis (DEA at least as much as CIA), DOJ has twice done CIA's bidding on major scale on the torture issue in recent years. First when John Durham declined to prosecute both the torturers and Jose Rodriguez for destroying evidence of torture. And then when Pat Fitzgerald delivered John Kiriakou's head on a platter for CIA because Kiriakou and the Gitmo detainee lawyers attempted to learn the identities of those who tortured.

There's no reason to believe this DOJ will depart from its recent solicitous ways in covering up torture. Jim Comey admittedly might conduct an honest investigation, but he's no longer a US Attorney and he needs someone at DOJ to actually prosecute anyone, especially if that person is a public official.

Implicitly, Feinstein and her colleagues could channel Mike Gravel and read the 6,000 page report into the Senate record. But one of CIA's goals is to ensure that if the Report ever does come out, it has no claim to objectivity. Especially if the Democrats release the Report

without the consent of Susan Collins, it will be child's play for Brennan to spin the Report as one more version of what happened, no more valid than Jose Rodriguez' version.

And all this assumes Democrats retain control of the Senate. That's an uphill battle in any case. But CIA has many ways to influence events. Even assuming CIA would never encourage false flags attacks or leak compromising information about Democrats, the Agency can ratchet up the fear mongering and call Democrats weak on security. That always works and it ought to be worth a Senate seat or three.

If Democrats lose the Senate, you can be sure that newly ascendant Senate Intelligence Chair Richard Burr would be all too happy to bury the Torture Report, just for starters. Earlier today, after all, he scolded Feinstein for airing this fight.

> "I personally don't believe that anything that goes on in the intelligence committee should ever be discussed publicly,"

Burr's a guy who has joked about waterboarding in the past. Burying the Torture Report would be just the start of things, I fear.

And then, finally, there's the President, whose spokesperson affirmed the President's support for his CIA Director and who doesn't need any Democrats help to win another election. As Brennan said earlier today, Obama "is the one who can ask me to stay or to go." And I suspect Brennan has confidence that Obama won't do that.

Which brings me to my comment above, on AJE, that Brennan knows where the literal bodies are buried.

I meant that very, very literally.

Not only does Brennan know firsthand that JSOC attempted to kill Anwar al-Awlaki on December 24, 2009, solely on the President's authority, before the FBI considered him to be operational.

But he also knows that the evidence against Awlaki was far dodgier than it should have been before the President authorized the unilateral execution of an American citizen.

Worse still, Feinstein not only okayed that killing, either before or just as it happened. But even the SSCI dissidents Ron Wyden, Mark Udall, and Martin Heinrich declared the Awlaki killing "a legitimate use of the authority granted the President" in November.

I do think there are ways the (Legislative) Democrats might win this fight. But they're not well situated in the least, even assuming they're willing and able to match Brennan's bureaucratic maneuvering.

Again, I don't blame Feinstein for precipitating this fight. We were all already in it, and she has only now come around to it.

I just hope she and her colleagues realize how well prepared Brennan is to fight it in time to wage an adequate battle.

CHELSEA MANNING WONDERS WHETHER SHE COULD HAVE GOTTEN ANWAR AL-AWLAKI'S TREATMENT

In accepting the Sam Adams prize, Chelsea Manning raised the ACLU/NYT lawsuits for the OLC memo authorizing the killing of Anwar al-Awlaki. (h/t Kevin Gosztola)

In doing so, she borrows an argument about separation of power and secrecy Judge Colleen McMahon made in her opinion on the FOIA.

Here's McMahon:

> As they gathered to draft a Constitution for their newly liberated country, the Founders – fresh from a war of independence from the rule of a King they styled a tyrant- were fearful of concentrating power in the hands of any single person or institution, and most particularly in the executive. That concern was described by James Madison in Federalist No. 47 (1788):
>
> > 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 ….
> >
> > The magistrate in whom the whole executive power resides cannot of himself … administer justice in person, though he has the appointment of those who do administer it.
>
> [snip]
>
> The Framers – who were themselves susceptible to being hanged as traitors by the King of England during the Revolutionary War – were as leery of accusations of treason as they were of concentrating power in the hands of a single person or institution. As a result, the Constitution accords special protections to those accused of the most heinous of capital crimes; Article 3, Sec. 3 sets the procedural safeguard that, "No Person shall be convicted of treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."
>
> Interestingly, the Treason Clause

> appears in the Article of the Constitution concerning the Judiciary — not in Article 2, which defines the powers of the Executive Branch. This suggests that the Founders contemplated that traitors would be dealt with by the courts of law, not by unilateral action of the Executive. As no less a constitutional authority than Justice Antonin Scalia noted, in his dissenting opinion in *Hamdi*, 542 U.S. at 554, "Where the Government accuses a citizen of waging war against it, our constitutional tradition has been to prosecute him in federal court for treason or some other crime."

Here's Manning:

> The founders of America — fresh from a war of independence from King George lll — were particularly fearful of concentrating power. James Madison wrote that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."(1)
>
> [snip]
>
> When drafting Article III of the American Constitution, the founders were rather leery of accusations of treason, and accorded special protections for those accused of such a capital offense, providing that "[n]o person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."
>
> For those of you familiar with the American Constitution, you may notice that this provision is under the Article

> concerning the Judiciary, Article III, and not the Legislative or Executive Articles, I and II respectively. And, historically, when the American government accuses an American of such crimes, it has prosecuted them in a federal criminal court.

After having repeated McMahon's lesson on the checks our Founders gave Article III courts over the President, Manning described how frustrated McMahon was in not being able to release the OLC memo to ACLU and NYT.

> In a recent Freedom of Information Act case(2) – a seemingly Orwellian "newspeak" name for a statute that actually exempts categories of documents from release to the public – a federal district court judge ruled against the New York Times and the American Civil Liberties Union. The Times and the ACLU argued that documents regarding the practice of "targeted killing" of American citizens, such as the radical Sunni cleric Anwar Nasser al-Aulaqi were in the public's interest and were being withheld improperly.
>
> The government first refused to acknowledge the existence of the documents, but later argued that their release could harm national security and were therefore exempt from disclosure. The court, however, felt constrained by the law and "conclud[ed] that the Government [had] not violated the FOIA by refusing to turn over the documents sought in the FOIA requests, and [could not] be compelled . . . to explain in detail the reasons why [the Government's] actions do not violate the Constitution and laws of the United States."
>
> However, the judge also wrote candidly about her frustration with her sense

> that the request "implicate[d] serious issues about the limits on the power of the Executive Branch under the Constitution and laws of the United States," and that the Presidential "Administration ha[d] engaged in public discussion of the legality of targeted killing, even of [American] citizens, but in cryptic and imprecise ways." In other words, it wasn't that she didn't think that the public didn't have a right to know — it was that she didn't feel that she had the "legal" authority to compel disclosure.

Against that background, Manning notes that she was charged with treasonable offense, and wonders whether under the Awlaki precedent she could have been drone killed, just like Awlaki.

> I was accused by the Executive branch, and particularly the Department of Defense, of aiding the enemy – a treasonable offense covered under Article III of the Constitution. Granted, I received due process. I received charges, was arraigned before a military judge for trial, and eventually acquitted. But, the al-Aulaqi case raises a fundamental question: did the American government, and particularly the same President and Department, have the power to unilaterally determine my guilt of such an offense, and execute me at the will of the pilot of an Unmanned Aerial Vehicle?

She then compares (I think, though the timing on this is perhaps understandably murky) the release of both the OLC memo and follow-up speeches — and its revelation of the powers claimed by the President — with her own releases.

> Until documents held by the U.S. Department of Justice's Office of Legal

> Counsel were released after significant political pressure in mid-2013, I could not tell you. And, very likely, I do not believe I could speak intelligently of the Administration's policy on "targeted killing" today either.
>
> There is a problem with this level of secrecy, obfuscation, and classification or protective marking, in that they supposedly protect citizens of their nation; yet, it also breeds a unilateralism that the founders feared, and deliberately tried to prevent when drafting the American Constitution. Now, we have a "disposition matrix," classified military commissions, and foreign intelligence and surveillance courts – modern Star Chamber equivalents.
>
> I am now accepting this award, through my friend, former school peer, and former small business partner, Aaron, for the release of a video and documents that "sparked a worldwide dialogue about the importance of government accountability for human rights abuses," it is becoming increasingly clear to me that the dangers of withholding documents, legal interpretations, and court jurisprudence from the public that pertain to the right to "life, liberty, and property" of a state's citizens is as fundamental and important to protecting against such human rights abuses.

Of course, we still don't know what happened to Anwar al-Awlaki; the White Paper leaves many of the key details obscure. Even as the government prepares to execute another of its citizens.

But in comparing her own releases with the government's refusal to reveal precisely how they decided to execute an American with no due process, Manning points to where this has

already gone.

And she makes a compelling case that the government’s claims of secrecy cannot be trusted.