

THE NEW GITMO MEMORANDUM OF UNDERSTANDING: OBAMA FINALLY FIGURED OUT HOW TO CLOSE DOWN GITMO!

Yesterday, the NYT weighed in on a new practice at Gitmo: the requirement that lawyers whose clients have lost their habeas case sign new memoranda of understanding governing the terms of access to their client.

The Obama administration's latest overuse of executive authority at Guantánamo Bay is a decision not to let lawyers visit clients in detention under terms that have been in place since 2004. Because these meetings pose little risk and would send a message about America's adherence to the rule of law, the administration looks as if it is imperiously punishing detainees for their temerity in bringing legal challenges to their detention and losing.

[snip]

Four years after the Supreme Court ruled that "the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law," the government may be calculating that it can decide what "meaningful" means.

But if the wars where detainees were captured have been to defend American interests, surely the country has an interest in an unequivocal commitment to

the rule of law, including full legal representation for detainees.

The NYT got closer to ascribing a motive and envisioning the impact of the policy than Lawfare's several posts on the subject. But I think both are missing what I suspect is the point.

Aside from giving detainees little recourse over issues affecting their own treatment (which is most urgent, in my opinion, to monitor the mental health of the detainees), the MOU will have three effects:

- Gutting Obama's own promise to provide Periodic Reviews to detainees
- Eliminating the risk that detainees will pursue justice internationally
- Burying Obama's biggest failed promise

Gutting the Periodic Review Boards

As Jack Goldsmith reminded back in April, a year earlier Obama had issued an executive order promising a Periodic Review Board for all detainees.

In March 2011, the Obama administration issued an Executive Order (13567) that created a process of Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force." The "review and hearing" process was designed to operate on top of the habeas review process and the other internal review processes for GTMO detainees, and to facilitate release of detainees who were not "a significant threat to the security of the United States." Bobby analyzed the

E0 here and here, as did Tom Nachbar here.

The E0 states: "For each detainee, an initial review shall commence as soon as possible but *no later than 1 year from the date of this order*" (emphasis added). I have heard little about these reviews since last Spring, and the deadline for their commencement passed last month. Has the administration carried out its pledges under the E0?

Irrespective of the delay, it was crystal clear by April that Obama didn't put much stock in his promise to tie continued detention to the risk a detainee posed. After all, the Administration was willing to gut habeas with a detainee who, on multiple occasions, under both the Bush and Obama Administration, was cleared for release. When Obama did release the PRB guidelines, the timing involved—providing for just 4 months of election season during which the PRB would function (one of which has already elapsed)—made it clear it wasn't actually supposed to function.

But the whole thing is supposed to be driven by new information; it's not a reconsideration of information already in the files. And not only does the PRB determine the priority in which they'll consider cases, they get to decide whether any information from the detainee is relevant.

Any additional relevant information (as defined in the Glossary) that has become available since the later of the Reference (k) review or prior PRB review, including information discovered as a consequence of information presented by the detainee's personal representative or private counsel.

[snip]

(1) The personal representative and private counsel, if any, shall be

provided with advance notice of the PRB review, as well as a reasonable opportunity to meet or talk to the detainee to discuss the PRB process and the information the detainee may wish to submit.

(2) The personal representative and private counsel, if any, may prepare a written submission for the PRB, which may include a written statement from the detainee. The written submission shall include all factual information that the detainee intends to present in the PRB proceedings. Such submission shall only contain information relevant and material to the determination of whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States. Relevance of the information is determined by the PRB.

And now the MOU warns that lawyers cannot assist their client for PRB matters under the MOU.

Undersigned counsel and translator understand and acknowledge that access to the detainee post-habeas is for the sole purpose of obtaining the detainee's transfer or release from detention by the United States Government at Guantanamo Bay through potential habeas corpus or other litigation in United States federal courts or through discussions with the United States Government. Undersigned counsel and translator also understand that access under this MOU is not authorized for any other purpose, including assisting or representing that detainee in connection with military commission proceedings or Periodic Review Board proceedings under Executive Order 13567 (access for these purposes shall be governed by a separate set of procedures).

In effect, this means there is no way for a lawyer who knows a detainee's case best to try to present information to the PRB during its 3 remaining months.

The PRB, then, becomes nothing more than a campaign prop, in place for election season, but designed so it is almost impossible for it to do any good.

Eliminating the risk that detainees will pursue justice internationally

More troubling still is the second half of that above paragraph: the MOU explicitly prohibits lawyers from providing assistance to their clients for matters pertaining to anything aside from transfer. This in effect solidifies a practice already put into place through operation of the legal mail process, in which the government has prevented detainees from getting any documents pertaining to other kinds of legal challenges.

I'm most familiar with this happening in the context of Abu Zubaydah, who will, of course, never be transferred, partly because he's an extremist though not the high level al Qaeda figure they used to claim he was, partly because the government wants to hide how his torture and detention made him crazy.

But the government has repeatedly refused to allow AZ's legal team to get other legal documents to him. They refused to let him have a document to sign that would authorize a lawsuit in Lithuania.

Attorneys for Abu Zubaydah say they have been trying to mount a meaningful defense for the "high-value" detainee, who has been in the custody of the US government since March 2002, and have also sought legal remedies outside of the United States to hold accountable those who were complicit in his rendition and torture.

But the attorneys claim their efforts

have been stymied by the Justice Department (DOJ), which refuses to turn over to them critical documents they need to press forward with Zubaydah's case.

For example, late Thursday, Zubaydah's legal team filed a lawsuit against Lithuania with the Strasbourg-based European Court of Human Rights (ECHR), the leading human rights tribunal in the world, over the country's failure to reopen an investigation into its role in Zubaydah's rendition to a CIA black site prison in Lithuania and the torture he was subjected to there in 2005.

But the DOJ on Wednesday told Zubaydah's lawyers they would not declassify and turn over to them a power-of-attorney form Zubaydah signed earlier this year authorizing his legal team to file the lawsuit against Lithuania on his behalf.

And they've tried to do that to prevent AZ from giving permission to release his FBI file.

At one level, this serves simply to ensure that no other country will hold American responsible for the torture it committed. At another level, it serves to prevent the full stories of Gitmo detainees from becoming public. In effect, it turns Gitmo back into the black hole that Rasul and then Boumediene, briefly, opened up.

Burying Obama's biggest failed promise

And all that happens in time for election season!

Obama made a bunch of promises before he got elected he has failed to keep: passing a public option and not passing a health insurance mandate, fixing the FISA Amendments Act, addressing climate change, renegotiating NAFTA.

But none of those promises was accompanied by the kind of first day theater as his promise to close Gitmo. Obama got into office, and the

first thing he did was implement a promise to close Gitmo.

And then (as Daniel Klaidman's book makes clear) he failed to do any of the political things he needed to do to make that happen.

That's probably the biggest effect of the this MOU: closing down Gitmo, as a press item or a political football, for election season (at least). It's effectively as much a political gimmick as it is a legal document—though of course it has pretty serious legal consequences.

NCAA, MARK EMMERT, UNITARY EXECUTIVES & THE DEATH OF DUE PROCESS



Once you step beyond the tragedy of Aurora, the big news

today centers on Penn State and the aftermath of Jerry Sandusky, Joe Paterno and Louis Freeh. There is a lot of news, and implications to come, from today's events.

First, and unsurprisingly, Penn State yesterday took down the fabled statue of JoePa. Abandoning larger than life symbols, whether human or otherwise, is never easy. And it is not just the specter of human faces in this regard either, witness the difficulty (irrespective of which

side of the equation you reside on) of moving beyond "Redskins" and "Seminoles" as team mascots. But Paterno's statue at PSU, by now, was more a testament and reminder of gross and wanton failure, not success. A defeating duality if there ever was one for a supposedly inspirational piece of art. The statue had to go the way of JoePa himself, and it now has.

The second part of the news, and discussion thereof, however, will have far greater repercussions. That, of course, is the actual penalties handed down to the Penn State football program. They have just been announced and are as follows:

- 1) A \$60 Million fine to be applied to anti-child abuse charity and organizations
- 2) A four year ban on bowl appearances
- 3) A scholarship reduction of 10 initial scholarships year one and 20 overall scholarships per year for a period of four years.* Current athletes may transfer without penalty or limitation
- 4) Imposition of a five year probationary period
- 5) Mandatory adoption of all reforms recommended in the Freeh Report
- 6) Vacation of all football wins from the period of 1998 through 2011. A loss of 111 wins from the record book (109 of which were from Paterno)

These are extremely harsh penalties. In some terms, competitively anyway, the scholarships are the key element. A loss of twenty per year for for four years, when prospective players know they will never see a bowl game in their career, is crippling. It will be fascinating to see how PSU survives this blow.

USC provides the best analogy, as it is just finishing up its sanction of a two year bowl ban

and loss of ten scholarships per year for three years. While the Trojans will be eligible for a bowl game again this year, they still have one more year of the scholarship reduction to get through. USC has remained competitive and, in fact, is considered to be a major contender for the championship this coming year. Penn State, however, has much longer terms, especially as to the critical bowl ban, and cannot offer the glitz of Southern California. It is going to be very tough, but likely passable, sledding for the Nittany Lions. We shall see.

To some extent before, but certainly ever since the release of the Freeh Report, there were plaintive wails for the imposition of the death penalty for the PSU football program. The cries came from all corners, none more pronounced than the ranks of sports journalists who make a living off of the disingenuous sham that is big time "student athletics". The examples are rampant, but Michael Ventre of NBC Sports and Stephen A. Smith of ESPN are but two examples of the bloviation that has occurred on "death" for PSU football. There were a plethora of others from all over the spectrum.

It has been amusing watching the very press and pundits who make a living creating the aura of people like Joe Paterno, and the godliness of football programs such as he ran at Penn State, howl at how wrong it all was and must be killed. They are physicians that should heal themselves.

What was the basis for such mob clamoring for death – or worse! – to Penn State? Well, shocking as it may be that such erudite legal minds as Stephen A. Smith could be wrong, I can find no express jurisdiction for direct NCAA action, much less the "unprecedented sanctions" rendered, under the factual situation presented. Emmert claimed the inherent authority, but the rules themselves belie his claim, as does historical precedent of NCAA enforcement. What occurred today was not just "unprecedented", it was *never contemplated*.

The NCAA Division One Manual and Bylaws is

incredibly long, convoluted and poorly written. The one unmistakable takeaway from a review of it, though, is that it was designed for regulation of student athletes and the sanctioned competition they engage in. It is not a regulatory, nor enforcement, scheme designed to deal with criminal acts and morality, whether direct or tangential. In fact, the word "criminal" appears on exactly one out of the 426 pages of the manual (see: Manual, p. 393), and that is, somewhat hilariously, only in relation to defense and indemnification of NCAA employees – the masters and overlords – who might get called to testify or participate in civil and/or criminal proceedings. That is the full extent of the contemplated jurisdiction of the NCAA in relation to overt criminal acts, whether they be acts of commission or omission, both of which were present in the Sandusky/PSU set of facts.

So, what is the actual original intent of the NCAA? It has been stated, and restated, over the years, but this, from the NCAA itself, is pretty much as good a synopsis as there is of the designed intent and jurisdiction:

The original 1906 constitution of the NCAA (IAAUS at that time) reflected a desire of the first delegates (primarily college professors) to regulate college athletics and ensure that athletic contests reflect the "dignity and high purpose of education" (Falla, p.21). During the early years of the NCAA, this was carried out by assuming a role as the chief rulesmaking body for many sports, promoting ethical sporting behavior, suggesting that athletic departments be recognized as units of instruction within each university, and debating issues such as amateurism and eligibility for competition. Many of these functions and issues are still foci for the NCAA. However, the organization's role has expanded substantially over the years to include administration of national

championships, education and outreach initiatives, marketing, licensing and promotion, communications and public affairs, membership/legislative services, and rules enforcement.

An admirable set of goals indeed, but it does not contemplate regulation of felonious criminal behavior, even if it is tangential to a major college sports program. And, unsurprisingly, never – at least until today – has the NCAA sought to insert itself into such weighty concerns of society as a whole, as opposed to conduct in and around the “student-athlete” relationship to member universities and “competition” among them. Not until today, not until Mark Emmert arrogated upon himself the authority. But that is what unitary executives do, isn’t it? They arrogate power and abrogate due process.

Read the Freeh Report; the only possible student-athlete/competition offenses that appear to exist are extremely minor infractions on which Paterno did not discipline players appropriately or fully. That, of course, has nothing whatsoever to do with the Sandusky facts, and in no way could serve as an appropriate basis for the serious “major infraction” level penalties imposed today. PSU may morally deserve these penalties, or even maybe the death penalty, but that does not mean the path to it is legitimate or should have been taken in the absence of competent jurisdiction.

The NCAA rules and bylaws do not apply on their face, and are clearly not intended for the type of application just imposed against PSU. The only possibility was to contort “lack of institutional control” but, again, the design of the regime is to regulate student athlete and competition elements, and this is simply not that.

There was no statutory investigation by the NCAA enforcement arm, no infractions, whether minor or major, found, no improper recruiting, no

academic cheating, no sex, drugs nor rock and roll found present. Nothing. Punishment without crime or bylaw due process. And Emmert had the temerity to jam Penn State into a consent decree so that there would be no appeal. It is just stunning arrogance and belligerence.

It should also be noted that one of the stated goals previously encouraged and respected by the NCAA is the self reporting and remediation by a target university. It is hard to imagine a case where a university has done a better job in that regard. PSU fired Paterno long ago and severed the other administrative personnel actively involved in the cover up. The coaching staff has been effectively cleansed and replaced with new and squeaky clean souls. Most notably, Penn State conducted their own hard hitting investigation, on their own dime, and resolved to implement its recommendations. And they removed the damnable statue. It would be impossible for a university to do more given what Penn State faced.

But none of that was enough for the NCAA.

What was found? Apparently a "lack of institutional control" based on....well...the golden egg of the NCAA has been tarnished, and that just cannot maintain. So, Mark Emmert and the 22 high holy men that are the NCAA Board of Directors arrogated upon themselves the grandstanding pulpit and power to decree from on high the moral judgment necessary to salve their own souls and shine their egg. It was an egregious claim of power by a unitary executive via the abrogation of normal procedural due process. Apparently that phenomenon is not limited to the Article II branch of the federal government. The wave is catching, watch out.

It is a grotesque farce of epic proportion. The NCAA is, historically, one of the most malignant, arbitrary, capricious and self serving organizations in the history of man; that they sit in judgment as they have today is criminal in its own right.

You know what else you did not hear from the lips of judge, jury and executioner Mark Emmert today? Words about how the paradigms of reform imposed on PSU will be spread to all the other member institutions, most all of whom have many of the same institutional infirmities Penn State did. This is a cover your ass move for the NCAA, and it is sick.

As Dave Zirin notes, less than two years ago, Mark Emmert engaged in hyperbolic grandstanding by saying Joe Paterno was “the definitive role model of what it means to be a college coach”. Same Emmert, different grandstand today. And both completely shameless efforts. Zirin also said:

What Penn State did was commit horrific violations of criminal and civil laws and they should pay every possible price for shielding Sandusky, the child rapist. This is why we have a society with civil and criminal courts. Instead we have Mark Emmert inserting himself in a criminal matter and acting as judge, jury and executioner, in the style of NFL commissioner Roger Goodell. As much as I can't stand Goodell's authoritarian, undemocratic methods, the NFL is a private corporation and his method of punishment was collectively bargained with the NFL Players Association. Emmert, heading up the so-called non-profit NCAA, is intervening with his own personal judgment and cutting the budget of a public university. He has no right and every school under the auspices of the NCAA should be terrified that he believes he does.

Speaking anonymously to ESPN, a former prominent NCAA official said, “This is unique and this kind of power has never been tested or tried. It's unprecedented to have this extensive power. This has nothing to do with the purpose of the

infractions process. Nevertheless, somehow (the NCAA president and executive board) have taken it on themselves to be a commissioner and to penalize a school for improper conduct.”

I could not agree more. Once unitary power is claimed, it is never relinquished, nor applied evenly and fairly. Go read Dave’s article this morning, it is excellent, as was his piece last week after the release of the Freeh Report.

Where does this new frontier of moral jurisdiction lead for the NCAA and college athletics? I for one would like to know if the High Holy Mark Emmert plans to do anything about the Lizzy Seeberg scandal at Notre Dame:

The blood of a 19-year-old girl spills like an oil slick over the football team and the school administration. They should still be thinking about what happened in the chill of the Sun Bowl. They should be thinking about what Tom and Mary Seeberg must have felt like when they received the news that their daughter, Elizabeth “Lizzy” Seeberg, a freshman at neighboring St. Mary’s College, had died.

Not from natural causes. Not in a car accident. But by suicide 11 days after making an allegation of sexual assault against a university football player at the end of August. The school administration and the Notre Dame police department should be ashamed about an inexcusably sloppy investigation at best and a deliberate coverup at worst. But there is no shame when a football game is to be played, however meaningless, and this Sun Bowl is completely meaningless. There is still money to be made.

Where were the “moral priorities”,

“institutional control” and “concern for victims” at Notre Dame? Warped as it may be, at least the victims at Penn State were not made so by athletes, and are alive today to tell their story. The same cannot be said of Lizzy Seeberg and Notre Dame. And it is not just Seeberg either, there is other death directly tied to the football program and under the “institutional control” affiliated with Notre Dame. Where is the heavy hand of the vainglorious Mark Emmert when it comes to the Golden Dome of college football? Nowhere to be found.

But that is the way of unitary executives, isn't it? Due process dies while the elite are protected at all human and moral cost. That's also the once and future way of the NCAA.

* Updated to reflect distinction between initial scholarship loss the first year and overall figures for the remaining years

[graphic by ArtVoice and Coalition for Economic Justice]

WILL THE GOVERNMENT FINALLY USE A LAWSUIT AS AN OPPORTUNITY TO EXPLAIN THE ANWAR AL-AWLAKI KILLING?

When the ACLU and CCR represented Nasser al-Awlaki in a suit to prevent the government from killing Nasser's son Anwar unless the government could prove he was an imminent threat, Judge John Bates threw the case out on standing grounds. The civil rights groups think they'll face no such problem on the suit alleging wrongful death they just filed suing Leon

Panetta, David Petraeus, SOCOM Commander William McRaven, and JSOC Commander Joseph Votel. That's because Nasser al-Awlaki—suing on behalf of both his son and grandson, Abdulrahman—and Sarah Khan—suing on behalf of her son Samir, who was killed in the strike on Anwar—represent the estates of the dead men, so they should clearly have standing.

If that's right, the courts will have to find some other way to punt on this issue. Alternately, for the first time, the government will have to provide evidence to a court to judge whether or not it wrongly killed three American citizens.

That's one of the big issues behind this suit—an issue which I hope to follow up on later. As the Director of ACLU's National Security Project, Hina Shamsi, noted, while the facts alleged against Anwar (though not against his son or Samir Khan) are very serious, none of them have been attested in court yet (the government submitted some of the facts in the Abdulmutallab sentencing, but only after the trial was over).

We don't want to minimize the seriousness of the allegations [against Anwar al-Awlaki]. It is the role of the courts to distinguish between actual evidence and mere allegations.

She describes this as an opportunity for the government. If the government has evidence Awlaki presented an imminent threat, this case is an opportunity to present the evidence so it can be tested.

Of course, the government has had that opportunity three times before: in the earlier Nasser al-Awlaki suit, the Abdulmutallab trial, and the FOIA response. The government's efforts to avoid using that opportunity have gotten more and more ridiculous. But since they appear to have no shame on this point, I'm betting they find a way to avoid doing so now.

WE CAN'T AFFORD ANOTHER "COMPLICATED AND QUIRKY" PRESIDENCY

You've no doubt heard about the BoGlo piece that describes 9 different legal documents on which Mitt Romney was listed as CEO of Bain after the time—in 1999—when he now claims to have left the company.

Romney has said he left Bain in 1999 to lead the winter Olympics in Salt Lake City, ending his role in the company. But public Securities and Exchange Commission documents filed later by Bain Capital state he remained the firm's "sole stockholder, chairman of the board, chief executive officer, and president."

[snip]

Romney did not finalize a severance agreement with Bain until 2002, a 10-year deal with undisclosed terms that was retroactive to 1999. It expired in 2009.

[snip]

The Globe found nine SEC filings submitted by four different business entities after February 1999 that describe Romney as Bain Capital's boss; some show him with managerial control over five Bain Capital entities that were formed in January 2002, according to records in Delaware, where they were incorporated.

I'm envisioning Mitt Romney, in 2017, claiming

the treaty he signed with China in 2014 doesn't really count because he wasn't really acting as President when he signed it, in spite of his legal status as President.

But I'm most interested in the scant response the Mitt campaign gave.

A Romney campaign official, who requested anonymity to discuss the SEC filings, acknowledged that they "do not square with common sense." But SEC regulations are complicated and quirky, the official argued, and Romney's signature on some documents after his exit does not indicate active involvement in the firm.

"Complicated and quirky" says a guy (or gal) now spending his time trying to get Mitt elected to an even more complicated and quirky office, the Presidency.

Frankly, though, there's precedent for a President claiming "complicated and quirky" absolves him of responsibility for things that occurred under his presidency. After all, while Bush signed the paperwork in the first 6 years of his presidency, it wasn't until he fired Rummy that Bush actually took over responsibility for the big decisions from Dick Cheney.

And I can't help but harp on the "complicated and quirky" document—the "Gloves Come Off" Memorandum of Notification, effectively written by now Romney advisor Cofer Black—that has undermined the accountability Presidency more generally. Effectively, that MON pre-authorized the CIA (at least) to do whatever they wanted within certain general areas of organization. It served as Presidential authorization, but insulated the President from any provable involvement in torture and assassination and partnering with lethal regimes. When proof that the President had authorized all this torture threatened to come out via legal means, the

current President went to the mat to prevent that from happening.

All the rest—the debates about what Congress authorized the day after this complicated and quirky document, the OLC memos, the repeated investigations that always end up in immunity for all (or almost all)—are just the legal facade that hides the fact that in fact even our Constitution has become “complicated and quirky.” And while Obama at least admits his involvement in these issues—while still hiding them from legal liability—he has chosen to keep the structure in place and has relied on the plausible deniability it gives.

The thing is, as damning as this revelation may prove to be for Mitt, it is in fact quite unsurprising that a man can run for President on a resumé for which—his advisors say, behind the veil of anonymity—he can simultaneously claim credit but no responsibility.

That’s the way this country increasingly works. Even—perhaps especially—the Presidency.

OUR OTHER ASSASSINATION PROGRAM: MAFIA HITMEN HIDDEN FROM CONGRESS

As part of my not-yet exhausted obsession with the government’s effort to obscure its drone assassination program, I re-read these two posts describing the assassination squads Dick Cheney set up but kept hidden from Congress. When Leon Panetta learned about it—and learned Congress had not been briefed—it set off a big scandal where, for once, Congress actually got pissed.

The big scandal, we ultimately learned, was that the assassination squads had been outsourced in 2004 to Blackwater. And while actual approval for the program appears to have come in a September 26, 2001 directive following up on the Gloves Come Off Memorandum of Notification that authorized hit squads, its legal justification and logic parallels the drone program.

The Bush administration took the position that killing members of Al Qaeda, a terrorist group that attacked the United States and has pledged to attack it again, was no different from killing enemy soldiers in battle, and that therefore the agency was not constrained by the assassination ban.

But former intelligence officials said that employing private contractors to help hunt Qaeda operatives would pose significant legal and diplomatic risks, and they might not be protected in the same way government employees are.

[snip]

Officials said that the C.I.A. program was devised partly as an alternative to missile strikes using drone aircraft, which have accidentally killed civilians and cannot be used in urban areas where some terrorists hide.

Yet with most top Qaeda operatives believed to be hiding in the remote mountains of Pakistan, the drones have remained the C.I.A.'s weapon of choice. Like the Bush administration, the Obama administration has embraced the drone campaign because it presents a less risky option than sending paramilitary teams into Pakistan.

Today, we learn that the guy who took the assassination program private, then CIA CTC Operations Director Ricky Prados, was a mob hitman whose murderous ways continued after he

joined the Agency.

More startling, the Miami murders allegedly continued *after* Prado joined the CIA. One target included a cocaine distributor in Colorado who was killed by a car bomb. Investigators believed he was killed over concerns he would talk to the police.

Years later, in 1996, Prado was a senior manager inside the CIA's Bin Laden Issue Station, before the Al-Qaida mastermind was a well-known name. Two years later, the bombings of the U.S. embassies in Kenya and Tanzania elevated Prado to become the chief of operations inside the CIA's Counterterrorist Center, headed by then-chief Cofer Black, later an executive for the notorious merc firm Blackwater. "As the title implied, the job made Prado responsible for all the moving pieces at the CTC – supervising field offices on surveillance, rendition, or other missions, and making sure that logistics were in order, that personnel were in place," according to Wright.

Prado was also reportedly put in charge of a "targeted assassination unit," that was never put into operation. (The CIA shifted to drones.) But according to Wright, the CIA handed over its hit squad operation to Blackwater, now called Academi, as a way "to kill people with precision, without getting caught." Prado is said to have negotiated the deal to transfer the unit, which Wright wrote "marked the first time the U.S. government outsourced a covert assassination service to private enterprise." As to whether the unit was *then* put into operation, two Blackwater contractors tell Wright the unit began "whacking people like crazy" beginning in 2008.

I'll grant you, there's little that would beat the story of a Miami hitman running our CT program. Except has the drone program really evolved in such different fashion? There are, after all, contractors involved in the targeting process even if they're not "whacking people like crazy."

More importantly, the government not only refuses to disclose details of its drone program to us mere taxpayers, but they also refuse to answer very basic questions posed by Congressional overseers.

What is it, then, that distinguishes Dick Cheney's secret mafia hitman-led assassination squad and John Brennan's secret contractor assisted drone program?

WHY IS DOJ DELIBERATELY HIDING INFORMATION RESPONSIVE TO ACLU'S ANWAR AL-AWLAKI FOIA?

As part of its strategy to not respond to the Anwar al-Awlaki FOIAs, the government seems to have decided to bury the NYT and ACLU under declarations. It submitted declarations and exhibits from 3 departments in DOJ, CIA, DOD, and DIA. Each attempts to appear helpful while (usually) blathering on at length but in no detail about why the President's authority to kill an American citizen must remain hidden.

That said, the declarations can be distinguished by how convincing (or not) are their claims to have searched for relevant documents. In

particular, DOJ Office of Information Policy was patently unresponsive, probably to hide the intelligence DOJ has on Anwar al-Awlaki (and possibly Samir Khan).

DOJ OLC presented by far the most convincing evidence of a real search. As described by Deputy Assistant Attorney General John Bies, the department conducted searches for the following terms: target! kill!, drones, assassinat!, extrajudicial killing, UAV, unmanned, awlaki, aulaki, lethal force, lethal operation.

DOD primarily searched legal officers. While Lieutenant General Robert Neller didn't provide a full list of search terms used, he claimed the search "included relevant key words," including "Citizen," "AG Speech," "al-Awlaki," and "Samir Khan." While Neller says DOD used "multiple spellings" of al-Awlaki, it's not clear whether they only searched hyphenated names. And there are some terms clearly missing—such as anything to do with targeted killing. And "citizen"? Really?!?!?

CIA, meanwhile, had this to say about their search:

In light of these recent speeches and the official disclosures contained therein, the CIA decided to conduct a reasonable search for records responsive to the ACLU's request. Based on that search, it has determined that it can now publicly acknowledge that it possesses records responsive to the ACLU's FOIA request.

The DOJ response provides this nonsensical excuse for why CIA can't reveal how it searched for relevant documents.

Although the CIA acknowledges its possession of some records responsive to the FOIA 6 requests, information concerning the depth and breadth of that interest, including the number of documents, is classified. See infra

Point II; Bennett Decl. ¶¶ 27-28. We therefore do not describe the CIA's search on the public record; it is described in the Classified Declaration of John Bennett.

Given the CIA's well-documented history of not searching where they know the most interesting documents are, I think it safe to assume the search was completely negligent. But I find it mighty interesting they didn't even tell us what their search consisted of—the better to avoid contempt proceedings in the future, I guess.

Nevertheless, I think the least defensible search comes from Deputy Chief of the Initial Request Staff at Office of Information Policy Joseph Hibbard. OIP conducted the search in offices of top DOJ officials like the Attorney General, the Deputy Attorney General, and so on. Their search terms were: "targeted killings," "kill lists," "lethal operation," "lethal force," "al-Aulaqi" and "target," "al-Awlaki" and "target," "Samir Khan" and "target," and "Abdulrahman" and "target." The use of the hyphens in Awlaki might miss documents. The search for the plural rather than the singular of "targeted killing" and "kill list" almost surely would miss documents even assuming those terms are used at DOJ. The use of Samir Khan's full name and the choice not to search on Anwar might likewise miss some documents.

Most problematic of all, however, is that searching on these men's names only with "target" would miss a lot of responsive information.

Remember, in addition to general information about the legal authorization process, ACLU asked for:

Facts supporting a belief that al-Awlaki posed an imminent threat to the United States or United States interests;

[snip]

Facts supporting the assertion that al-Awlaki was operationally involved in al Qaeda, rather than being involved merely in propaganda activities;

[snip]

All documents and records pertaining to the factual basis for the killing of Samir Khan

DOJ probably has information pertaining to the assessment—for example—that Samir Khan could leave the US and travel to Yemen even though a long line of FBI terror investigation subjects have gotten arrested for doing the same. There's also information submitted in the Mohamed Osman Mohamud prosecution pertaining to Khan which also probably would have received high level attention.

And we know that DOJ claims to have evidence that proves that Awlaki was operational, much of it pertaining to Umar Farouk Abdulmutallab's attempted attack and subsequent interrogation (indeed, two of the few documents OIP says were responsive date to January and February 2010 and almost certainly pertain to the aftermath of Abdulmutallab's attempted attack). But there are other documents that almost surely should be there—such as discussions after the CIA added Awlaki to their kill list after April 6, 2010 and DOJ attempted to use that to get more intelligence out of Abdulmutallab. Or deliberations in September 2010 about whether to charge Awlaki or not. And I highly doubt that no one in top DOJ offices reviewed the opening argument in the Abdulmutallab case and/or discussed the strategy of keeping Awlaki's name silent, even while presenting information that—DOJ later claimed—was really about Awlaki in the first place.

All of this would be responsive to ACLU's request. Some of it is obviously unclassified.

Note, too, that while the other offices that described their search searched right through

the present, OIP decided,

The cut-off day for documents responsive to plaintiffs' request was November 3, 2011, the day the search for records commenced.

[snip]

The speech of Attorney General Eric Holder at Northwestern University School of Law on March 5, 2012 was delivered after the searches had been initiated, and the speech is therefore not included in the responsive material. A true and exact copy of those prepared remarks is nonetheless attached here as Exhibit E.

Of course, Holder's speech was not the only unclassified material from the period after November 3, 2011. By far the most relevant materials—more so probably than even the Holder speech—were released with Abdulmutallab's sentencing, when DOJ all of a sudden released information they had previously suppressed, in part to explicitly make claims about Abdulmutallab's ties to Awlaki.

The Supplemental Factual Appendix is included in order to provide the Court with additional information regarding "the nature and circumstances of the offenses," particularly Count One. It provides the Court with relevant details regarding other terrorists with whom defendant interacted overseas as part of this plot, including Anwar Awlaki.

Even beyond what DOJ claimed to the judge in the case, DOJ presented the appendix as proof that Awlaki's killing was legally justified. If it's proof, then why wasn't it turned over under FOIA?

Yet in the face of a legal request to turn these documents (or the underlying interrogations) over under FOIA, DOJ has contorted its response

to ignore them.

DOJ twice before—in the ACLU/CCR suit to establish the basis for Awlaki's presence on the kill list and with the Abdulmutallab opening arguments—decided not to present the evidence that purportedly justified Awlaki's killing in a legally antagonistic setting. They appear to have done so again.

Not only should the ACLU be demanding a more honest response to their FOIA. But Americans ought to be asking why DOJ has repeatedly backed off of presenting the evidence they say justifies killing an American citizen.

Update: I just counted. There are 48 email chains involving OAG and/or ODAG that OLC was able to find but OIP (the people supposedly good at finding things) failed to find. Of those, 18 are after OIP's self-imposed cut-off for search (in effect, it cut off its search just as Holder's aides were in the middle of a big debate about how to explain the killing of Awlaki). But that still means OIP failed to find 30 responsive email chains. Also note that OLC found two of the documents that appear in OIP's Vaughn index, and the implication is that OIP did not find the second one—a February 9, 2010 email from ODAG to OLC, at all.

On April 18, 2012, the Office of Legal Counsel referred two responsive documents to OIP that are subject to the FOIA. One of these documents was duplicative of material previously located by OIP and identified in OIP's Vaughn Index as document one. The responsive portions of the second document, totally three pages, have been withheld in full and the document is listed in the attached Vaughn Index as document four.

I wonder whether OIP would have admitted to either of these if OLC hadn't formally referred them for declassification.

THE NSC'S MAY 2011 "DRAFT" LEGAL ANALYSIS AND THE CONTINUED STONEWALLING OF RON WYDEN

I'm ultimately going to get around to arguing that the reason the government response to the ACLU targeted killing FOIA is so funky is because (mind you, this is a wildarsed guess) the CIA didn't rely on the OLC memo authorizing Anwar al-Awlaki's killing.

But for the moment I want to point out a far tinier but nevertheless related point.

On March 30 of this year, just before the government started scrambling for extensions on this FOIA, AUSA Sarah Normand called ACLU Attorney Eric Ruzicka to ask if ACLU would "limit the first prong of its FOIA requests" to DOJ and DOD. The first prong asked for,

All records created after September 11, 2001, pertaining to the legal basis in domestic, foreign and international law upon which U.S. citizens can be subjected to targeted killings, whether using unmanned aerial vehicles ("UAVs" or "drones") or by other means.

Normand asked Ruzicka to agree to exclude any draft legal analyses, emails, and internal communication. Ruzicka agreed to waive draft analyses, but not emails and internal communications.

Most of the internal communications from the DOD and DOJ that would have been excluded which are

described in the Vaughn indices aren't all that interesting—almost all pertain to discussions leading up to the Situation Room debate over how transparent to be on these killings or to Jeh Johnson and Eric Holder's speeches on targeted killing.

But there is a series of three email chains I find particularly interesting.

On May 18-19, 2011 attorneys at OLC and the National Security Council deliberated discussing "draft legal analysis regarding the application of domestic and international law to the use of lethal force in a foreign country against U.S. citizens." Then, on May 19, lawyers at OLC, DOJ's Civil and National Security Divisions, and at the Offices of the Associate and Deputy Attorney General discussed the same thing. Finally, on May 20, the DOJ lawyers and the National Security Council lawyers continued the discussion, this time including DOJ's Office of Legislative Affairs.

This says, at a minimum, two things. First, the White House and DOJ were discussing what they called "draft" legal analysis as late as May 2011, 11 months after OLC finalized an opinion supposedly authorizing Anwar al-Awlaki's killing but 4 months before the US killed him. And, that the discussion of that "draft" legal analysis pertained, in part, to some issue raised by Congress.

That, by itself, is interesting. Why was this legal analysis still considered draft analysis in May 2011? (And for what it's worth, they were having similar deliberations in November 2011, after they had already killed Awlaki.)

But then there's the likelihood that this discussion relates to persistent requests from Ron Wyden to get basic questions about targeted killing answered.

In a letter to Eric Holder on February 8, 2012 (so before DOJ tried to get ACLU to waive precisely this information) complaining about continued stonewalling of his questions about

targeted killing, Wyden made it clear he called Holder in April 2011 to get these questions answered. And DOJ answered in limited form in May 2011—the same month, at least, that DOJ and the White House were discussing “draft” legal analysis.

In February 2011, after making similar requests to other officials, I asked the Director of National Intelligence to provide the legal analysis that explains the intelligence community’s understanding of its authority to kill American citizens. The Director indicated that he would have liked to be responsive to my request, but he told me that he did not have the authority to provide formal written opinions of the Department of Justice’s Office of Legal Counsel to Congress.

So, as you will remember, **I called you in April 2011** and asked you to ensure that the secret Justice Department opinions that apparently outline the official interpretation of this lethal authority were provided to Congress. **The Justice Department provided me with some relevant information in May 2011**, and I mistakenly believed that this meant that you had agreed to my request. Nine months later, however, the Justice Department still has not fully complied with my original request, and it is increasingly clear that it has no intention of doing so.

Wyden’s letter continued by describing some of the questions he had asked Holder in April 2011 but had not had answered as of February 2012 (and as far as I know, to this day).

And it is critically important for the public’s elected representatives to ensure that these questions are asked and answered in a manner consistent with American laws and American values.

Some of these questions include: ‘how much evidence does the President need to decide that a particular American is part of a terrorist group?’, ‘does the President have to provide individual Americans with an opportunity to surrender before using lethal force against them?’, ‘**is the President’s authority to kill Americans based on authorization from Congress or his own authority as Commander-in-Chief?**’, ‘can the President order intelligence agencies to kill an American who is inside the United States?’, and ‘what other limitations or boundaries apply to this authority?’. [my emphasis]

I’m particularly interested in that question regarding whether the President relied on the AUMF (or some other Congressional grant of authority) or Article II power. Because it says whether or not these email discussions pertained to Wyden’s questions, the full Senate Intelligence Committee had still not been briefed on the basis of authority for the President’s authority to kill an American citizen. Hell, as far as we know, the Committee still hasn’t received that information.

According to Charlie Savage’s reporting, the OLC memo finalized 10 months before these discussions of “draft” legal analysis situated the authority to kill Awlaki in the AUMF.

Based on those premises, the Justice Department concluded that Mr. Awlaki was covered by the authorization to use military force against Al Qaeda that Congress enacted shortly after the terrorist attacks of Sept. 11, 2001 – meaning that he was a lawful target in the armed conflict unless some other legal prohibition trumped that authority.

But in his bizarrely unmentioned April 2012

speech discussing how the CIA decides whether its use of lethal force is legal, CIA General Counsel Stephen Preston emphasized Article II power, with an AUMF being secondary.

First, we would confirm that **the contemplated activity is authorized by the President in the exercise of his powers under Article II of the U.S. Constitution**, for example, the President's responsibility as Chief Executive and Commander-in-Chief to protect the country from an imminent threat of violent attack. This would not be just a one-time check for legal authority at the outset. Our hypothetical program would be engineered so as to ensure that, through careful review and senior-level decision-making, each individual action is linked to the imminent threat justification.

A specific congressional authorization might also provide an independent basis for the use of force under U.S. law.

In addition, we would make sure that the contemplated activity is authorized by the President in accordance with the covert action procedures of the National Security Act of 1947, such that Congress is properly notified by means of a Presidential Finding. [my emphasis]

Now maybe the government still hasn't figured out whether the President killed Awlaki based solely on his own authority or whether they nodded to Congress before they took out a US citizen with a drone.

Or maybe this issue is the precise question that they're trying to obscure with their silence about Preston's speech and their sustenance of the CIA Glomar.

IS THERE A PRE-2001 OLC OPINION AUTHORIZING TARGETED KILLING OF US CITIZEN TERRORISTS?

Update: I realize now this can't be the explanation. I've just referred back to the original request and the ACLU actually did time-limit their general requests to records created after September 11, 2001. So maybe the issue relates to non-al Qaeda terrorists?

I'm still working through all the declarations submitted in the government's response to the drone targeting FOIAs; I will have far, far more to say about what they suggest.

But for now I wanted to point to a detail in OLC Deputy Assistant Attorney General John Bies' declaration that suggests OLC has a pre-2001 memo authorizing the targeted killing of US citizen terrorists.

As Bies' declaration lays out, the three FOIAs at issue in this suit ask for OLC memos relating to the targeted killing of US citizens. To summarize:

- Scott Shane asked for OLC memos since 2001 on the targeted killing of people suspected of ties to Al Qaeda or other terrorist groups
- Charlie Savage asked for OLC memos on the targeted

killing of a United States citizen who is deemed to be a terrorist

- ACLU asked for all records on the legal basis under which US citizens can be subjected for targeted killings

That is, Shane put a start date on his FOIA—post 2001—and limited it to terrorist groups. Savage put no start date on it and didn't specify which terrorist groups he was addressing. ACLU didn't limit it with either a start date or ties to terrorist groups. Note, too, ACLU was looking for info on the killing of Abdulrahman al-Awlaki as well as his father and Samir Khan; Savage used language suggesting an interest in Anwar al-Awlaki, though he did not limit his request to the older Awlaki. Shane used no such limiting language.

As I've analyzed and will show at more length, the government gave inconsistent responses to these three FOIAs, even though on the surface they appeared to ask for the same information.

More interesting still is Bies' claim in his declaration that the responses to Savage and the ACLU were limited to the recent spate of targeted killings of US citizens. Bies wrote,

By letter dated October 27, 2011, [OLC Special Counsel] Colburn responded to the Savage Request on behalf of the OLC. ... **Interpreting the request as seeking OLC opinions pertaining to al-Aulaqi**, OLC neither confirmed nor denied the existence of such documents, pursuant to FOIA Exemptions One, Three, and Five.

[snip]

By letter dated November 14, 2011, Mr. Colburn responded to [ACLU lawyer Nate] Wessler on behalf of OLC, **interpreting**

**the request as seeking OLC opinions
pertaining to those three individuals**
[Anwar al-Awlaki, Samir Khan, and
Abdulrahman al-Awlaki] and informing him
that, pursuant to FOIA Exemptions One,
Three, and Five, OLC “neither confirms
nor denies the existence of the
documents in your request” because the
very fact of the existence of
nonexistence of such documents is itself
classified, protected from disclosure by
statute, and privileged.” [my emphasis]

Bies’ declaration had no language about Colburn “interpreting” Shane’s FOIA to pertain only to these killings in Yemen. In addition, as you can see from the letters Colburn sent (linked above), Colburn actually didn’t note his interpretation in his response letters to Savage and ACLU. I guess they were just supposed to guess.

And while this is just a wildarsed guess, the totality of these three requests and the caveats Bies made about the responses suggests that Colburn had to make such interpretations because of the open timeframe of the requests. That is, what is common to the Savage and ACLU requests but not the Shane one is the way they set no start point for their request.

Which suggests there may be OLC documents pertaining to the targeted killing of Americans (potentially as terrorists) dating back before the 2001 start point of Shane’s request. Who knows? Maybe there’s an OLC opinion authorizing the assassination of Black Panther Fred Hampton, for example (though the FBI would only fall under Savage’s request if considered “intelligence community assets”). If that’s correct, then is that OLC memo still on the books?

There are, I suspect, a number of other reasons why the government is so squirrely about this FOIA. But one of them may relate to documents lying around OLC’s archives from before the time

9/11 changed everything ... or returned an earlier state of targeted killing.

SCOTUS REVIEWS THE “MILITARY AGE MALE” STANDARD ON THURSDAY

One of the most consistent statements of outrage I’ve seen from people just coming to the horrors of the drone program is the military aged male criterion: the Administration’s assumption that all military age males killed in a drone strike must be combatants.

Mr. Obama embraced a disputed method for counting civilian casualties that did little to box him in. It in effect counts all military-age males in a strike zone as combatants, according to several administration officials, unless there is explicit intelligence posthumously proving them innocent.

Justin Elliott even got the Administration to reiterate the claim, albeit anonymously.

I gave the White House a chance to respond, and it declined to comment on the record. But speaking on condition of anonymity, an administration official acknowledged that the administration does not always know the names or identities of everyone in a location marked for a drone strike.

“As a general matter, it [the Times report] is not wrong that if a group of fighting age males are in a home where we know they are constructing explosives

or plotting an attack, it's assumed that all of them are in on that effort," the official said. "We're talking about some of the most remote places in the world, and some of the most paranoid organizations on the planet. If you're there with them, they know you, they trust you, there's a reason [you're] there." [brackets original]

What no one seems to get, however, is that between them, the Bush and Obama Administrations have been using that standard to **detain** people for over a decade. Indeed, there are probably over 30 men (I suspect the number is closer to 50) still at Gitmo being held on that standard, most of them for over a decade.

More importantly, SCOTUS will decide whether to uphold that standard on Thursday (or whenever they get around to accepting or denying cert on the 7 Gitmo cases they've been agonizing over for weeks).

The case in question is Uthman Abdul Rahim Mohammed Uthman's habeas petition. Here's how his cert petition describes the issues presented by his case.

Whether the Authorization of Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001) ("AUMF"), authorizes the President to detain, indefinitely and possibly for the rest of his life, an individual who was not shown to have fought for al Qaeda, trained to fight for al Qaeda, or received or executed orders from al Qaeda, and was not claimed to have provided material support to al Qaeda.

The government has always yoked its detention authority closely to its targeted killing authority (see, for example, the reported justification for the Awlaki killing). And here you can replace "detain, indefinitely and

possibly for the rest of his life” with “kill with a drone strike” and you’ve got precisely the authority that Obama (and Bush before him) claims to kill all men in the vicinity of suspected al Qaeda figures, even absent any claim they were al Qaeda fighters.

I wrote about the evidence against Uthman here (two of the men who gave evidence against him had been tortured), but here are the passages from Judge Henry Kennedy’s (yup, the same judge who presided over the Latif suit, with another Yemeni prisoner) opinion granting the habeas petition (before the DC Circuit overturned it).

In sum, the Court gives credence to evidence that Uthman (1) studied at a school at which other men were recruited to fight for Al Qaeda; (2) received money for his trip from an individual who supported jihad; (3) traveled to Afghanistan along a route also taken by Al Qaeda recruits; (4) was seen at two Al Qaeda guesthouses in Afghanistan; and (5) was with Al Qaeda members in the vicinity of Tora Bora after the battle had occurred there.

[snip]

Even taken together, these facts do not convince the Court by a preponderance of the evidence that Uthman received and executed orders from Al Qaeda. Although this information is consistent with the proposition that Uthman was a part of Al Qaeda, it is not proof of the allegation. . . . Associations with Al Qaeda members, or institutions to which Al Qaeda members have connections, are not enough to demonstrate that, more likely than not, Uthman was part of Al Qaeda.

In other words, Uthman’s habeas appeal challenges whether being in any of five wrong place at the wrong time—including a school, a

travel route, a guest house, and the vicinity of Tora Bora, as well as funded by jihadists—amount to being an al Qaeda militant. Subsequent to Uthman, detainees’ habeas petitions were rejected based on fewer of those criteria (for example, in addition to the error-ridden intelligence report against Latif, the main evidence against him is an even more tenuous travel route than used to jail Uthman). But the Circuit decision in Uthman basically enshrines the claim that being in the wrong place is all the evidence the government needs to detain someone indefinitely.

Since they’re rushing to roll out drones in US airspace, you better start worrying about whether your travel patterns mark you for killing or detention.

WHEN DID THE “SIGNATURE STRIKES” START IN YEMEN?

Last week, I argued that the focus on the drone vetting process—the “Kill List”—is a shiny object, distracting us from signature strikes targeted at patterns, not people, in Yemen. Today, I’m going to push that further and suggest the focus on drones is also a shiny object distracting from the degree to which we’ve gone to war against Yemeni insurgents, using a variety of tactics including but not limited to drones.

I’ve long accepted, based on the public reporting, that Obama approved signature strikes in Yemen—and John Brennan took over the targeting process—just a day or two after the Saudis delivered up UndieBomb 2.0 around April 20. That’s based largely on the fact that when Greg Miller first reported on the issue on April

18, he spoke prospectively. When the WSJ reported that Obama had approved signature strikes, it said the decision had been made “this month” (meaning some time in April), and it pointed to an April 22 drone strike that seemed likely to be a signature strike.

The frequency of U.S. strikes in Yemen is expected to increase with the changes. On Sunday, a CIA-piloted drone hit a vehicle believed to be carrying AQAP militants. Intelligence analysts are working to identify those killed.

[snip]

The White House’s decision this month stopped short of giving CIA and JSOC the Pakistan-style blanket powers that had been sought—opting instead for what one defense official termed “signature lite.”

Interestingly, that WSJ report pointed to “several direct threats to the US” that surely included the UndieBomb sting that had already reportedly been delivered up to the Administration.

U.S. counterterrorism officials said they are currently tracking several direct threats to the U.S. connected to AQAP. The officials wouldn’t provide further details because that information is classified.

So one way or another, Administration sources seemed to time this to the UndieBomb plot.

But I want to consider the likelihood that Obama embraced “signature strikes”—or rather, expanded drone targeting—earlier than that (though remember that the Administration reportedly knew the UndieBomb plot was coming up to a month before April 20, when it was reportedly delivered up).

Based on TBIJ’s reports of drone strikes in

Yemen, it's fairly clear what have been treated as drone strikes started getting out of control in March, after Abed Rabu Mansour Hadi took over as President in February, not just in April. There are the strikes in three days in early March, which TBIJ estimates killed upwards of 50 people.

The latest strike involved at least five U.S. drones and took place in the Jabal Khanfar region of Jaar, located in southern Abyan province, two senior Yemeni security officials said. At least six suspected al Qaeda militants were killed, Yemeni officials said.

A member of the military committee – Yemen's highest security authority – confirmed that strike, and said the Yemeni government was given no advance warning of it.

"The United States did not inform us on the attacks. We only knew about this after the U.S. attacked," the committee member told CNN.

The strike was the third such attack on suspected al Qaeda targets in less than three days, according to Yemeni officials.

The United States was also involved in two other major attacks on Friday and Saturday, which killed at least 58 suspected al Qaeda insurgents, two senior Yemeni defense ministry officials said.

The Friday airstrikes occurred in the Yemen province of al-Baitha in areas used as launching pads for militant attacks. The second attack took place in the towns of Jaar and Zinjibar in Abyan province.

One of the strikes—in Bayda—reportedly killed a significant number of civilians.

It's not just the civilian casualties, the high numbers of dead, or the reported Yemeni ignorance of the strikes that suggest these might be signature strikes (or something even broader) rather than personality strikes. They also accompany other military action—including reported naval bombardment—that suggests they're part of the coordinated assault on insurgents. While there have certainly been a number of lower level AQAP members named as those killed in the strikes, the focus seems to be on militarily significant targets, not individuals.

Also note, on some of these strikes, there has been confusion whether a drone or manned planes carried out the attack (partly based on the mistaken assumption—now largely put to rest—that only Yemen, rather than the US, would be using manned aircraft in Yemen).

Finally, note that all of these strikes came in the wake of AQAP claims to have killed a CIA officer earlier in March, though the US denied it. Provide AQAP targets to hit, they'll hit those targets, and you've got a reason to retaliate 100 times.

With all that in mind, re-read this April 2 LAT article. While it focuses on drone strikes that net 4-8 casualties rather than the ones that resulted in over 20, it does make it clear we were already at war against insurgents, not just AQAP.

As the pace quickens and the targets expand, however, the distinction may be blurring between operations targeting militants who want to attack Americans and those aimed at fighters seeking to overthrow the Yemeni government.

U.S. officials insist that they will not be drawn into a civil war and that they do not intend to put ground troops in Yemen other than trainers and small special operations units.

[snip]

Most militants fighting under the Al Qaeda banner in Yemen are local insurgents, U.S. officials say, along with Saudis bolstering the ranks and assuming leadership roles.

The LAT also dances around the two justifications the Administration has been testing out for going to war in Yemen: the targeting of “diplomats” and civilians in Yemen, and the possibility that Ibrahim al-Asiri might strike again.

Some of the militants are known to harbor ambitions of attacking the West: Ibrahim Hassan Asiri, who made the underwear bomb used by Umar Farouk Abdulmutallab in an attempt to blow up an airliner over Detroit, remains at large in Yemen, U.S. officials say.

The militants say they are fighting the governments in Sana and Riyadh as well as the United States. They have mounted lethal attacks on Yemeni government officials and civilians, including a March 5 battle that killed 100 Yemeni soldiers. An Al Qaeda affiliate claimed credit for a March 18 attack in which an American teacher was shot and killed by motorcycle-riding assailants.

[snip]

The militants were targeted not because they were plotting attacks against the U.S. but because intelligence suggested they were planning attacks on American diplomats or other targets inside Yemen, the U.S. officials said.

In other words, while LAT may have significantly under-reported the casualties in this assault on insurgents, they very clearly portray it as such, well before the news stories about signature versus personality drone strikes got rolled out. It appears the Administration was

already preparing its rather weak claims that our entry into this counterinsurgency was a response to imminent threats.

And then, over the course of the month of April, the White House developed first the claim that this war against insurgents is really just signature strikes like we've seen in Pakistan (where they're not accompanied by the same number of JSOC "trainers" and ships). As April turned to May, that claim turned into a campaign ad about Obama the steely Decider overseeing each and every kill.

All the decisions about this campaign may well be coming out of the steely Decider's White House. But it's pretty clear the rest of this news blitz arose because,

Brennan believed there was an even greater need to ... show[] the American public that al-Qaida [sic] targets are chosen only after painstaking and exhaustive debate [admittedly selectively cropped quote; see the original nonsensical sentence [here](#)]

We've significantly joined a counterinsurgency in Yemen—basically gone to war with no formal war announcement or declaration. Rather than announcing that, the White House has rolled out a campaign about how careful all these drone strikes are.