

# 17-157

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United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket No. 17-157

AMERICAN CIVIL LIBERTIES UNION,  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,  
*Plaintiffs-Appellees,*  
—v.—

DEPARTMENT OF JUSTICE, including its components THE  
OFFICE OF LEGAL COUNSEL AND OFFICE OF INFORMATION  
POLICY, DEPARTMENT OF DEFENSE, DEPARTMENT  
OF STATE, CENTRAL INTELLIGENCE AGENCY,  
*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**JOINT APPENDIX  
VOLUME IV OF IV  
(Pages A-722 to A-954)**

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# Exhibit 33

May 2013 Fact Sheet

**A-723**

## A-724

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### **U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities**

Since his first day in office, President Obama has been clear that the United States will use all available tools of national power to protect the American people from the terrorist threat posed by al-Qa'ida and its associated forces. The President has also made clear that, in carrying on this fight, we will uphold our laws and values and will share as much information as possible with the American people and the Congress, consistent with our national security needs and the proper functioning of the Executive Branch. To these ends, the President has approved, and senior members of the Executive Branch have briefed to the Congress, written policy standards and procedures that formalize and strengthen the Administration's rigorous process for reviewing and approving operations to capture or employ lethal force against terrorist targets outside the United States and outside areas of active hostilities. Additionally, the President has decided to share, in this document, certain key elements of these standards and procedures with the American people so that they can make informed judgments and hold the Executive Branch accountable.

This document provides information regarding counterterrorism policy standards and procedures that are either already in place or will be transitioned into place over time. As Administration officials have stated publicly on numerous occasions, we are continually working to refine, clarify, and strengthen our standards and processes for using force to keep the nation safe from the terrorist threat. One constant is our commitment to conducting counterterrorism operations lawfully. In addition, we consider the separate question of whether force should be used as a matter of policy. The most important policy consideration, particularly when the United States contemplates using lethal force, is whether our actions protect American lives.

#### **Preference for Capture**

The policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect, because capturing a terrorist offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots. Capture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with all applicable law and consistent with our obligations to other sovereign states.

#### **Standards for the Use of Lethal Force**

Any decision to use force abroad – even when our adversaries are terrorists dedicated to killing American citizens – is a significant one. Lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Lethal force will be used only to prevent or stop attacks against U.S. persons, and even then, only when capture is not feasible and no other

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reasonable alternatives exist to address the threat effectively. In particular, lethal force will be used outside areas of active hostilities only when the following preconditions are met:

*First*, there must be a legal basis for using lethal force, whether it is against a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.

*Second*, the United States will use lethal force only against a target that poses a continuing, imminent threat to U.S. persons. It is simply not the case that all terrorists pose a continuing, imminent threat to U.S. persons; if a terrorist does not pose such a threat, the United States will not use lethal force.

*Third*, the following criteria must be met before lethal action may be taken:

- 1) Near certainty that the terrorist target is present;
- 2) Near certainty that non-combatants<sup>1</sup> will not be injured or killed;
- 3) An assessment that capture is not feasible at the time of the operation;
- 4) An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and
- 5) An assessment that no other reasonable alternatives exist to effectively address the threat to U.S. persons.

*Finally*, whenever the United States uses force in foreign territories, international legal principles, including respect for sovereignty and the law of armed conflict, impose important constraints on the ability of the United States to act unilaterally - and on the way in which the United States can use force. The United States respects national sovereignty and international law.

### **U.S. Government Coordination and Review**

Decisions to capture or otherwise use force against individual terrorists outside the United States and areas of active hostilities are made at the most senior levels of the U.S. Government, informed by departments and agencies with relevant expertise and

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<sup>1</sup> Non-combatants are individuals who may not be made the object of attack under applicable international law. The term "non-combatant" does not include an individual who is part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense. Males of military age may be non-combatants; it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants.



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institutional roles. Senior national security officials – including the deputies and heads of key departments and agencies – will consider proposals to make sure that our policy standards are met, and attorneys – including the senior lawyers of key departments and agencies – will review and determine the legality of proposals.

These decisions will be informed by a broad analysis of an intended target's current and past role in plots threatening U.S. persons; relevant intelligence information the individual could provide; and the potential impact of the operation on ongoing terrorism plotting, on the capabilities of terrorist organizations, on U.S. foreign relations, and on U.S. intelligence collection. Such analysis will inform consideration of whether the individual meets both the legal and policy standards for the operation.

### **Other Key Elements**

**U.S. Persons.** If the United States considers an operation against a terrorist identified as a U.S. person, the Department of Justice will conduct an additional legal analysis to ensure that such action may be conducted against the individual consistent with the Constitution and laws of the United States.

**Reservation of Authority.** These new standards and procedures do not limit the President's authority to take action in extraordinary circumstances when doing so is both lawful and necessary to protect the United States or its allies.

**Congressional Notification.** Since entering office, the President has made certain that the appropriate Members of Congress have been kept fully informed about our counterterrorism operations. Consistent with this strong and continuing commitment to congressional oversight, appropriate Members of the Congress will be regularly provided with updates identifying any individuals against whom lethal force has been approved. In addition, the appropriate committees of Congress will be notified whenever a counterterrorism operation covered by these standards and procedures has been conducted.

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# Exhibit 34

August 2013 Kerry Statement

**A-728**

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**The New York Times** | <http://nyti.ms/16lL8Q6>

ASIA PACIFIC

# Kerry, in Pakistan, Expresses Optimism on Ending Drone Strikes Soon

By **MICHAEL R. GORDON** AUG. 1, 2013

ISLAMABAD, Pakistan — Secretary of State John Kerry said Thursday that the United States had made significant headway in its drone campaign and that he hoped the strikes in Pakistan could end shortly.

“I believe that we’re on a good track,” Mr. Kerry said in an interview on Pakistani television. “I think the program will end as we have eliminated most of the threat and continue to eliminate it.”

Asked if the United States had a “timeline” for ending the drone strikes in Pakistan, Mr. Kerry said: “Well, I do. And I think the president has a very real timeline, and we hope it’s going to be very, very soon.” But he did not specify what the timeline was, and a State Department statement issued later said, “Today, the secretary referenced the changes that we expect to take place in that program over the course of time, but there is no exact timeline to provide.”

Mr. Kerry was in Pakistan to strengthen ties, and was meeting with the nation’s new prime minister, Nawaz Sharif, and other members of the Pakistani leadership.

His remarks followed President Obama’s speech on drone policy in May,

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in which he asserted that the reduction in American troop levels in Afghanistan and progress in the fight against Al Qaeda had reduced the need for drone strikes. But Mr. Obama did not go as far as Mr. Kerry in talking of ending the strikes. Mr. Kerry's comments, and the State Department's qualifying statement, illustrated the difficulty the Obama administration is having in trying to balance its desire to strengthen ties with Pakistan with its determination to strike militant groups who mount attacks into Afghanistan from safe havens in Pakistan.

As part of a push to improve ties, Mr. Kerry met Thursday with Mr. Sharif, who delayed a trip to Mecca for the meeting; Sartaj Aziz, the prime minister's foreign affairs adviser; and Ashfaq Parvez Kayani, Pakistan's powerful army chief, among others.

As Mr. Kerry tried to focus on developing a broad relationship, however, the issue of drones kept intruding in his agenda and public appearances.

The United States' drone strikes are hugely unpopular in Pakistan. With Mr. Kerry standing by his side, Mr. Aziz said they should end.

"Drone attacks are counterproductive to our relationship," Mr. Aziz told a joint news conference. "We are asking for stopping."

In an effort to avoid inflaming public sentiment here, the Obama administration has cut back on the number of drone strikes in Pakistan.

According to the New America Foundation, a nonpartisan public policy institute, there have been 16 drone strikes in Pakistan this year, compared with 48 in 2012, 73 in 2011 and 122 in 2010.

Mr. Kerry said the United States was working with Pakistan on the issue, leaving open the possibility that the strikes might end only after the Pakistani government cracks down on the militant havens or takes steps to encourage a peace settlement between the Taliban and the Afghan government.

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However, Pakistani officials said nothing on Thursday suggesting that such tough action might be imminent.

Asked what action the Pakistani government might take against militant havens in Waziristan, Mr. Aziz said that Pakistan's forces were "overstretched right now" and that the government needed to try talk with local leaders first.

"Obviously, dialogue has to go along with military action, so we will explore that option first," Mr. Aziz said. "And if that doesn't work, then we'll see under what conditions and by what time frame we'll do the alternative actions."

On another pressing issue, Mr. Kerry told a news conference on Thursday that he expected the United States and Afghanistan to complete a security agreement that would allow American forces to stay in Afghanistan after 2014.

"I am personally confident that we will have an agreement," Mr. Kerry said during a visit here.

Several prominent lawmakers in the United States have criticized the White House for failing to say how many troops it plans to keep in Afghanistan after 2014 and even stating that the White House has been considering pulling out all forces from there — the "zero option." That approach, they have argued, has backfired by heightening insecurity in Afghanistan.

Mr. Kerry declined to say what issues remained to be settled in the talks over the Bilateral Security Agreement, the accord that is being worked out by the United States and Afghanistan.

Nor did he indicate when Mr. Obama would decide how many troops should remain in Afghanistan. But Mr. Kerry said he expected that American forces would remain, along with troops from allied countries, to train Afghanistan's forces and carry out commando raids against terrorist groups as it takes over security of the country from coalition troops.

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“The United States is drawing down, not withdrawing,” Mr. Kerry said.

There was no comment from Afghan officials on Mr. Kerry’s statements. But one irritant was removed when Afghanistan, faced with the possible loss of hundreds of millions of dollars in American aid, backed off a threat to impose fines on the NATO-led coalition over missing paperwork for cargo shipments, Afghan and coalition officials said Thursday.

Afghan officials had contended that the coalition, which is allowed to import supplies duty free, had never filed paperwork to claim the exemption on most of the material it had brought to Afghanistan. They estimated that 70,000 containers had been imported over the past decade and said each was subject to a \$1,000 fine now that the coalition was taking its material out. The fine could have totaled \$70 million.

The compromise announced on Thursday would see the Afghan government waive the fines in exchange for a coalition pledge to abide by the rules in the future, according to Finance Minister Omar Zakhilwal.

Matthew Rosenberg and Azam Ahmed contributed reporting from Kabul, Afghanistan.

A version of this article appears in print on August 2, 2013, on page A6 of the New York edition with the headline: Kerry, in Pakistan, Expresses Optimism on Ending Drone Strikes Soon.

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# Exhibit 35

2014 Rizzo Book



**A-734**

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—DINA TEMPLE-KASION, THE WASHINGTON POST

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# Company Man

THIRTY YEARS OF

CONTROVERSY AND

CRISIS IN THE CIA

# John Rizzo

“EMPHATICALLY A BOOK FOR ANYONE WHO CARES ABOUT THE SECURITY OF THIS COUNTRY.”

—MICHAEL MUKASEY, THE WALL STREET JOURNAL

## Company Man John Rizzo

“PING STORY.” —THE NEW YORK TIMES BOOK REVIEW

took “a total shot in the dark” and sent his résumé to the Central Intelligence Agency. More than thirty years later, after serving under eleven CIA presidents, he would become a notorious public figure in post-9/11 America, serving as the point person answering for the Iran-contra scandal and the 2003 Iraq war. Rizzo witnessed and participated in virtually all the significant events of the CIA’s modern history.

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“THIS IS SIMPLY THE MOST REVEALING INSIDER ACCOUNT TO DATE OF THE CIA DURING ITS MOST HISTORIC—AND CONTROVERSIAL—ERA. RIZZO’S HONOR IN EVERY CHAPTER. FRANKLY, I OFTEN FOUND MYSELF ASKING THE CIA’S PREPUBLICATION CENSORS SIGNED OFF ON SOME OF IT.” —JANA PRIEST, COAUTHOR OF *TOP SECRET AMERICA*

**RIZZO** had a thirty-four-year career as a lawyer at the CIA, and spent seven years as the Agency’s chief legal officer. Since then, from the CIA, he has served as senior counsel at the Washington, D.C. law firm Steptoe & Johnson.

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ISBN 978-1-4516-7394-4 \$17.00 U.S./\$26.00 Can.



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## CHAPTER 10

## The Attacks and the Response (September 2001–January 2002)

When the news first broke on that sunny Tuesday morning of September 11, 2001, I and thousands of other employees at the CIA's Langley headquarters were just settling in for another day at the office. Like the rest of the country, we watched our office TVs with unbelieving shock and horror as the World Trade Center towers collapsed. Many of us were aware of the increasingly ominous intelligence reports during the previous two years about a possible attack, but no one had envisioned this particular nightmare scenario. Yet everyone in the building who had been privy to those reports, myself included, immediately realized that this had to be an Al Qaeda operation.

And then came the news that another passenger jet had hit the Pentagon, just a few miles away from the Agency. Shortly after that, word came that yet another hijacked plane was still in the air, perhaps headed for the Washington metropolitan area. We watched as TV reporters, just as shaken and bewildered as everyone else, began excitedly speculating about its potential target. Perhaps the White House, they said. Perhaps the Capitol. Or perhaps CIA Headquarters.

It is an indelible memory, yet impossible to describe adequately, what it was like for us at Langley as we stared out our office windows—in my case, on the top floor of the original headquarters building—toward the skies. From my perch, I could look across the courtyard toward the new headquarters building and see dozens of my colleagues at their windows, looking out.

A few minutes later, an urgent message appeared on every office computer screen at the Agency: "Immediate Evacuation." There would be

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COMPANY MAN

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The Attacks and the Response (September 2001–January 2002)

exceptions to that edict, of course. Everyone involved on the counter-terrorist account stayed at his post. George Tenet took a handful of his top aides to a separate, small building—the CIA's printing plant—on the headquarters campus. General Counsel Bob McNamara was included in that small group, but I was not. Still, I decided to stay where I was. It was a decision made on strictly practical grounds. I could see from my office window, and from the windows in the Office of Public Affairs across the hall, that the roads to the main exit gates were already gridlocked. I could also see hundreds of employees spilling out of the two buildings and heading—most walking, some running—toward their cars in the vast parking lots encircling the buildings. It would take me hours to get off the compound and home, I figured. So I decided the hell with it. I closed the door to my office suite, ignored the blaring recorded voice on the hallway intercom repeating the evacuation order, and hunkered down at my desk. I wanted to do something, anything, that might be productive. My first move was to follow any lawyer's natural instinct. I took out a blank yellow legal pad. Focus, I told myself. Focus.

I knew that two things were bound to happen to the Agency in the immediate postmortems (for once, in the literal sense of that term) of this catastrophe. There would be investigations and recriminations directed at the CIA, demanding answers on how we could have let this happen. All the previous controversies I had been involved in during my Agency career would pale by comparison. But there was nothing to be done about that. Besides, for now, that was totally beside the point.

The other thing was that the White House would order the Agency to develop and undertake a full-scale assault on Al Qaeda, to employ all means necessary to prevent any further attacks on the homeland. So I poised my pen on the legal pad and began scribbling a laundry list of potential covert actions the CIA could undertake in the weeks and months ahead. Things we had never done before in my career. On that unimaginable morning, I let my imagination run wild.

I didn't keep any personal files on covert-action programs in my office, so I had to rely on memory to establish a baseline on what authority we already had to act against Al Qaeda. The spate of Clinton MONs in 1998 and 1999—which were still on the books—were confusing and contradictory, and in any case were woefully insufficient now. They permitted us to kill bin Laden and his close associates, maybe, but the authorities

were honeycombed with conditions and caveats. I tried to remember the terms of the proposed MON that Tenet had ordered up and presented to the new Bush administration in the early months of 2001. It was more aggressive and less ambiguous than the Clinton MONs, giving clear direction to the CIA to take lethal action against bin Laden. Yet even that seemed not to go far enough. Not on the morning of 9/11.

I scribbled down a new formulation: "Lethal action against members of Al Qaeda and any affiliated groups," or words to that effect. We would hunt down and kill anyone in Al Qaeda, or acting under its direction or influence, involved in the 9/11 attacks or actively planning attacks on the homeland or on U.S. citizens anywhere.

But then I wondered, was that all that we could do? Covert-action programs were never conceived to be primarily instruments of national vengeance, at least during my long career. They are supposed to be forward-looking documents, combating ongoing or future threats to the United States. Killing Al Qaeda leaders or operatives was one thing, but a dead man can't give you his intentions or plans. Even if we had the capacity and capability to kill them all—which I doubted—was that smart? Was that enough? Maybe, I thought, we should retain the option to take terrorists alive, not just to take them out of circulation but to get them to tell us about what their confederates still at large might be plotting.

I scribbled down the phrase "capture, detain and question" on my legal pad. I was totally winging it now. The CIA, in my experience, never had a program to hold people against their will. I had no idea where we might hold them (although it surely would not be anywhere inside the United States) or what sort of facility they would be held in. The manner in which we would question them did not cross my mind.

I made a few other notes to myself about what to include in any new program—language authorizing the CIA to call upon the services and personnel of all other federal agencies as well as foreign governments, things like that. It was early afternoon by then, and I decided it was time to go home to be with my wife and family. The unaccounted-for plane, United Flight 93, had just been reported as having crashed in a field in Shanksville, Pennsylvania. The carnage, at least for that day, seemed to be over. My trip home to Georgetown didn't take very long, but it seemed to last forever.

Over the next few days, John Bellinger, the legal advisor to the National

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Security Council staff, convened a series of marathon sessions, attended by senior lawyers from the White House and the national security community, to hash out the terms of the new MON. Bob McNamara went to some of the sessions, and I went to others. Less than a week after the 9/11 attacks, President Bush signed off on the final version. Multiple pages in length, it was the most comprehensive, most ambitious, most aggressive, and most risky Finding or MON I was ever involved in. One short paragraph authorized the capture and detention of Al Qaeda terrorists, another authorized taking lethal action against them. The language was simple and stark.

When the MON was delivered to the intelligence committees a day later, Republicans and Democrats alike had the same reaction: Is this enough? Is this everything you guys need to protect the country? As far as I was concerned, there was nothing else we possibly could have included; we had filled the entire covert-action tool kit, including tools we had never before used.

As far as I know, the MON remains in effect to this day.

In mid-October, Bob McNamara told me he was stepping down from his position as general counsel to accept a position in the private sector. It was not entirely a surprise to me, since Bob had been signaling for several months that he was exploring outside opportunities. Once 9/11 happened, however, I assumed he would postpone his plans for a while. Still, I understood Bob's decision—he had been in office for nearly four grueling years, and the pace and pressure were surely going to become even more relentless for years to come.

And so, when Bob departed in mid-November 2001, I became acting general counsel. It was not an unfamiliar position for me, having filled in for a few weeks at a time during the previous several years when the incumbent GC was out of town or in the interregnum between outgoing and incoming GCs. This would be no ordinary interregnum, of course. Workers were still sifting through rubble at Ground Zero and the Pentagon. The attempted "Shoe Bomber" attack on another U.S. passenger jet, as well as the murderous, unsolved "anthrax letter" incidents in D.C. and Florida, were keeping the nation in the grip of dread and fear. Meanwhile, the most high-stakes, high-risk covert-action program in CIA history was just getting under way. So, yes, I had been "acting" on previous

occasions, but never in circumstances remotely resembling these. To be the chief legal advisor at the CIA at that point of history was at once intoxicating and frightening.

What's more, I had the distinct impression that this time I could be in the hot seat for a while. In the months before 9/11, when Bob McNamara was making no secret of his plans to leave, I discerned no move by the White House to identify a replacement. Once Bob was gone, I still didn't. One day early on, I asked John Moseman, Tenet's chief of staff, and by now my close friend, if he knew of any talk about a new general counsel. Based on past experience, I knew that the process could take months—a candidate would have to be interviewed by the director, cleared by the White House political office, undergo a thorough background security investigation, be formally nominated by the president, and confirmed by the Senate.

"The White House hasn't said anything about it to George, and George hasn't said anything about it to the White House," John replied. "So just sit tight. No one's in any hurry."

"Have fun," he added with a mordant chuckle.

In 1996, shortly after he became deputy CIA director, George Tenet had begun convening biweekly meetings with the CTC so that he could be kept personally abreast of world terrorism developments. In the wake of the 1998 African embassy bombings, George had started holding these sessions on a weekly basis. A few days after 9/11, they morphed into a daily ritual that was officially called "the CTC Update" but soon came to be known around the building as "the five o'clock." It was no longer a mere briefing forum—it became the command bunker in the CIA's war on Al Qaeda, with George wielding the marshal's baton.

Each day at the appointed hour, a group of about thirty-five of us would gather around the oblong polished oak table in the director's conference room to review and discuss the daily developments in the Agency's full-throttle campaign against Al Qaeda. On one side of the table sat George, along with his deputy, John McLaughlin, Executive Director Buzzy Krongard (a spectacularly successful and colorful investment banker whom George had recruited a couple of years before), Deputy Director for Operations Jim Pavitt, and Deputy Director of Intelligence Jami Miscik. Several other senior officials—the directors of public and

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congressional affairs, the CIA comptroller, the acting general counsel, and a few other high-level straphangers—filled out that side of the table.

Across the table were arrayed the CIA's true warriors in this new, post-9/11 war. Each day about twenty officers from the Counterterrorist Center (CTC) and the Near East (NE) and Special Activities (SAD) divisions would troop in, sit down, and, for about an hour or so, basically scare the bejesus out of the rest of us with up-to-the-minute updates on the latest intelligence coming in on Al Qaeda plans, capabilities, and threats. Their presentation also included descriptions of what our people were doing, or proposed to do, in response.

The maestro of the group was the CTC chief, Cofer Black. An imposing presence with the physique of a retired NFL tight end, Cofer had a face and slicked-back, receding hairline that together reminded some of us of a late-career Jack Nicholson. Also, like most of Nicholson's screen characters, he spoke in a staccato, world-weary cadence liberally sprinkled with dark, cynical humor. But the dramatic image he presented was not an affectation—Cofer was a bona fide, hard-bitten product of the CIA's clandestine world, having spent years in hotspots and hellholes where he consistently performed with bravery and verve. In 1994, for instance, he had been the key CIA operative in orchestrating the capture in Sudan and rendition to France of the legendary terrorist fugitive Carlos the Jackal. In the post-9/11 literature, Cofer has been famously cited as having supposedly exhorted his troops to bring him "bin Laden's head in a box." I never heard him say that, either at the five o'clock meeting or elsewhere, but having gotten to know him well over the years, it rings true to me as the quintessential Cofer quote.

Cofer typically would lead off the meeting with the intelligence "headlines," then turn things over to the working-level operatives and analysts lined up in a row down the table from him. One would describe the most recent reports on threats to the homeland. The next would update Al Qaeda efforts to acquire biological and chemical weapons (which reliably elicited the most head-shaking and muttering from the rest of us). After that, a CTC analyst tracking intelligence on the possible location of bin Laden and his top commanders would give the latest update. The next two guys, from the CTC and the SAD, would describe the progress of the paramilitary war in Afghanistan. At the end of the row, the CTC's financial operations whiz, a thin, pale figure always wearing an impec-

cably tailored black suit, would quietly and methodically catalogue all the unprecedented ways in which he was detecting and disrupting Al Qaeda's international money flow.

One by one, these officers would crisply make their presentations. Some of them were only in their twenties; few were older than fifty. Their preternatural calm and the thoroughness with which these rank-and-file employees delivered their daily digests of danger and derring-do were a constant source of wonder to me. Watching them perform, I would think to myself: If the American people could only see this, they would be so proud and reassured.

Shirt-sleeved, tie askew, and chomping an unlit cigar beyond recognition, George Tenet would lean forward and listen eagerly, alternately cross-examining and encouraging the briefers at every turn. Occasionally, he would interrupt and bark out terse orders: That piece of new threat information you just gave me? Get it to the FBI pronto. That foot-dragging you're getting from the Pakistanis (or the Yemenis, the Saudis, and so on)? I'll get on the phone tonight and ream them out personally. George was hands-on all the way in those daily sessions.

As the months went on, these daily meetings acquired a certain cachet. Other than a couple of FBI and NSA employees who were on detail to the CTC, no one from outside the Agency was allowed to regularly attend. High-level officials from around the Executive Branch would quietly lobby to get into them, convinced that it meant entrée to some shadowy inner sanctum. In most cases, the Agency would resist those blandishments from outsiders (there was a blanket ban on anyone from a foreign intelligence service getting in, for instance), but on occasion George would allow a visiting U.S. government colleague to attend—I remember the NSA director, Mike Hayden, and the White House homeland security advisor, Fran Townsend, sitting in a few times in those early years.

Ironically, however, the really sexy, sensitive stuff was not bandied about at the five o'clock meetings. For something that was extraordinarily closely held, there would be a "rump" session of sorts scheduled immediately after the five o'clock meeting. These would be held in George's office, with only a handful of people in attendance. I had an open invitation to sit in on all of them.

One such "rump" session, in those frantic first months after 9/11, sticks out in my mind. The subject was a nascent CTC plan for CIA officers with

## COMPANY MAN

## The Attacks and the Response (September 2001–January 2002)

weaponized, unmanned aerial vehicles (UAVs) targeting the prey, from thousands of feet up, in their lairs on the Afghan frontier. But in late 2001, drone technology was still a work in progress; it was not yet certain that it would be lethally effective. True, I was fully aware that the MON that I helped prepare clearly sanctioned lethal actions against the Al Qaeda network. But those were only lawyers' antiseptic words on a page.

Instead, as the fateful year of 2001 turned into 2002, my energies and priorities were being directed to a separate and what proved to be a far more legally perilous area: the CIA's detention and interrogation of high-value Al Qaeda operatives.

From the outset, the top two names of the Agency's post-9/11 "most wanted" list were Osama bin Laden and his alter ego, Ayman al-Zawahiri. Technically, I suppose, they were wanted dead or alive, but I remember no one in the know at the CIA who seriously thought that either of them, if ever cornered, would allow himself to be taken into custody. Nonetheless, the Agency's preferred strategy for the next rung of high-value Al Qaeda targets (HVTs) was to capture them, not blow them away. It was these guys who were the most knowledgeable about the ongoing plots, about who was going to carry out the next wave of attacks, and about exactly where and when they would take place. And in late 2001 and on into 2002, there was every reason to believe Al Qaeda was planning more attacks. The experts at the CIA were convinced of that, and most of the still shell-shocked American public expected it. That same public, and their elected representatives, demanded that the government prevent it from happening, whatever that took.

To the CIA, that meant not only taking bin Laden's key henchmen out of circulation, but getting them to talk.

The first task for the Agency, accordingly, was to figure out where to put these HVTs, if and when we captured them (at which point, in the strange, new post-9/11 alphabet-soup terminology, they would morph into high-value detainees—HVDs). Defense Secretary Donald Rumsfeld put down a marker early on to George Tenet: The DOD wouldn't play the role of jailer for the CIA. No one was sure exactly why Rumsfeld felt that way—the DOD was busily turning the Guantánamo Bay Naval Base into a detention facility, after all—but Rumsfeld was obdurate and implacable.

The CTC told George, at one of the earliest "five o'clocks," that this was just as well: For the big fish we're after, we didn't want them mixing with the Al Qaeda foot soldiers who were rapidly filling up Gitmo. They needed to be held somewhere where no one but we could get access to them, the CTC said, where no one but we knew where they were. And foreign governments couldn't be relied on to hold them for us either, the CTC advised—who knew what might happen to them then? They could get killed, they could be let go. If we were going to get into this, the CTC recommended to George, the CIA needed absolute control over these HVDs.

And so, with George's go-ahead, the Agency began casting about for its own incarceration site. I soon found myself sitting in George's office, where terms like "deserted island" and "mystery ship" were being thrown around. Only in retrospect is it remarkable to me that such a fateful decision was made with so little hesitation. In those days, hesitation simply was not an option, not with some senior Al Qaeda operative about to fall into our lap any minute, and not with another attack on the homeland possibly just around the corner. Still, I do remember feeling a vague, inchoate sense of trepidation at the time. Jeez, I thought to myself, the CIA has never in my experience built and run a prison. Before long, another new term was thus introduced into the Agency dialogue: "black site."

By early 2002, the first such black site was in place. Just in time, because its first guest was about to arrive.



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# Exhibit 36

February 2014 Clapper Testimony

**A-743**

## A-744

6/11/2015

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**THE WALL STREET JOURNAL.**

WSJ.com

February 11, 2014, 4:19 PM ET

# CIA's Drones, Barely Secret, Receive Rare Public Nod

By Siobhan Gorman



Director of National Intelligence James Clapper testifies before the Senate Intelligence Committee on Capitol Hill in Washington, Jan. 29, 2014. (AP Photo/Pablo Martinez Monsivais)

Associated Press

The worst kept secret in Washington national security circles is no more. Director of National Intelligence **James Clapper** publicly acknowledged for the first time at a Senate hearing Tuesday that the Central Intelligence Agency has a drone program.

The CIA's drone program, which operates in Pakistan and Yemen, has been the subject of news reports for years. But U.S. officials have continued to steer clear of publicly acknowledging the program, glossing over CIA's role, because it has remained officially covert. That covert status allows the CIA to operate in countries where local governments don't support the strikes.

The U.S. military also operates a drone program, which is not covert.

In this exchange with Sen. **Bill Nelson** (D., Fla.) at a Senate Armed Services Committee

## A-745

6/11/2015

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hearing on global threats to the U.S., Mr. Clapper indirectly confirmed the existence of the CIA's program by saying Sen. Nelson's statement was accurate.

**Sen. Nelson:** It is — you tell me if this is correct — the administration's policy that they are exploring shifting the use of drones, unmanned aerial vehicle strikes, from the CIA to the DOD. Is that an accurate statement?

**Mr. Clapper:** Yes, sir, it is. And again, that would also be best left to a closed session.

**Sen. Nelson:** OK. Well, I just want to state at the outset that my opinion is that that is a mistake. And I think that what I consider to be a mistake, I will ask with this question: One of the avowed reasons, so stated, is that by it being the DOD, it would not be covert, it would be overt, and therefore, when the enemy says that we killed so many innocent civilians, which is usually not accurate by any stretch of the imagination, that we would be able to publicly state that. Is that one of the justification for the policy?

**Mr. Clapper:** That — yes, sir — it's awkward discussing this in public — that is, but I wouldn't characterize that as the primary reason.

Asked whether Mr. Clapper intended to publicly acknowledge the program, Mr. Clapper's spokesman **Shawn Turner** said, "He clearly said the topic should be discussed in closed session."

In May, President **Barack Obama** gave a lengthy speech outlining the legal framework and tightened standards for U.S. drone operations. But he did not specify any agency's role in the program in his remarks.

A classified policy guidance issued along with the speech outlined the administration's intention to gradually [move the CIA's drone operations over to the Pentagon](#).

The [CIA has yet to hand over the keys](#) to its Yemen program and is aiming to end the Pakistan program before handing it over to the Pentagon.

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# Exhibit 37

July 2014 Yoho Statement

**A-747**

## A-748

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<http://yoho.house.gov/meda-center/press-releases/yoho-wants-increased-transparency-and-oversight-over-us-drone-policy>

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### Yoho Wants Increased Transparency and Oversight over U.S. Drone Policy

**Washington, DC** - Today Congressman Ted Yoho (R-FL-03) introduced **H.R. 5091 – the Drone Reform Act (DRA)**, a bipartisan bill that would consolidate authority to use armed drones within the Department of Defense (DOD). This legislation shifts authority to DOD, which would lead to greater transparency in the budget and appropriations process by moving away from the heavily secretive intelligence budget. This will reveal to the American people where funds and program resources are being spent.

Congressman Yoho gave the following statement after introducing his bill:

*“The CIA’s main mission is intelligence collection and analysis. It should not be in the business of military strikes. This legislation will bring our armed drone fleet under the jurisdiction of the DOD, where it should be. If our national security requires drone strikes abroad, then one agency should be held accountable to the American people.*

*“Even our top military officials have been pressing for permission to publicly defend U.S. drone strikes against criticism at home and abroad and against the spread of misinformation from terrorist groups. This bill will allow our military personnel to testify before Congress and release details of all strikes. The DRA will make it clear that no other federal agency or department, or any personnel, shall have authority to operate or fire an armed drone except for DOD.”*

**Original Cosponsors: Reps. Justin Amash (R-MI), Thomas Massie (R-KY), Rush Holt (D-NJ), Paul Broun (R-GA), John Conyers (D-MI), Barbara Lee (D-CA), Mick Mulvaney (R-SC), and Raul Labrador (R-ID)**

###

Congressman Ted Yoho serves on the Foreign Affairs and Agriculture Committees. He represents North Florida's 3rd Congressional District.

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# Exhibit 38

July 2014 Yoho Bill



**A-750**

## A-751

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I

113TH CONGRESS  
2D SESSION

# H. R. 5091

To consolidate within the Department of Defense all executive authority regarding the use of armed unmanned aerial vehicles, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mr. YOHO (for himself, Mr. AMASH, Mr. MASSIE, Mr. HOLT, Mr. BROUN of Georgia, Mr. CONYERS, Ms. LEE of California, Mr. MULVANEY, and Mr. LABRADOR) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To consolidate within the Department of Defense all executive authority regarding the use of armed unmanned aerial vehicles, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drone Reform Act”.

**A-752**

1 **SEC. 2. DEPARTMENT OF DEFENSE EXECUTIVE AUTHORITY**  
2 **OVER USE OF ARMED UNMANNED AERIAL VE-**  
3 **HICLES.**

4 (a) DOD EXECUTIVE AUTHORITY.—

5 (1) PROHIBITION.—No operation involving the  
6 use of an armed unmanned aerial vehicle shall be  
7 carried out under the authority of a department or  
8 agency of the Federal Government other than the  
9 Department of Defense.

10 (2) USE BY MILITARY PERSONNEL.—Only uni-  
11 formed members of the United States Armed Forces  
12 may—

13 (A) operate, or order the operation of, an  
14 armed unmanned aerial vehicle; or

15 (B) operate or fire, or order the operation  
16 or firing of, any weapon or other munition car-  
17 ried on an armed unmanned aerial vehicle.

18 (3) APPLICABLE LAW.—The operation and use  
19 of an armed unmanned aerial vehicle shall be subject  
20 to the requirements of title 10 of the United States  
21 Code.

22 (b) RULES OF CONSTRUCTION.—Nothing in this sec-  
23 tion shall be construed—

24 (1) to limit or expand any authority of any  
25 component of the Federal Government to provide ad-  
26 vice, including intelligence, to the Department of De-

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3

1 fense in support of actions described in paragraph  
2 (1) and (2) of subsection (a); or  
3 (2) to create any authority, or expand any ex-  
4 isting authority, for the Federal Government to kill  
5 any person.

6 (c) UNMANNED AERIAL VEHICLE.—The term “un-  
7 manned aerial vehicle” means an aircraft that is operated  
8 without the possibility of direct human intervention from  
9 within or on the aircraft. The term includes aircraft re-  
10 ferred to as a drone, UAV, unmanned aircraft (UA), un-  
11 manned aerial system (UAS), remotely piloted aircraft  
12 (RPA), remotely piloted vehicle (RPV), remotely operated  
13 aircraft (ROA), and unmanned aerial vehicle system  
14 (UAVS).

15 (d) EFFECTIVE DATE.—This section shall take effect  
16 60 days after the date of the enactment of this Act.

○

**A-754**

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# Exhibit 39

September 2014 Pentagon Statement

**A-755**

## A-756

### IMMEDIATE RELEASE

# Statement from Pentagon Press Secretary Rear Admiral John Kirby on Ahmed Godane

Press Operations

Release No: NR-465-14

September 5, 2014

"We have confirmed that Ahmed Godane, the co-founder of al-Shabaab, has been killed. The U.S. military undertook operations against Godane on Sept. 1, which led to his death. Removing Godane from the battlefield is a major symbolic and operational loss to al-Shabaab. The United States works in coordination with its friends, allies and partners to counter the regional and global threats posed by violent extremist organizations."

**A-757**

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# Exhibit 40

December 2014 WPR Report



**A-758**

## A-759

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the WHITE HOUSE PRESIDENT BARACK OBAMA



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#### **The White House**

Office of the Press Secretary

For Immediate Release

December 11, 2014

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## A-760

Letter from the President -- Six Month Consolidated War Powers Resolution Report | whi... Page 2 of 8  
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# Letter from the President -- Six Month Consolidated War Powers Resolution Report



Dear Mr. Speaker: (Dear Mr. President:)

I am providing this supplemental consolidated report, prepared by my Administration and consistent with the War Powers Resolution (Public Law 93-148), as part of my efforts to keep the Congress informed about deployments of U.S. Armed Forces equipped for combat.

### MILITARY OPERATIONS IN SUPPORT OF U.S. COUNTERTERRORISM OBJECTIVES

In furtherance of U.S. counterterrorism efforts, the United States continues to work with partners around the globe, with a particular focus on the U.S. Central Command's and U.S. Africa Command's areas of responsibility. In this context, the United States has deployed U.S. combat-equipped forces to enhance the counterterrorism capabilities and support the counterterrorism operations of our friends and allies, including special operations and other forces for sensitive operations in various locations around the world. Specific information about counterterrorism deployments to select countries is provided below, and a classified annex to this report provides further information.

#### Military Operations Against al-Qa'ida, the Taliban, and Associated Forces and in Support of Related U.S. Counterterrorism Objectives

Since October 7, 2001, the United States has conducted combat operations in Afghanistan against al-Qa'ida, the Taliban, and associated forces. In support of these and other overseas operations, the United States has deployed combat-equipped forces to a number of locations in the U.S. Central, Pacific, European, Southern, and Africa Command areas of operation. Such operations and deployments have been reported previously, consistent with Public Law 107-40 and the War Powers Resolution, and operations and deployments remain ongoing. These operations, which the United States has carried out with the assistance of numerous international partners, have been successful in seriously degrading al-Qa'ida's capabilities and brought an end to

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the Taliban's rule in Afghanistan. If necessary, in response to this terrorist threat, I will direct additional measures to protect U.S. citizens and interests. It is not possible to know at this time the precise scope or the duration of the deployments of U.S. Armed Forces necessary to counter this terrorist threat to the United States.

**Afghanistan.** United States Armed Forces have transitioned the lead for security to Afghan security forces while striking significant blows against al-Qa'ida's leadership and preventing Afghanistan from being used to launch attacks against our homeland. On May 27, 2014, I announced my decision to end the U.S. combat mission in Afghanistan at the end of 2014, and to maintain a limited number of U.S. forces in Afghanistan beyond the end of 2014. These forces in Afghanistan will be for the purposes of training, advising, and assisting Afghan forces and supporting counterterrorism operations against the remnants of al-Qa'ida.

The U.N. Security Council most recently extended its authorization of the International Security Assistance Force (ISAF) in Afghanistan until December 31, 2014, in U.N. Security Council Resolution 2120 (October 10, 2013). The mission of ISAF, under North Atlantic Treaty Organization (NATO) command and in partnership with the Government of the Islamic Republic of Afghanistan, is to reduce the capability and will of the insurgency, support the growth in capacity and capability of the Afghan National Security Forces (ANSF), and facilitate improvements in governance and socio-economic development in order to provide a secure environment for sustainable stability. For the last few years, the ISAF campaign has focused on preparing the ANSF for full security transition in 2014.

Since June 2013, the ANSF have been in the lead for security nationwide and have been conducting the overwhelming majority of operations. ISAF is now in support of the ANSF, and the only unilateral operations that ISAF conducts are in support of its own security, sustainment, and redeployment. During the remainder of its campaign, ISAF will continue to focus on developing the sustainability of the ANSF at the corps and ministerial levels. The security transition process -- as agreed to at the 2010 NATO Summit in Lisbon and reaffirmed at the 2012 NATO Summit in Chicago -- remains on track, and the ANSF are expected to assume full responsibility for security across the whole of Afghanistan by the end of 2014.

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Following the completion of the ISAF mission at the end of 2014, the mission to help train, advise, and assist the ANSF and Afghan ministries and institutions will continue through the follow-on NATO-led Resolute Support Mission.

Today, there are approximately 15,000 U.S. forces in Afghanistan. The U.S. Armed Forces are on track to draw down to a Force Management Level of 9,800 by early 2015. (The actual number of U.S. military personnel in Afghanistan may exceed this Force Management Level due to, for example, overlap during rotations of units and the continued presence of forces with the single mission of supporting the retrograde of U.S. equipment, both of which are excluded from counting against the Force Management Level.) By the end of 2016, U.S. forces would draw down to a small presence at our embassy in Kabul, focusing primarily on security assistance activities. The United States would continue to work with our Afghan partners to pursue the remnants of al-Qa'ida and more broadly to work with our partners in the region to continue to detect and disrupt extremist threats.

As I noted in my report of June 12, 2014, on March 25, 2013, the United States signed a Memorandum of Understanding (MOU) with the Government of Afghanistan under which the United States transferred all Afghan nationals detained by U.S. forces in Afghanistan to the custody and control of the Afghan government.

Pursuant to the MOU, any new Afghan detainees are to be transferred to Afghan custody and control within 96 hours after capture. United States forces in Afghanistan continue to detain a small number of third-country nationals under the 2001 Authorization for the Use of Military Force (Public Law 107-40), as informed by the law of war.

**Iraq and Syria.** In order to provide support and security to U.S. personnel and the U.S. Embassy in Baghdad and as part of a comprehensive strategy to degrade and ultimately defeat the Islamic State of Iraq and the Levant (ISIL), I authorized, earlier this year, the deployment of U.S. Armed Forces to Iraq. These deployments of U.S. forces, which I reported to the Congress in a series of reports in recent months, are conducting coordination with Iraqi forces and providing training, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Kurdish Peshmerga forces. Additionally, these forces are conducting a systematic campaign of airstrikes and other necessary actions against ISIL forces in Iraq and Syria and airstrikes against elements of al-Qa'ida known as the Khorasan

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Group in Syria. The Force Management Level for U.S. Armed Forces in Iraq currently is 3,100 personnel.

These actions are being undertaken in coordination with and at the request of the Government of Iraq and in conjunction with coalition partners.

**Somalia.** In Somalia, a small contingent of U.S. military personnel, including some special operations forces, has worked to counter the terrorist threat posed by al-Qa'ida and associated elements of al-Shabaab. On September 1, 2014, U.S. forces conducted an airstrike in Somalia that killed the emir of the terrorist group al-Shabaab, Ahmed Abdi al-Muhammad, also known as Ahmed Godane.

**Yemen.** The U.S. military has also been working closely with the Government of Yemen to operationally dismantle and ultimately eliminate the terrorist threat posed by al-Qa'ida in the Arabian Peninsula (AQAP), the most active and dangerous affiliate of al-Qa'ida today. Our joint efforts have resulted in direct action against a limited number of AQAP operatives and senior leaders in that country who posed a terrorist threat to the United States and our interests.

**Cuba.** Combat-equipped forces, deployed since January 2002 to the Naval Base, Guantanamo Bay, Cuba, continue to conduct humane and secure detention operations for the 142 detainees at Guantanamo Bay under the authority provided by the 2001 Authorization for the Use of Military Force (Public Law 107-40), as informed by the law of war.

### Military Operations in Niger in Support of U.S. Counterterrorism Objectives

As indicated in my report of December 13, 2013, U.S. military personnel in Niger continue to provide support for intelligence collection and to facilitate intelligence sharing with French forces conducting operations in the Sahel and with other partners in the region. The total number of U.S. military personnel deployed to Niger is approximately 200.

### Military Operations in Chad in Support of Efforts to Locate Schoolgirls Kidnapped in Nigeria

The deployment of U.S. military personnel to Chad to support U.S. intelligence, surveillance, and reconnaissance operations has concluded. A small number

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of U.S. military personnel remain deployed to Chad for security cooperation activities.

### MILITARY OPERATIONS RELATED TO THE LORD'S RESISTANCE ARMY

In October and November 2011, U.S. military personnel with appropriate combat equipment initially deployed to Uganda to serve as advisors to regional forces of the African Union Regional Task Force (AU-RTF) that are working to apprehend or remove Joseph Kony and other senior Lord's Resistance Army (LRA) leaders from the battlefield, and to protect local populations. United States forces deployed to central Africa also operate and maintain U.S. aircraft providing air mobility support to foreign partner forces. The aircraft and personnel providing the enhanced air mobility support will deploy to the LRA-affected areas of central Africa episodically, as they are available, consistent with other Department of Defense requirements. During these deployments, the number of U.S. military personnel deployed to the central Africa region, including advisors deployed for this mission and personnel providing logistical and support functions to this and other missions, will fluctuate at a level up to approximately 300.

United States forces are working with select partner nation forces of the AU-RTF to enhance cooperation, information-sharing and synchronization, operational planning, and overall effectiveness. These forces, however, will not engage LRA forces except in self-defense. It is in the U.S. national security interest to help our regional partners in Africa to develop their capability to address threats to regional peace and security, including the threat posed by the LRA. The United States is pursuing a comprehensive strategy to help the governments and people of this region in their efforts to end the threat posed by the LRA and to address the impact of the LRA's atrocities.

Additional information about military operations related to the Lord's Resistance Army is provided in the classified annex.

### MILITARY OPERATIONS IN EGYPT

Approximately 700 military personnel are assigned to the U.S. contingent of the Multinational Force and Observers, which have been present in Egypt since 1981.

### MILITARY OPERATIONS IN JORDAN

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As initially detailed in my report of June 21, 2013, at the request of the Government of Jordan, U.S. Armed Forces elements, including Patriot missile systems, fighter aircraft, and related support, command, control, and communications personnel and systems, are deployed to Jordan to support the security of Jordan and promote regional stability. The total number of U.S. forces in Jordan is approximately 1,700 U.S. military personnel. These forces will remain in Jordan, in full coordination with the Government of Jordan, until the security situation becomes such that they are no longer needed.

### U.S./NATO OPERATIONS IN KOSOVO

The U.N. Security Council authorized Member States to establish a NATO-led Kosovo Force (KFOR) in Resolution 1244 on June 10, 1999. The original mission of KFOR was to monitor, verify, and, when necessary, enforce compliance with the Military Technical Agreement between NATO and the then-Federal Republic of Yugoslavia (now Serbia), while maintaining a safe and secure environment. Today, KFOR deters renewed hostilities in cooperation with local authorities, bilateral partners, and international institutions. The principal military tasks of KFOR forces are to help maintain a safe and secure environment and to ensure freedom of movement throughout Kosovo. The U.S. contribution to KFOR is approximately 700 U.S. military personnel out of the total strength of approximately 4,600 personnel.

### REGIONAL SECURITY OPERATIONS

As stated in my report of June 12, 2014, U.S. Armed Forces remain in Yemen to support the security of U.S. personnel. These forces will remain deployed, in full coordination with the respective host governments, until the security situation no longer requires them.

As I noted in my report of July 27, 2014, during the period July 25-26, embassy personnel and the U.S. forces supporting their security were relocated outside Libya. To support the safe departure of the embassy staff from Libya over land through Tunisia, U.S. military aircraft and additional military personnel entered Libya and Tunisia; those forces also departed Libya.

As I noted in my report of September 11, 2014, U.S. Armed Forces deployed to the Central African Republic to support the resumption of the activities of the U.S. Embassy in Bangui. The force is expected to remain in the Central



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African Republic until it is replaced by an augmented U.S. Security Guard Detachment and additional Department of State civilian security personnel as the security situation allows.

I have directed the participation of U.S. Armed Forces in all of these operations pursuant to my constitutional and statutory authority as Commander in Chief (including the authority to carry out Public Law 107-40 and other statutes), and as Chief Executive, as well as my constitutional and statutory authority to conduct the foreign relations of the United States. Officials of my Administration and I communicate regularly with the leadership and other Members of Congress with regard to these deployments, and we will continue to do so.

Sincerely,

BARACK OBAMA



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# Exhibit 41

January 2015 Burgess Bill

**A-768**

**A-769**

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I

114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 466**

To prohibit the Central Intelligence Agency from using an unmanned aerial vehicle to carry out a weapons strike or other deliberately lethal action and to transfer the authority to conduct such strikes or lethal action to the Department of Defense.

---

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2015

Mr. BURGESS (for himself and Mr. AMASH) introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

**A BILL**

To prohibit the Central Intelligence Agency from using an unmanned aerial vehicle to carry out a weapons strike or other deliberately lethal action and to transfer the authority to conduct such strikes or lethal action to the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

**A-770**

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2

1 **SECTION 1. PROHIBITION ON CENTRAL INTELLIGENCE**  
2 **AGENCY OPERATION OF UNMANNED AERIAL**  
3 **VEHICLE STRIKES AND TRANSFER OF AU-**  
4 **THORITY TO THE DEPARTMENT OF DEFENSE.**

5 (a) PROHIBITION.—Notwithstanding any other provi-  
6 sion of law, no officer or employee of, or contractor or  
7 detailee to, the Central Intelligence Agency shall use an  
8 unmanned aerial vehicle to carry out a weapons strike or  
9 other lethal action.

10 (b) TRANSFER TO DEPARTMENT OF DEFENSE.—  
11 Notwithstanding any other provision of law, the President  
12 shall transfer to the Department of Defense all authority  
13 to use an unmanned aerial vehicle to carry out a weapons  
14 strike or other lethal action.

○

**A-771**

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# Exhibit 42

February 2015 Pentagon Statement

**A-772**

## A-773

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### Department of Defense Press Briefing by Rear Adm. Kirby in the Pentagon Briefing Room

**Presenter: Pentagon Press Secretary Navy Rear Adm. John Kirby**  
February 03, 2015

REAR ADMIRAL JOHN KIRBY: Good afternoon, everybody.

Thanks for waiting.

I want to read a statement on behalf of the secretary and then I've got one other short announcement to make and we'll get to your questions.

On behalf of the men and women of the United States Department of Defense, Secretary Hagel extends his deepest condolences to the family of Royal Jordanian Air Force Pilot First Lieutenant Moaz al-Kassasbeh, who was brutally murdered after being taken captive by ISIL terrorists.

This horrific, savage killing is yet another example of ISIL's contempt for life itself. The United States and its military stands steadfast alongside our Jordanian friends and partners.

Jordan remains a pillar of our global coalition to degrade and ultimately destroy ISIL, and this act of despicable barbarity only strengthens our shared resolve.

We send our thoughts and prayers to Lieutenant al-Kassasbeh's comrades, loved ones, and all Jordanians as we join them in mourning this tragic loss.

Now, I do want to make you aware that on Saturday, this past Saturday, the 31st of January, a little bit after 9 a.m. Eastern Time, U.S. Special Operations forces conducted a strike south of Mogadishu, using unmanned aircraft and several Hellfire missiles. This operation was a direct strike against the al-Shabaab network, and the terrorist group's chief of external operations and planning for intelligence and security. His name was Yusuf Dheeq.

We are still assessing the results of the operation and will provide additional information when and if appropriate. At this time however, we don't assess there to be any civilian or bystander casualties as a result of the strike.

This operation was, as others have been, an example of the commitment made by the United States government, our allies and partners, to the people and to the government of Somalia. And it goes to show, again, how long our reach can be when it comes to counterterrorism.

Q: Admiral, was the U.S. aware that the Jordanian pilot had been killed one month ago, on January 3rd? And also a question on the Somalia announcement there. This was the -- did you say that the intelligence and --

(CROSSTALK)

REAR ADM. KIRBY: The intelligence chiefs -- intelligence and security chief and director of external planning. So directly involved in the planning and collection of information to plan and conduct strikes outside Somalia.

Q: Can you give any assessment of the impact of that as killing him as well as the previous senior al-Shabaab about three weeks ago?

REAR ADM. KIRBY: Well, if, again, I'm not in a position now to confirm the results of the strike. But if successful, if he no longer breathes, then this is a significant -- another significant blow to al-Shabaab and their ability to conduct, plan, prepare for and -- and strike against targets inside and outside Somalia. So we would deem this to be -- if successful -- a very significant blow against their capabilities.

On your first question, Bob, I haven't seen anything that indicated that we had before today any direct knowledge of the murder happening on the 3rd of January. I've seen these reports today, but I'm not aware that we had any indications prior to today that it happened so long ago.

Q: Admiral, as a result of the killing of the Jordanian pilot, President Obama said today that the U.S. was going to double-down on the efforts to defeat and degrade ISIS -- ISIL. What does that mean?

I mean, are there plans by the U.S. military to double the efforts in their fight against ISIL?

REAR ADM. KIRBY: Well, you know we don't talk about future operations, Jim, but I think it, as I said in my opening statement, reflecting the secretary's views, that it's just another example of how barbarous this group is and how serious the threat we need to continue to take -- to take them -- and we will.

And you also know that there has been a long, concerted effort here over the last seven months to degrade and destroy their capabilities. Nothing is going to slow down about that. We're going to continue to put as much pressure on them as possible with our partners in Iraq and in Syria.

Q: I guess my question is, was that just a sort of a reaction to what happened? Or are there actual plans in the works to double-down the U.S. military efforts against ISIL?

REAR ADM. KIRBY: We don't talk about future plans and operations. What I can tell you is that we're going to remain committed to this, as we have been, and we're not -- there's not going to be any loss of focus. In fact, an event like this only sharpens that focus and makes it that more -- you know, makes it that more important for us to succeed.

(CROSSTALK)

Q: Admiral Kirby, Lt. Gen. Vincent Stewart was on Capitol Hill for his confirmation hearing, or on -- at a hearing today and said that of the -- given the percentage of recidivism among released Gitmo detainees, that one of the five -- Taliban five who were released for Sergeant Bowe Bergdahl would be expected to return to the fight and that DIA would not be able to do anything to trace them once the one year is up in terms of Qatar watching them for one year.

That seems to stand in contrast to what you said in terms of the ability to mitigate the risk that these released prisoners pose after the one year mark in May ends in Qatar, if they decide to leave for Afghanistan, return to the fight. How do you reconcile that?



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REAR ADM. KIRBY: Well, I didn't see the general's comments, but let's just take that at face value. What I -- I still stand by what I said up here before. And so let's look at this factually right now, because it's very difficult to predict the future. All five remain in Qatar. All five are being monitored. There are security assurances that we have from the government of Qatar. And the secretary's comfortable that those assurances are being met and followed.

It was the fact that they existed at all and there was a monitoring program in place allowed us to know about this individual's reengagement. And as you know, I can't get into the details of what that -- the character of that reengagement. But we knew about it and were able to have a dialogue with the government in Qatar because it worked.

And so again, I would repeat what I said last week, that we're comfortable that going forward, through these measures, we're going to be able to more closely monitor them. And that we will continue to work with partners, not just in Qatar, but in the region, to try to mitigate the threat that any returned detainee could potentially pose, not just to American interests, but to the interests of our partners in the region.

Q: But do you think that can continue after May? I mean, you have --

REAR ADM. KIRBY: The other thing I'd say -- the other thing I'd say is, because I think where you're going is "well, what happens if they go back to Afghanistan?"

I think Secretary Hagel said this very, very well, and very eloquently, in the House Armed Services Committee testimony, when we discussed the Bergdahl transfer, when he said they return to the battlefield at their own peril.

And they will, because when they return to the battlefield, if they choose to do that, we obviously have the ability to protect our troops, and we will. And the Afghan National Security Forces are far more competent today than they were even a year ago, and they are certainly capable, and increasing in their capability of defending their citizens.

Q: He also said DIA was not consulted before the decision to swap the prisoners was made. Why wasn't DIA consulted?

REAR ADM. KIRBY: I'd have to get back to you on that, Jen. I didn't see that particular comment. I can't -- I can't validate it. I mean, I'm sure that the general was speaking honestly and truthfully. I'd just -- you're going to have to let me get back to you on that.

Joe?

Q: Admiral Kirby --

REAR ADM. KIRBY: I'll come to you in a second.

Q: After the killing of the Jordanian pilot, how do you think the Pentagon, the United States, and the coalitions will respond to that killing and to the killing of other hostages?

REAR ADM. KIRBY: We haven't made it a -- and I can only speak for the United States military -- we haven't made it a point to respond directly to these killings, even when these -- when American citizens were killed.

What we have done and will continue to do is degrade and destroy their capabilities and continue to put them on the defensive, in which they still remain today.

So there's -- I wouldn't -- at least from an American military perspective, I wouldn't look at this as a -- you're not going to -- it's not fit for fat. We're at war with ISIL in the same way that we're at war with Al-Qaida. We're at war with allies and partners: indigenous partners in Iraq, and hopefully growing Syrian moderate opposition in Syria. Nothing's going to change about that, Joe.

Nobody's letting off the gas. We're going to continue to put pressure on ISIL regardless of these barbaric acts. What these acts do, however, I mean, they bring into stark relief just how despicable these people are, and how little that -- the contempt that they have for life and how little they care.

Now, I don't need to remind you that this pilot was himself a Muslim. So, it does bring into stark relief the seriousness of the threat.

But you know, the -- these brutal murders, I can't -- there's no way I could, but no possibly figure out how to justify it in your brain, because it's so twisted. But it certainly isn't -- these aren't the acts of a winner.

And they're not winning.

Jamie.

Q: You mentioned in the strike in Somalia that it demonstrated the long reach of U.S. counter-terrorism efforts. Is that in any way a veiled or maybe not so veiled warning to ISIL?

REAR ADM. KIRBY: There's no veil put upon the warning to ISIL. We have been nothing but clear and transparent about the degree to which we take this threat seriously and that we're going to work to eradicate it.

Q: Do you think that the -- you've mentioned the brutality, the barbaric nature of this act. Do you think that could backfire against them in terms of creating more homegrown capability to go against them?

REAR ADM. KIRBY: Backfire in terms of hurting their recruiting efforts?

I think it -- it's hard to say.

I do think an act like this, as all their murderous acts have been, but they're not -- they're certainly not, as I said, the behavior of a winner. And they're certainly not in our view going to further advance any success by them.

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I do think that this will be a setback, eventually.

Now, will it possibly attract some young, disenfranchised young men to the cause? It very well might.

And I think that they believe that there is propaganda value. Obviously, they think there's propaganda value into not only doing this, but videotaping it and then posting it online.

But in the end, it just shows the utter corruption, the debasement of who they are as an organization. And yes, it will – I think that at least regionally – it will backfire on them.

Yeah?

Q: So admiral, since the capture of Lieutenant Kassasbeh, did -- did you have any information about his whereabouts or make any effort to -- to try and release him?

And the second question, do you have any concerns that the killing of Kassasbeh will have any negative implications on the popular support for the war on DAESH, and more specifically --

REAR ADM. KIRBY: Popular support here in the United States?

Q: No, abroad, basically in the region, in Jordan. And do you still have the commitment of the Jordanian government to be part of the coalition against ISIL?

REAR ADM. KIRBY: Well, I won't speak for the Jordanian government.

Q: Did you receive any new commitment?

REAR ADM. KIRBY: Since this video? None that I'm aware of. But I would let the Jordanian government speak for itself and for the Jordanian people. That's not my place.

I'm not aware that we had any information at all in terms of specificity about where he was being held. We had been working closely with Jordanian officials since he was captured, you know, to do what we could, to try to help locate him. But I'm not aware that any -- that there was any success in that regard. So, there would've been no ability to try to mount an overt rescue opportunity.

Q: And on the popular support in the region?

The public opinion support.

REAR ADM. KIRBY: What this will do to popular support? Well, you're already seeing video out of Amman about the reaction there by the Jordanian people to this. I think this goes to Jamie's question. I do think that this has the potential to backfire on them. I absolutely do believe that, in the region.

But again, I think it's important, everybody, just to take a couple of steps back and look at who these guys are, what they're about, and the seriousness of the threat.

And we've been saying this for a long, long time. And we've also said it's going to take a while to get at the ideology, which is the real center of gravity here. You're not going to do that through bombs and airstrikes. That doesn't mean the bombs and airstrikes aren't going to keep happening. They are.

Nothing is going to change. Nothing is going to change as a result of today and this video about the resolve that we, the United States military have, or the coalition has more broadly.

Q: Since you mentioned, if I may have a follow-up, since you mentioned the videos from Amman, we actually on Al Jazeera have different other videos as well. We had videos from the region where Kassasbeh is, was born, and people saying "well, why are we in this situation? This is not our war in the first place. This is a U.S. war." How do you respond to that?

REAR ADM. KIRBY: I didn't see those videos.

So let me just more broadly respond to the idea that this is the U.S.'s war. It's not. And I think a coalition of 60 nations proves that it's not. We're not the only ones involved in this in trying to get rid of this group.

That said, I can -- you know, we also believe in this country, in you know, a diversity of opinion, and certainly can allow for the fact that others may have a different view about what this murder means or should mean going forward.

All I can do, again, is speak for the United States military. That's my job. And what I'm telling you is the United States military is going to stay committed to this.

Phil?

Q: Admiral, I know you don't like to get into body counts or nose counts in this fight against ISIL, so I won't ask about specific numbers, unless you're interested in talking about them, but there are reports and discussion over the past couple of days that ISIL is getting more foreign fighters as part of its recruiting effort than the U.S. and the coalition are killing there.

Is that accurate? And can you give us any sense of what the difference is between their ability to add to their pool of combatants and the Americans' and others' ability to take those guys off the battlefield?

REAR ADM. KIRBY: You're right, I'm not going to get into body counts with you Phil, or throw out numbers, because, as I've said before, I don't think that's a helpful metric.

That's okay. But what I can tell you is we do continue to attrite their forces. In other words, they are still suffering battlefield losses every -- almost every day, as airstrikes continue, and as ground operations continue, particularly up in the north.

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And it's true that they continue to recruit back to Jamie's question, and I think one of the things that we believe they believe they're getting out of these very public, grisly murders is more recruits. So, we know that they have the ability to continue to generate young men that are attracted to this group and this ideology, and that's going to be a long-term problem.

I can't sit here and tell you -- and I saw the press reports, and I made a few phone calls before I came out here, as you might think I would. I can't tell you with any specificity that those numbers in the press reports are accurate.

I can't refute them either.

We do know that they are capable of bringing more people to the fight. And we have been saying that from the get-go as well, Phil. You know that. Which is why, again, we are going to stay committed to this for the long-term, and it is going to be a long-term fight.

So, I don't know what the balance sheet is, and I suspect, quite honestly, that that balance sheet changes every day, because this isn't the -- they're not an army where you raise your right hand, you take an oath, you get a ID card, and off you go to boot camp. These are common street fighters. And they come and they go.

And sometimes they stay for a while, and sometimes they stay for a day and they leave. And so I know ISIL has -- they have a fluctuating manpower pool.

What we have seen, and a better judgment of the strength of this group is their behavior. So, we've seen them change the way they operate on the ground. They're hiding more. We've seen them not travel around in convoys -- not as much as they used to.

So they're not as -- they're not as agile as they once were. We know that they've lost literally hundreds and hundreds of vehicles that they can't replace.

It's not like they've got a supply chain out there, you know, and a defense contractor building trucks for them. So they've got to steal whatever they want to get, and the number -- you know -- there's a finite number. So, we know that we've hit them there.

We also know that they aren't -- the main source of revenue for them used to be oil. Now we assess that it's no longer the main source of revenue. Now, I can't give you the dollar figure now, I know that, we know -- because I know that was the next question coming -- but we know that oil revenue is no longer the lead source of their income in dollars.

So, they are changing. And I know, and we have talked about the fact, that they are largely in a defensive posture. They aren't taking new ground. Let's talk about Kirkuk. Yeah, over the weekend, they mounted an offense Kirkuk. They were out of there before the second day was up, they were pushed out. And they're not on Kobani anymore.

So, they are losing ground. They are more defensive. They are more worried now about their lines of communications and supply routes. This is a different group than it was seven months ago. I'm not saying they're not still dangerous. I'm not saying they're not still barbaric, but they're different. Their character, their conduct, their behavior is different. And that's a sign of progress.

Q: Other members of the coalition here, especially Turkey, need to do more to stop the flow of foreign fighters to ISIL?

REAR ADM. KIRBY: Well, we've talked about Turkey and their contributions. We're grateful for those contributions, particularly on the train and equip side.

Every member of this coalition, and there are more than 60 countries, is contributing in ways that they and their people deem most appropriate. There are some countries that are only contributing financially, not militarily at all, others that are doing both, others that are, you know, much more focused on kinetic military support.

Every country brings something to this. It's a coalition of the willing. And that means we have to be willing to let these nations contribute in ways that they deem most appropriate.

What is their -- what is their lead source of income?

REAR ADM. KIRBY: They get a lot of donations. They also have a significant black market program going on. But what I can tell you is that we now know that oil is no longer the lead source of revenue. I don't have their tip sheet with me.

Q: Can I follow up please?

REAR ADM. KIRBY: Yeah.

Q: How long has it not been the lead source of revenue? Do you know?

REAR ADM. KIRBY: I don't know.

Q: Okay. And one other question. You talked about the coalition, what they're willing to do, and how the U.S. has to be accommodating to that. Has Jordan continued to fly its F-16s over Syria since December 23rd when Lieutenant Kassasbeh was taken, and -- or had they at any point suspended it? And have they given any indication that they will or not be willing to --

REAR ADM. KIRBY: Those are great questions for Jordan, Nancy.

I don't know what the -- I don't know what their air tasking order is for Jordan. I would direct you to the Joint Task Force or to CENTCOM for what countries are flying. They keep track of that. I just don't have that handy with me. But really, this is for Jordan to speak to.

Q: Admiral Kirby?

REAR ADM. KIRBY: Yeah.

Q: You laid out a number of positive indicators, but let me ask you something. On the Iraq side of the equation, the new DIA director today testified that the Iraqi forces weren't capable of defending themselves without U.S. help.

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And in Syria, again, U.S. airstrikes by all accounts allowed the turning of the corner in Kobani, so U.S. airstrikes right now in both cases appear to be the only thing really holding ISIS off.

When do you – for the U.S. military, how long do you just continue to grind away at airstrikes, or does there come a point when there is something else you can do or should do, will recommend to the president to change the basic relative strength on the ground?

Because right now, it appears on both sides of the border. It is only airstrikes that are holding ISIS off. And there's no indication that fundamentally, the balance of their power has changed.

REAR ADM. KIRBY: Well, I think I would just dispute that on both counts there, Barb. One, airstrikes have been an important component. We know that.

And that's why we're continuing to conduct them. But they're not the only component. Look at Sinjar Mountain and the airstrikes helped get those guys out from -- away from that mountain, but it is Kurdish ground forces, Peshmerga, that are actually helping secure the population that remains on Mount Sinjar and has remained there.

Q: So your own DIA director today says the Iraqi forces, not the Peshmerga, the Iraqi forces cannot defend themselves without outside help, even after all these months of airstrikes, they can't do it, even though you've been training them.

REAR ADM. KIRBY: I did not see those – I did not see those comments.

Q: And on the Syrian side, Kobani, yes, but again, at what point is – for you, if ISIS is such a threat, if they are so terrible, which obviously everyone agrees to, at what point is there – are airstrikes, I come to the other side of the equation, no longer enough? At what point do you have to recommend something else?

REAR ADM. KIRBY: Airstrikes have never been enough. We've been saying that from the very beginning.

Q: (off mic)

REAR ADM. KIRBY: Barb, we've been saying it from the very beginning. Airstrikes are never going to be enough. We're not going to win this fight by the barrel of a gun or by dropping a bomb. We know that.

Now, just let me -- please let me finish. You asked about a lot, and let me just have a chance to respond.

We've always said that airstrikes are never going to be enough.

We've said that military power is not going to be enough. But let's put the political stuff aside for a second. One of the other things that we've been working so hard to do is to help develop and improve Iraqi capability. And I know we're not talking Pesh, so let's talk about the Iraqi Security Forces.

Now, we've got four training sites stood up now – three of them to help train nine brigades of Iraqi troops. Not all Iraqi units are as competent as others, so we're focusing on those that our assessment teams believe needed the support. All three of those sites are up and running right now, and they're helping to crank out students. I can give you the stats here, we can give it to you after it's over. You can find out exactly how many are at every sight. We know that they need some improvement, and so we're working on that.

We've always long said that ultimately, you need a competent force on the ground. That force needs to be indigenous. It needs to be Iraqi. And we are confident, now that we're up and running with these training sites, that we're going to help them get there.

Q: What percentage of Iraqi forces right now do you think are capable of fighting, taking, and holding ground?

REAR ADM. KIRBY: They are already fighting, taking, and holding ground. I don't have a percentage for you today, Barb.

But there are units in the Iraqi army that are already doing that, in Anbar province and certainly in and around the capital city.

Remember, it wasn't too long ago we were – you know, that there was this breathless state of reporting that Baghdad was going to fall. It never did. Baghdad has stayed defended, ably defended by Iraqi Security Forces. And they have taken ground back in Anbar.

Q: Can you give us a statistic by coalition and U.S. standards, what percentage of Iraqi forces you believe are capable of fighting, taking, and holding territory?

REAR ADM. KIRBY: I will pose the question and try to get you something back.

Q: Admiral.

REAR ADM. KIRBY: Yes?

Q: BBC News here. Just on a different subject, there's been a couple of former ambassadors to Kiev today and a whole series of senior, former senior members of the administration, various administrations, calling for a change in tactics and a change in the way the U.S. supports the government in Ukraine.

Can you tell us what active consideration you're giving to hardware – supplying hardware to the government there, and lethal assistance? And is the – is the position of the U.S. government shifting?

REAR ADM. KIRBY: There's been – well, the focus of our assistance provided to Ukraine and the Ukrainian security forces right now remains on the non-lethal side. But we've said for months now that we continue to review and to consider all requests by the Ukrainian government for assistance, lethal and non-lethal.

That remains true today.

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There has been today, this week, last week, three weeks ago, longer than that, discussions about the potential provision for lethal assistance to Ukraine. It remains on the table. We continue to talk about that. But right now, the material that we are sending is of a non-lethal nature.

Q: Are you actively considering lethal assistance?

REAR ADM. KIRBY: I don't know that the word consider needs the adverb of active. Consider means consider. We're considering it.

Yes?

Q: I'd like to follow up on Somalia. This is the third drone strike since September, I think. Are there fresh indications that al-Shabaab is targeting Americans or American interests? Or are these individuals of al-Shabaab being attacked just by virtue of their position in al Shabaab?

REAR ADM. KIRBY: Both are true. Craig, I mean, they're legitimate targets because they are – because they represent a terrorist network allied with Al-Qaida and pose a threat not just to the interests of the people in Somalia and in the region, but to American interests.

Q: And a year ago, the department said that it had established a new coordination cell in Mogadishu, a small number of people. Has that grown in size or operation? And has that helped with intelligence information that's enabled these attacks?

REAR ADM. KIRBY: What I can tell you is the cell is still there and still performing a vital function, but we don't talk about the size of the footprint there.

(CROSSTALK)

Q: And just to clarify something about the Somalia strike. Was that a UAV strike or were there boots on the ground involved?

REAR ADM. KIRBY: There were no U.S. boots on the ground.

Q: And was this done in coordination with the Somali government? Or was this a unilateral U.S. strike?

REAR ADM. KIRBY: Well, Jon, I mean, let's not parse. I mean, all the operations that we conduct there are in consultation and coordination with the – YPG\* [editor's note: \*Somali government]. But, I mean, it's not – this was, as I said in my – I believe I said in the opening, this was done with hellfire missiles fired from UAVs.

Q: The DIA – the new DIA director mentioned the spreading of ISIS affiliates to I believe it was Egypt and Libya. And I wanted to know what the military is doing to stop that, or if it's a concern that that ideology is spreading?

REAR ADM. KIRBY: Well, what we're doing to stop ISIL is what we're doing in Iraq and Syria, which is the real central focus of this group. That's – they're sustaining themselves and resourcing themselves out of Syria, a safe haven there, and they're operating and maneuvering or trying to operate, not really maneuvering so much, in Iraq. But that's where the focus of the effort is.

Yes, of course, it's a concern. I mean, it's not a surprise to us and we've been talking about this for a while, that this is a group that has a fairly evangelical strain about it. They want to metastasize. They want to grow. They want to increase their influence. And so we're aware that they are looking for opportunities to do that elsewhere in the region.

Yeah, but we're watching it as closely as we can. We're in consultation with partner nations in the region and we're monitoring it.

Yeah, in the back there.

Q: Admiral Kirby, it was reported that the DoD gave lightweight counter-radar systems to Ukraine. I think they reported it in November. I was wondering if you had an update on how that performed – how it is performing? And if there are any new deliveries of that radar system?

REAR ADM. KIRBY: You're right. There were some counter-battery – counter-mortar battery radar systems delivered. I think I said that right, didn't I, Steve? No?

(CROSSTALK)

REAR ADM. KIRBY: Counter-mortar radar system, yeah. It's a – I'm a naval officer still – that were delivered earlier. I can't speak to exactly their – what their battlefield use was. I mean, let us come back to you on that. I don't want to characterize it from here and try to wing it, but it is a defensive system, obviously. And we'll just have to get – we'll just have to get back to you.

On future deliveries, as I said, we're considering all manner of potential assistance going forward. I'm not – I don't have anything to announce or anything specific to say today about what might be coming.

I'll just take a couple more. Yes?

Q: Admiral, ISIL has another U.S. hostage, a woman. And barring the event of a covert action and considering that you have called them a terrorist organization in this press briefing, should we consider any U.S. hostage with them as lost if they're in ISIL hands?

Do you follow me?

REAR ADM. KIRBY: I think I do. Let me – let me –

(CROSSTALK)

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Q: -- consider any U.S. hostage in ISIL hands as lost?

REAR ADM. KIRBY: No. We never stop monitoring the situation of our hostages that are held by terrorist organizations. And I think you've seen in not too distant history here where we've made some pretty gallant attempts to try to rescue. But I'm not going to stand up here and talk about plans or efforts of any specificity. All that would do would potentially put any other hostage's life at further risk.

No, we don't -- no, we don't consider -- no, we wouldn't. We wouldn't. And we never stop trying to know more, to learn more, and to do something if it's possible to do something. But I wouldn't at all get into specifics in that case.

Q: (inaudible) -- military action, we're not going to negotiate with them, in other words.

REAR ADM. KIRBY: Nothing has changed about the United States' policy of not negotiating with terrorist organizations.

Yeah, one more.

Q: (inaudible) -- it is reported that North Korea conduct military exercise aimed to hit U.S. aircraft carrier. How do you response -- (inaudible)?

REAR ADM. KIRBY: Didn't see that report.

Q: (inaudible) -- North Korea -- (inaudible) -- joint military exercise with Russia next month. How -- (inaudible)?

REAR ADM. KIRBY: Well, again, I didn't see these reports. Countries exercise their militaries all the time. They train -- I mean, we do it virtually every day all around the world. What matters is the intent and again the message to North Korea is the same as it always has been. What they need to do is focus less on destabilizing the peninsula and the region, and more on feeding their own people.

Thanks, everybody.

**A-780**

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# Exhibit 43

March 2015 Pentagon Statement

**A-781**



# A-782

7/7/2015

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**Release No. NR-089-15  
March 18, 2015**

#### Statement on March 12 Airstrike in Somalia

On March 12 at approximately 7:30 a.m. Eastern Time, working from actionable intelligence, U.S. forces using unmanned aircraft struck a vehicle carrying Adan Garar, a member of al-Shabaab's intelligence and security wing, in the vicinity of Diinsoor, Somalia. The attack was a success and resulted in the death of Garar.

Garar was a key operative responsible for coordinating al-Shabaab's external operations, which target U.S. persons and other Western interests in order to further al-Qaida's goals and objectives. He posed a major threat to the region and the international community and was connected to the West Gate Mall attack in Nairobi, Kenya. His death has dealt another significant blow to the al Shabaab terrorist organization in Somalia.

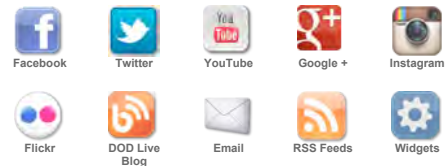


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# Exhibit 44

April 2015 Feinstein Statement

**A-784**

## A-785

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# United States Senator Dianne Feinstein

Apr 23 2015

## Feinstein Statement on Death of U.S., Italian Hostages

*Washington*—Senate Intelligence Committee Vice Chairman Dianne Feinstein (D-Calif.) released the following statement on the deaths of two hostages held by al Qaeda:

**“I’m deeply saddened by the announcement that a U.S. counterterrorism operation in January killed two hostages held by al Qaeda, including Warren Weinstein and Giovanni Lo Porto. Both Warren and Giovanni led selfless lives, helping men, women and children around the world. They serve as role models for us all, and my thoughts and prayers are with their families.**

**“The role of the Senate Intelligence Committee is to conduct extensive oversight of counterterrorism operations, and these efforts will continue. The committee has already been reviewing the specific January operation that led to these deaths, and I now intend to review that operation in greater detail. We should also again review all procedures and safeguards to make sure every measure is taken to prevent the deaths of innocent civilians.**

**“I agree with the president that, to the greatest extent possible, more information on U.S. counterterrorism operations should be made public. I believe this should include an annual report on the number of deaths—both combatant and civilian—from U.S. strikes. We must be certain our counterterrorism strategy is aimed at defeating terrorist organizations and that counterterrorism operations, which I believe to be highly successful at removing individual terrorist targets, are furthering that goal.”**

###

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Permalink:

<http://www.feinstein.senate.gov/public/index.cfm/2015/4/feinstein-statement-on-death-of-u-s-italian-hostages>

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# Exhibit 45

May 2015 White House Statement

**A-787**

## A-788

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April 23, 2015

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# Press Briefing by Press Secretary Josh Earnest, 4/23/2015



James S. Brady Press Briefing Room

\*Please see below for a correction, marked with an asterisk.

1:03 P.M. EDT

MR. EARNEST: Before I go to your questions, let me just begin by saying that I anticipate that many of you will have legitimate questions about the death of Dr. Weinstein and the counterterrorism operation that was carried out by the United States government that resulted in his death.

The President, as you heard in his opening remarks, has taken full responsibility as the Commander-in-Chief for the operation and for its unintended but yet very tragic consequences. The President has directed all of us to share as much information as possible with you and with the American people about what occurred.

In pursuit of that effort, I spent a decent portion over the last 24 hours talking with our national security team, talking with the attorneys on our national security team to try to collect as much information as possible and to give you as much detail as possible so I could answer your questions on this matter.

However, as you would expect, in order to protect our ability to carry out counterterrorism operations, there are some details, including some very basic details, that I will not be in a position to discuss. So, for example, I'm not going to be in a position to talk with precision about where this operation occurred, and I'm not going to be able to talk in much detail at all about how this operation was carried out.

But that all said, we're not planning a background briefing here at the White House. I'm here at the President's instruction to answer as many questions in as much detail as I can, on the record and in public. And as the President mentioned, our country and our government's willingness to face up to mistakes and redouble our efforts to review protocols and procedures to



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prevent them from happening again is one of the things that makes our country so unique and contributes significantly to our strength.

So in that spirit, Josh, let's get started with some questions.

Q Thanks, Josh. Let's start just with some of the facts of what happened, to the extent that you can discuss them. How many other people were killed in these two strikes, either local civilians or militants?

MR. EARNEST: Josh, I won't be able to provide specific numbers on this. I can tell you that in the specific strike that resulted in the death of Dr. Weinstein and Mr. Lo Porto, there was one other al Qaeda leader who was among those that was killed. That is the -- Ahmed Faruq, the American citizen al Qaeda leader. This was a strike against an al Qaeda compound, and the result was the death of at least one al Qaeda leader.

I can tell you that the assessment that we have right now does not raise questions about additional civilian loss of life. Again, the reason for that is that the standard that was in place and, to the best of our knowledge, was closely followed by our counterterrorism professionals was to adhere to this near-certainty standard. And that near-certainty standard applied to two things.

The first is near certainty that this was an al Qaeda compound that was used by al Qaeda leaders; that turned out to be true. That assessment did turn out to be correct. The other near-certainty assessment was that no civilians would be harmed if this operation were carried out. Unfortunately, that was not correct, and the operation led to this tragic, unintended consequence.

Q And there's very little at this point that we know about the Gadahn operation. Who was the target of that operation? And were others killed in that strike?

MR. EARNEST: Josh, I can tell you that Mr. Gadahn was not specifically targeted. But in a fashion that was similar to the operation that we were discussing that resulted in the death of Dr. Weinstein and Mr. Lo Porto, the operation was against an al Qaeda compound. So again, this is a scenario where U.S. officials had determined with near certainty that an operation could be carried out against an al Qaeda compound that was frequented, or at least where at least one al Qaeda leader was located. And that operation did result in the death of Mr. Gadahn.

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Q So are you saying basically that there were not specific individuals that were being targeted in that strike, but more the U.S. knew this was a place al Qaeda guys went and so the U.S. struck there under the presumption that they'd be likely to take out some al Qaeda operatives by striking that location?

MR. EARNEST: Yes. Again, based on the intelligence assessment, they could conclude with near certainty that this was an al Qaeda compound that was frequented by al Qaeda leaders, or at least an al Qaeda leader.

There's one other element of the near-certainty standard that applied to the first operation, the one that resulted in the death of Ahmed Faruq, and that is that there were hundreds of hours of surveillance against that particular al Qaeda compound. And this surveillance included near-continuous surveillance in the days leading up to the operation, and that is what led to the near-certain assessment that it was an al Qaeda compound frequented by an al Qaeda leader, and did not include -- or that civilians would not be included in an operation against the compound. Obviously, the latter assessment was incorrect.

Q We know these strikes took place in January, but you said in your statement this morning that the U.S. recently confirmed what had happened and that these individuals had died. Can you tell us when exactly was that? Are we talking days, weeks, months ago? And how long did you wait after coming to those conclusions before informing the families of these hostages?

MR. EARNEST: Josh, this is a good question. Let me try to explain how this process works. When a counterterrorism operation is carried out, it is followed by a battle damage assessment where our intelligence professionals evaluate the region or the area where the operation was carried out to determine the results of the operation and whether or not, if any, civilian casualties occurred.

And in the process of carrying out that battle damage assessment, that draws on multiple sources of intel. There was some indication that Dr. Weinstein had been killed. This was not in the early stages linked directly to the U.S. government operation. So as intelligence was collected that indicated, or at least raised questions about whether or not Dr. Weinstein was still alive, the intelligence community that has been devoting significant resources to trying to find and rescue him began to explore more completely whether, in fact, Dr. Weinstein was dead and to try to learn the circumstances of his death.

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And only in the last several days did the intelligence community reach an assessment with a high degree of confidence that Dr. Weinstein had been killed in a U.S. government counterterrorism operation. The President was briefed by his national security team very soon after that high-confidence assessment was completed. Upon receiving that assessment, the President directed his team, as I made reference to, to declassify as much information as possible about this specific operation for two reasons. One is to provide details to the families. And two is to be candid with the American public and with the world about what had happened. And the President mentioned in his statement how he believes the United States derives important strength from having the confidence and courage to face up to mistakes when they are made, even when they are as serious as this and, I guess he would say, particularly when they're as serious as this.

Let me say one other thing about our communication with the Weinstein family, and that is that there was an open line of communication with the Weinstein family. The Weinstein family was very aware, as they indicated in their statement today, that the U.S. government was working diligently to try to find Dr. Weinstein.

And when there was intelligence indicating the possible death of Dr. Weinstein, that information was also shared with the family. But again, it was only after the high-confidence assessment was completed in the last several days was the family informed that the intelligence community does assess that Dr. Weinstein was killed in a U.S. government counterterrorism operation.

Q And I know many of us have been reflecting, as I'm sure you have, on the 2013 speech that the President gave at National Defense University laying out his counterterrorism strategy. And in that speech, the President was pretty firm about laying out this standard of near certainty that no civilians would be killed or injured in a strike.

Today, from this podium, we heard quite a different type of rhetoric. We heard the President talking about the fog of war and the cruel truth that deadly mistakes can often happen when you're fighting terrorists. I'm wondering, has the President lived up to the principles that he set out for himself when he gave that speech?

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MR. EARNEST: The President has absolutely lived up to the principles that were laid out in that speech. Prior to giving that speech, there was not a lot of clear guidance. There were not clear -- or at least the protocols were not as clear as they are today about how these kinds of counterterrorism operations should be carried out.

And because of the diligent work of the President and his national security team and our national security professionals, there is much greater clarity about how our counterterrorism officials can both use our significant capabilities to protect the American people while also living up to the very high standards and values that the President expects. And so that is what the goal of those protocols and those reforms that the President laid out in the speech.

What's also clear and what I would also readily admit to you is that in the aftermath of a situation like this, it raises legitimate questions about whether additional changes need to be made to those protocols.

Again, to put it more bluntly, we have national security professionals who diligently follow those protocols based on what we all -- based on everything that we know so far. They follow those protocols, and yet it still resulted in this unintended but very tragic consequence. And that's why the President has directed his team to conduct a review of this particular operation to see if there are lessons learned, reforms that we can implement to this process.

What I can also let you know is that there is an ongoing inspector general review of this matter so that we'll have an opportunity for someone to take an independent look at this particular operation and also offer up recommendations for changes that could be made that could do more to prevent these kinds of, again, tragic, unintended consequences from occurring in the future.

Q And lastly on this issue of revealing what happened -- there's been a flurry of statements this morning from members of Congress, not only joining the President in offering condolences but promising rigorous oversight from some of the relevant congressional committees. Does the White House feel that Congress has a role to play in figuring out what went wrong here and how to possibly prevent it from happening again?

MR. EARNEST: Well, Josh, I can tell you that the President believes that Congress does have a very important oversight role over these kinds of

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programs. That's why in the President's National Defense University speech that he delivered a couple of years ago he made clear that when these kinds of counterterrorism operations are carried out, that the relevant members of Congress are briefed about each operation. And that is an indication of the seriousness with which the administration pursues cooperating with legitimate congressional oversight.

And I can tell you that as these intelligence assessments about the death of Dr. Weinstein and the ultimate high-confidence assessment that he'd been killed in a U.S. government operation was shared with the President, that information was also shared with relevant members of Congress.

Jeff.

Q Josh, will the U.S. government provide compensation to the families of the two hostages who were killed?

MR. EARNEST: Yes.

Q Can you give any details about that or how much?

MR. EARNEST: I'm not aware of what the details of that compensation is, but I can tell you that compensation will be provided.

Q To both families?

MR. EARNEST: To both families -- to both Dr. Weinstein and the family of Mr. Lo Porto.

Q How will this incident affect specifically the U.S. policy, government policy on usage of drones?

MR. EARNEST: Well, Jeff, there are certain aspects of this specific operation that I'm not going to be able to discuss, including how this specific operation was carried out. But I can say a couple things as a general matter.

The first is the President -- and I had an opportunity to talk about this with him today -- believes that his top priority is keeping the American people safe. And in this particular incident, it is particularly painful and tragic that in the course of carrying out an operation that was aimed at trying to protect the American public, that an American citizen -- an innocent American citizen lost his life.

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And it highlights the challenge that our counterterrorism professionals confront every day in terms of balancing the need to use our significant capabilities to protect the American people with the need to carry out these operations consistent with the values that we hold dear in this country.

Q Can you address the issue of drones, though, in any way? I take it you don't want to confirm that that's what used in this particular strike.

MR. EARNEST: I'm not in the position to talk specifically about how the operation was carried out.

Q Can you talk, though, about a future review of drone strategy more generally?

MR. EARNEST: What I can say is that these counterterrorism operations that are critical to the national security of the United States and critical to the safety of the American people continue. At the same time, there is an ongoing review both by our national security infrastructure and by an inspector general to review what occurred in this particular operation and to make recommendations about some reforms to the protocols and policies that are in place that would make it less likely that an unintended consequence like this would crop up again.

And that's not -- these kinds of reviews are not unusual; that our national security professionals after every operation try to review what had occurred -- even when it's successful, particularly when it's successful -- to derive lessons learned and to look for other ways, or changes that could be put in place to strengthen our protocols both in terms of their capabilities, but also in ensuring that they're living up to the values that are so important to our country.

Q Mrs. Weinstein said today that she hoped her husband's death would prompt the U.S. government to "take its responsibility seriously and establish a coordinated and consistent approach to supporting hostages and their families." Do you hear that criticism? Can or should the United States government be doing more to support hostages and their families?

MR. EARNEST: Well, Jeff, I probably should have said this earlier, but it's -- the President had the opportunity to do that this morning, but let me use this opportunity to convey our condolences to the Weinstein family for the death of Dr. Weinstein. And the Weinstein family right now is enduring something that's

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unthinkable to contemplate the loss of their loved one in this particular manner. And our thoughts and prayers of everybody here at the White House is with the Weinstein family.

And so an expression -- given those circumstances, an expression along the lines of what you just read from her statement is, of course, understandable. And what she also noted in her statement is her appreciation for U.S. counterterrorism and national security professionals that had gone to great lengths to try to rescue her husband and to do their best to keep the family informed.

But we have heard from other families who have been in this terrible situation about the need for improved communication with the federal government when they're in the midst of these circumstances. And the President has ordered a review of the way in which the government and our national security apparatus communicates with families that are in this terrible position.

And so the President is familiar with that frustration that is understandable and is articulated in her statement. And the goal of the ongoing review is to try to address those frustrations. I don't have any announcements to make in terms of the timing for that review, but I would anticipate that that review will be done relatively soon.

Mike.

Q Thanks, Josh. Two things. Following up on what Jeff asked, can you say that the use of counterterrorism operations, like the one that was used in this incident, have been reduced because of the review that's ongoing? In other words, are things happening less often? Are those strikes happening less often because this review is underway? Has something been -- has a spigot been turned off?

MR. EARNEST: Let me try to answer your question this way, which is that the United States retains significant capabilities to protect the American people. And the expectation that the President has -- and this is mentioned in the National Defense University speech -- is that when these operations are carried out, that they follow very specific protocols and procedures that balance the need to protect the American people with the need to adhere to very high standards in terms of preventing civilian casualties.

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Consistent with those protocols, our counterterrorism operations continue. And if there are reforms that are derived from the review that can strengthen those protocols or make those protocols more likely to result in successful counterterrorism operations, then the administration will act quickly to implement those reforms.

Q And then second, I appreciate your trying to give us a timeline of when you learned what you guys learned. But there's almost no times in the timeline. So let's just real quickly, what day did this happen -- did the strikes happen?

MR. EARNEST: I'm not able to --

Q You said where or how; that's a when.

MR. EARNEST: Okay. Well, the when is in that same category. Unfortunately, there was not an exhaustive list of things I'm not able to disclose.

What we have indicated is that both of these strikes that were mentioned in my written statement this morning occurred in January. But precisely when --

Q And you won't say when in January? Early, late?

MR. EARNEST: I'm not able to say precisely when.

Q Can you say then -- can you give us some sense of when you -- when the government first learned or first suspected that Mr. Weinstein was perhaps dead? Not yet known that it was at the hands of the U.S., but is that February, early February, late February? I mean, give us a sense of the time of when that happened.

MR. EARNEST: I would say that in the weeks after the strike, there were -- or in the weeks after the operation, there started to be some intelligence that indicated the possible death of Dr. Weinstein. And it was in the course of following up on those intelligence leads and developing intelligence from a wide variety of sources that the intelligence community was able to assess with high confidence that Dr. Weinstein had been killed in a --

Q So that initial assessment would have been in February, right, if it was weeks? Because we know the strikes -- the operations happened in January.



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So in February, sometime, you guys had that initial assessment that they might be dead?

MR. EARNEST: Well, I don't think that the intelligence community actually reached an assessment in February. I think --

Q They started hearing things.

MR. EARNEST: They started --

Q And at that point, in February, they also communicated to the family, hey, we think he might be dead?

MR. EARNEST: I don't have a specific timeframe for that. But what I can tell you is that as the intelligence community began to develop information that pointed to the death of Dr. Weinstein, that information was briefed to the President and that information was shared with the Weinstein family.

Q And you don't have the information because you don't have it, or because you've -- I mean, what would the security risks be of telling us a little bit with more precision when some of these things happened?

MR. EARNEST: Well, as it relates to -- it's hard for me --

Q And I guess I get the strike itself. But kind of being more precise about this seems to be in the interest of what the President just promised the American public about transparency.

MR. EARNEST: Well, there's no doubt that we are having a rather detailed conversation about a previously classified operation. And that is consistent with the spirit of what the President talked about in his statement this morning.

I do think that for me to talk about specific timeframes when we learned a piece of information through intelligence, could compromise sources and methods. And that's something that we obviously are very mindful of when talking about these kinds of matters.

Peter.

Q Josh, was the President the one yesterday who first communicated to the Weinstein family that Warren Weinstein was dead?

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MR. EARNEST: No, he was not the first person to convey that information to them. There are members of the national security apparatus that had been in regular touch with the Weinstein family to keep them apprised of the ongoing effort to try to rescue him.

Q And so was yesterday the first time that they were told of confirmation that he was dead though?

MR. EARNEST: Yes, this was the first time that they were informed of the high-confidence assessment by the intelligence community that Dr. Weinstein had been killed in the context of a U.S. government counterterrorism operation.

Q Did the President sign off on either of these strikes specifically, or keeping with the policy because there was a presumption that there were no Americans there, that it was a part of policy that these strikes could continue without his official signing off on these specific operations?

MR. EARNEST: The President did not specifically sign off on these two operations. There are policies and protocols in place for our counterterrorism professionals to make decisions about carrying out these kinds of operations based on a wide variety of things, including an assessment of near certainty that the target is an al Qaeda target and that civilians would not be harmed if the operation were carried out.

And that is a decision that is -- that is a policy that the President and his team have put in place that was, as far we know, followed by our counterterrorism professionals. But let me just conclude the answer by saying that the President was very direct up here today when he indicated that he -- while he did not sign off on the specific operation, he does take full responsibility as the Commander-in-Chief for the unintended tragic consequences that resulted from the operation.

Q Adam Gadahn, although he wasn't the specific target of that second of these two strikes, is he a target that the U.S. was trying to find? And would they, knowing that he was there, have pursued that strike against Adam Gadahn?

MR. EARNEST: Well, the thing that you know about Mr. Gadahn, Peter, is that he had been indicted for treason in 2006. That is an indication that he is

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somebody who presented a danger to the United States and our interests, and he is somebody that the United States was very interested in finding.

Q Would the President have said, go forward -- or would the President have wanted to go forward with said strike if he knew Adam Gadahn was there?

MR. EARNEST: Well, it's hard for me to entertain a hypothetical like that. Let me --

Q Were you pursuing strikes to find Adam Gadahn?

MR. EARNEST: Let me just say that he was not classified as a HTC HVT\* but he was obviously somebody who was wanted by the U.S. government because he had been indicted for treason. There is a procedure and a policy -- again, one that the President put in place -- for carrying out counterterrorism operations against American citizens where necessary.

But in this case, Mr. Gadahn was not targeted. What was targeted was the al Qaeda compound that he frequented. And that strike did succeed in taking some al Qaeda leaders off the battlefield.

Q The ACLU put out a statement a short time ago where it says, among other things, "These new disclosures raise troubling questions about the reliability of the intelligence that the government is relying on to justify drone strikes. In each of the operations acknowledged today, the U.S. quite literally didn't know who it was killing. These and other recent strikes in which civilians were killed make clear that there was a significant gap between the relatively stringent standards the government says it's using and the standards that are actually being used." What's the White House's response to that?

MR. EARNEST: Well, I strenuously disagree. There is no evidence at this point to indicate that our counterterrorism professionals deviated from the established protocols. But it also is important for us to step back here and recognize the situation that we're confronting.

We're talking about the Afghanistan-Pakistan region. This is a region of the world that is exceedingly remote. The President talked about this in his NDU speech back in May of 2013 that al Qaeda figures hide out in these areas because they are remote. They hide out in these areas because they know

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that local forces in some cases don't have the will -- in some cases, don't have the capacity -- to go after them.

And when you're talking about a circumstance like that -- and the other thing that they know because it's so remote, that the possibility of putting U.S. boots on the ground to go after them is just not feasible. And what that means is when we're talking about an environment like this, absolute certainty is just not possible. What we can do instead, though, is we can leverage significant intelligence assets to, for example, in this case, actually conduct extensive surveillance of a particular compound.

And as I mentioned, hundreds of hours of surveillance was conducted against this particular compound. We know that near-continuous surveillance of this compound was conducted in the days leading up to the operation. And based on that surveillance and other forms of intelligence, the intelligence community did assess with near certainty that this was an al Qaeda compound that was frequented by al Qaeda leaders. That assessment turned out to be correct.

They also had a near certainty assessment, again, based on that surveillance, that there were no civilians present and that no civilians would be at risk if the operation were carried out.

Now, what we also know is that al Qaeda considers these kinds of hostages to be extraordinarily valuable. And they go to tremendous lengths to try to conceal the location of these hostages. And that is why, unfortunately, that near-certain assessment was wrong. And that is why the President has directed a review to determine if there are any changes that we can make to determine -- or to make it less likely that these kinds of unintended consequences would occur again.

Q If al Qaeda had been willing to make a trade, would the U.S. have been willing to make a similar trade that they made for Bowe Bergdahl, for the life of Warren Weinstein? And was one ever offered?

MR. EARNEST: Peter, the U.S. government went to great lengths to try to rescue Dr. Weinstein. There were significant resources dedicated to trying to determine his whereabouts.

Q Did we offer a trade?

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MR. EARNEST: We have been very clear about the policy of the United States. As painful as it is, it is a policy that prevents the United States from negotiating with terrorists, and that policy was in place in the course of our efforts to try to secure the rescue of Dr. Weinstein. And again, this is a policy that, particularly to the Weinstein family, is a very difficult one. And frankly, I think it's a pretty difficult policy even for just the average human being.

But the analysis is a reasonable one, which is that to engage in the practice of negotiating with terrorist groups to try to secure the release of innocent Americans would only put at risk more innocent Americans.

Jon.

Q Josh, you won't even tell us that this was a drone strike or these were drone strikes?

MR. EARNEST: Jon, I'm not able -- despite the extensive information I am able to provide about a previously classified operation, I'm not able to discuss precisely how this operation was carried out.

Q So you tell us that Adam Gadahn and Ahmed Faruq were not the targets. Does the President regret the fact that they were killed in these strikes?

MR. EARNEST: No. Those two individuals that you mentioned were leaders in al Qaeda. They had prominent positions. We know that Mr. Faruq, for example, was a leader of AQIS -- al Qaeda in the Indian Subcontinent -- and that he was playing a prominent role in leading that network's operations and planning in that region of the world. We know that Mr. Gadahn has styled himself as a prominent spokesperson for al Qaeda. And it is for that and other reasons that he was indicted by the U.S. government for treason.

Q So the administration's policy on the justified killing of American citizens in these counterterrorism strikes, according to the Attorney General, is that they represented an "imminent threat of violent attack against the United States" and that capture was not feasible. Are you saying that Adam Gadahn and Ahmed Faruq represented an imminent threat of violent attack against the United States? Because that, under your policy, is the definition of a justified killing of an American.

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MR. EARNEST: And what I'm saying is that these two al Qaeda leaders were frequenting an al Qaeda compound that had been identified by the United States. And the United States carried out a counterterrorism operation against those compounds with the intent of taking al Qaeda fighters and al Qaeda leaders off the battlefield. We do that because we know that the al Qaeda organization is actively planning and plotting against American citizens. We have -- as is encapsulated in the authorization to use military force, the United States is at war with al Qaeda and its affiliates because of the way in which these affiliates are plotting and actively planning against the United States and our citizens.

Q Okay, but what I asked is: Gadahn and Faruq, did they represent an imminent threat of violent attack against the United States? Which is the words of the Attorney General as to what would qualify as a justified killing of an American.

MR. EARNEST: Well, what I can share with you from here is that these two individuals were not targeted in this specific counterterrorism operation, but we know that they were hit in this counterterrorism operation and they were killed in this counterterrorism operation because they were leaders of al Qaeda, and we know that al Qaeda is an organization that is actively plotting and planning against the United States.

Q But is it legal under the guidelines that this administration has put in place, is it legal to kill American citizens who do not represent an imminent threat of violent attack against the United States?

MR. EARNEST: What is permissible under international law and in the protocol that the President has established is for the United States to carry out strikes -- to carry out operations against al Qaeda compounds that we can assess with near certainty are al Qaeda compounds that are frequented by al Qaeda leaders. And that is the operation that took place, and that operation did result in the death of al Qaeda fighters and al Qaeda leaders who were in this al Qaeda compound.

Q But would it have been illegal for you to intentionally target those two men?

MR. EARNEST: Well, there is a separate procedure and protocol for specifically targeting American citizens. And this is the protocol that was

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followed in the targeted operation against Anwar al-Awlaki in Yemen. So there is a separate procedure and protocol for doing exactly that.

Q So if it was not Adam Gadahn who was being targeted in one strike and it was not Ahmed Faruq being targeted in the other strike, who was being targeted?

MR. EARNEST: What was targeted was what the intelligence community assessed with near certainty was an al Qaeda compound that we assessed with near certainty was being frequented by al Qaeda members, al Qaeda fighters, and, in this case, al Qaeda leaders.

Q So there was no who? There was no specific al Qaeda leader or leaders that were being targeted? It was a compound?

MR. EARNEST: What was being targeted was this specific al Qaeda compound.

Q In both cases?

MR. EARNEST: In both cases.

Q In both cases. And no names attached to that? There were no -- we didn't have a list of --

MR. EARNEST: That's correct. What we were targeting specifically was this al Qaeda compound that was based on this near-certain assessment that this was a compound that was maintained by al Qaeda and frequented by al Qaeda leaders.

Q Okay, there's another story I wanted to get you on quickly -- revelations regarding donates to the Clinton Foundation and actions taken by the United States government. I want to take the second part first. In hindsight, given what has happened with Russia over the last year or two, was it a mistake to allow a Russian company to essentially corner the market on uranium in the United States? Was it a mistake to allow that transaction to go forward, allow them to control basically one-fifth of the uranium supply in the United States?

MR. EARNEST: Jon, I'm not familiar with that specific transaction. I know there's been some reporting on this today, but I can take your question and

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see if we can get back to you on the specific transaction that you're talking about.

Q And the memorandum of understanding that governed Hillary Clinton's financial dealings, the financial dealings of the foundation and her husband's speaking fees -- first of all, can you make that memorandum public? Because I don't think we've ever seen it.

MR. EARNEST: This is a memorandum of understanding that resides at the State Department, so you can ask them about their policy for disclosing it or not.

Q Okay, we've asked for that. I'm wondering if you can -- I mean, this is -- I mean, in the interest of transparency this was supposed to be all about transparency. Can we see that memorandum?

MR. EARNEST: I think the goal of the memorandum was to ensure that even the appearance of a conflict of interest was avoided by ensuring that there was greater transparency and greater knowledge about the contributions that were being accepted by the Clinton Foundation for the charitable work that they do. That was the goal of the memorandum.

Q I mean, essentially, then-Secretary of State Hillary Clinton promised that she would make public the donations to the Clinton Foundation and also speaking fees for President Clinton. Isn't it clear now that Secretary Clinton did not abide by her own memorandum of understanding with the President?

MR. EARNEST: I'm not sure that that's clear, but you should go ask Secretary Clinton's team about that.

Q Well, I'm asking you, because we now read that Uranium One, a foreign company, donated over \$2 million to the Clinton Foundation while she was Secretary of State. That would seem to be a pretty clear violation of a memorandum of understanding as it's been explained to us by you.

MR. EARNEST: Well, again, for the details of this transaction I'd refer to either the State Department or Secretary Clinton's team. Obviously, that's not something that was reviewed at this level.

Q And we also know that, previously, that a \$500,000 donation from the Algerian government went to the Clinton Foundation while Hillary Clinton was



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Secretary of State. Again, isn't this a clear violation of a memorandum of understanding that said that, first of all, there was going to be an end to foreign donations, and these donations would -- and donations to the foundation would be made public?

MR. EARNEST: Again, I'd refer to you Secretary Clinton's team about that.

Q Well, can you check in on this, as well? This is an understanding with the President, right? This was --

MR. EARNEST: Yes, but you're asking about their compliance with this particular matter and whether it lived up to the standards that Secretary Clinton had set for herself. And so I'd refer you to Secretary Clinton's team to render some judgment on that.

Q One thing Secretary Clinton's team has referred us back to the White House on whether or not any agency objected to that Uranium One deal, again, that allowed the Russians take steps towards cornering the uranium market, which seems pretty significant. If any -- referred us to you if there's been any objections. So will you please find out for us if there were any objections made by any agency of the United States government for the Russians making such a bold move towards cornering a significant section of the uranium market?

MR. EARNEST: I will take a look and see if there's information that we can provide on that specific matter. I know the other thing that has also been pointed out here is that this was a decision that other countries had the opportunity to weigh in on, as well. And that seems like a relevant fact in terms of the completion of this specific transaction.

Q I'm asking about our country, but I appreciate it.

MR. EARNEST: Understandable. And if there's information that we can provide, I will. I'll try to do that.

Jim.

Q Before we get back to the operations and the news of today, I just wanted to follow up on Jon's question about the Clinton Foundation. Do you feel and does the President feel that the Clinton Foundation -- that Hillary Clinton provided sufficient information about the foundation's activities while she was

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Secretary of State? Are you fully satisfied with the disclosure from the foundation and her disclosures?

MR. EARNEST: I haven't been presented with any evidence to indicate that somehow there has been insufficient information provided to the administration.

Q And getting back to the operation, I wanted to ask about Gadahn one more time. You mentioned he was a prominent spokesman for al Qaeda, but had he moved into an operational role in any way?

MR. EARNEST: I don't have any additional assessment about his activities to share with you other than to note that he was an al Qaeda leader who frequented this particular al Qaeda compound. He is somebody who did serve as the public face of al Qaeda in some of their communications. He is somebody that was wanted by the U.S. government both for treason and for providing material support to terrorists. And there was an assessment of near certainty that an operation against this compound would succeed in taking out members of the al Qaeda leadership. And in this case, that assessment was correct.

Q And I know there are -- as we've talked about here, there are some details that you can't provide, and so I may be going through some red lights here. But what was it about the surveillance of these compounds that gave the counterterrorism officials confidence or high levels of confidence that these were al Qaeda compounds that were about to be struck?

MR. EARNEST: There's not additional information that I can share about the intelligence that led to the near-certainty determination that was reached.

Q Okay. And can you say whether or not these were ground forces that carried out these operations?

MR. EARNEST: I'm not able to discuss exactly how the operation was carried out.

Q You can't say whether they were ground or air? And getting back to the use of drones, does the President have any second thoughts now about their usefulness in carrying out these kinds of operations?

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MR. EARNEST: Well, first of all, the thing that we do know about these kinds of counterterrorism operations is that they have made al Qaeda less capable of receiving recruits. They have succeeded in diminishing al Qaeda's command and control capability. And we know that as a result of some of these operations, al Qaeda leaders have changed their behavior and are now intensely focused on their own personal security. And we know that when al Qaeda leaders are focused intently on their own personal security, that means they have less time and energy and attention to devote to plotting against the United States. So that is an important thing.

Q So drone strikes work?

MR. EARNEST: Well, what the President indicated -- and the President went through a lot of this in his National Defense University speech. Our preference when dealing with suspected terrorists is to capture, detain, debrief and prosecute them. And we -- the Obama administration has a very strong track record of doing exactly that in locations all around the world, frankly.

Bu the fact is, as I mentioned earlier, in some areas of the world, particularly in remote locations where extremists are hiding out, local authorities have limited capacity and, in some cases, limited will to go after these extremists. So the limited capacity of local forces and the remote nature of these environments is precisely why these extremists are hiding there. And what the President made clear -- again, and he made this clear more eloquently in his National Defense University speech than I will from here -- but what he made clear is we can't use Special Operation troops to go after every terrorist in the world; that we can't conduct an Osama bin Laden-style raid against every terrorist.

There are a variety of reasons for that. One, it would be an unacceptably high risk to our men and women in uniform. Two, it would actually be a higher risk to civilian populations than some of the other capabilities that we often use; that the deployment of a large number of U.S. forces on the ground could lead to a fire fight with local civilians that we don't actually have argument with. It could leave some local populations with the impression that the United States is seeking to occupy territory in their neighborhood. That, of course, is not true, but I think that is a reasonable conclusion if you're living in a remote region of the world, and you turn around and you see several dozen or even several hundred U.S. American military personnel.

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So the truth is that narrowly tailored counterterrorism actions are actually the least likely to result in civilian or innocent loss of life. However, what is abundantly and tragically clear this morning is that even narrowly tailored actions do not completely eliminate the risk of innocent loss of life. However, the President is determined to push his team -- and this is a conviction that's shared by other senior members of the President's national security team -- to review and, where necessary, reform the protocols that are in place to allow us to continue to carry out the counterterrorism operations that are critical to our national security, while also ensuring that those actions live up to the high standards and values that our country cherishes.

Q One last thing. I know there's a lot of other questions in the room. But it had to have been known by counterterrorism officials that al Qaeda leaders in compounds that they might have high certainty is an al Qaeda compound would likely be holding Americans hostage, or have the potential for holding Americans hostage. Is that a part of the risk that is taken when this kind of operation is conducted?

MR. EARNEST: Well, there are obviously a variety of risks that are associated with these kinds of operations. And what is clear is that our national security professionals go to great lengths to try to reach this near-certainty assessment. They rely on multiple sources of intelligence. In this case, one of those sources was hundreds of hours of surveillance of a specific compound, including near-continuous surveillance of that compound in the days leading up to the mission.

We know that as our national security and counterterrorism professionals are trying to reach this near-certainty determination, that they will seek out credible but contradictory sources -- or credible but contradictory intelligence; that they're looking for intelligence that would wave them off reaching this designation, or reaching this assessment. And then, these kinds of assessments are also subjected to a thorough Red Team process, where essentially you have intelligence professionals who are not part of developing this intelligence who will review the intelligence that's been collected to try to poke holes in it, to make sure that it actually represents the complete picture.

Q So in all these hundreds of hours of surveillance, it just wasn't ever seen that these hostages were present, is what you're saying?

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MR. EARNEST: Well, I can't talk in detail about what was seen in the -- what was gathered in the course of conducting this surveillance. But I think it would be reasonable for you to assume that if they had detected a civilian in the compound, that they would not have been able to reach this near-certainty assessment. But they did, but unfortunately that assessment was incorrect.

April.

Q Josh, I want to find out, when did the President talk to the Italian Prime Minister? Did he talk to him about this last week when both of them were meeting in the Oval Office?

MR. EARNEST: He did not. The President had a conversation with Prime Minister Renzi just yesterday.

Q So what was the conversation? If you could tell us what was in that conversation.

MR. EARNEST: The conversation was relatively short and very direct, and the President delivered a message to Prime Minister Renzi that's consistent with the message that he delivered here. And the President spoke in his statement this morning about how the values that motivated Mr. Lo Porto to travel a great distance from his home country and from his family, and try to meet the needs of the local population in Pakistan to help people find their way out of poverty is consistent with the kinds of values that certainly are embodied by the life of Dr. Weinstein and are the kinds of values that we cherish in this country. And I think that's a testament to the bonds and values that the United States and Italy have in common and were on full display in the lives of Dr. Weinstein and Mr. Lo Porto.

Q Was there any kind of concern from the Prime Minister that he was here and with the magnitude of the situation, that it would have been discussed during their conversation in the Oval Office last Friday?

MR. EARNEST: No, that was not communicated to the President.

Q And also on another subject. Today, Loretta Lynch will get that vote that you've been -- that the White House has been looking for. Any comments about the anticipation of a vote?

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MR. EARNEST: Well, that vote, as I've mentioned before, is long overdue. And we are hopeful that Senate Republicans will finally do the right thing and allow the nomination of this very well-regarded career prosecutor to come up for a vote. And we're confident that if they follow through on their promise to give her a vote, that after a long delay she will finally be confirmed with bipartisan support as the next Attorney General of the United States. That will be a good thing.

Q Do you expect an approval today? Do you expect an approving vote today?

MR. EARNEST: That's the indication that I've received from our staff that works closely with the United States Senate, and I hope that information is correct. And again, if she receives that vote today, that is a long overdue step in completing her confirmation process.

Major.

Q Josh, did the U.S. government at any time have a sense of where Dr. Weinstein was?

MR. EARNEST: Major, I can tell you that our intelligence professionals and our counterterrorism professionals expended significant resources to try to locate Dr. Weinstein and rescue him. And this was work that went on -- has been underway since he was first taken hostage back in 2011. So this is a long-running effort that the President was regularly briefed on the status of the effort to find him. But that's about all I can say about --

Q Was there ever an operation to try to rescue him?

MR. EARNEST: Not that I'm aware of.

Q In this assessment, was it ever raised by the Red Team or others that he might be in this compound?

MR. EARNEST: Well, I'm not able to talk about what specifically -- how this assessment was reached. But given the very high standard that is put in place, this near-certainty standard, I think it is reasonable for you to conclude that the intelligence professionals who evaluated this particular situation -- both in terms of drawing on the available intelligence, including the hundreds of hours of surveillance -- that they had no idea that he was there.

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Q How sobering is it that hundreds of hours of surveillance proved to be so fatally flawed?

MR. EARNEST: Well, the first is, is that it is an indication of the lengths to which al Qaeda goes to conceal the location of hostages that they take. And this is, again, an indication of just how highly valued these hostages are by al Qaeda. It's an indication of how difficult the work is to try to find these hostages so that they can be rescued. And that's the first thing.

But obviously what occurred is very tragic. And you all had the opportunity to see the President up close and personal when he delivered his statement here, and I think it was clear from watching him deliver his remarks how personally he takes this. He's the Commander-in-Chief, and his top priority is to protect the American people. And it is particularly painful that an operation that was carried out consistent with his policies to try to protect the American people, unfortunately and tragically resulted in the death of an American citizen -- an innocent American citizen.

Q In that National Defense University speech, the President went to great lengths to talk about the difficult cost-benefit analysis and the risks involved in how they weigh upon him.

MR. EARNEST: And I had an opportunity to talk to him about this today. There is probably -- this is as good an illustration as any of the difficulty in weighing those competing priorities.

Q Since you had that conversation, allow me to ask you: Knowing what he knows now, does the President believe this series of operations was worth it?

MR. EARNEST: Well, again, the standard that the President has set for these kinds of counterterrorism operations is near certainty that civilians would not be harmed.

Q But I ask that because you've made it clear to us you were not targeting anyone. This was a compound. That's not in pursuit of any particularly identified, vetted, or thoroughly established operational leader of al Qaeda. It was a compound. And there was nobody in particular, as we understand it, based on what you've told us, the United States government was seeking to attack or eliminate. And I'm just wondering, that standard of not seeking

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anyone and having a specific target resulting in the deaths of these two innocent hostages, does the President consider it worth it?

MR. EARNEST: Well, I think it's important, because in this instance we've gone to great lengths to declassify as much information as we can, for us to scrutinize these two situations.

As it relates to the operation against the compound that resulted in the death of Adam Gadahn, you had the intelligence community reach a near-certain assessment that this was an al Qaeda compound and it could be carried out without harming any innocent civilians. Those assessments were correct, and that operation did succeed in taking an al Qaeda leader off the battlefield.

The other operation that resulted in the death of Ahmed Faruq, the al Qaeda leader who was frequenting that compound, also resulted in the death of Dr. Weinstein and Mr. Lo Porto. The near-certain assessment that it was an al Qaeda compound and that it was frequented by an al Qaeda leader was correct. What was not correct is that an innocent civilian would not be harmed in that strike.

Q Weighing all those things, was it worth it?

MR. EARNEST: And so I think the point is simply this -- that when it comes to that particular operation, the protocols that are in place, had our intelligence professionals known that there were -- or even suspected that there were innocent civilians in and around that compound, then the operation would not have been carried out because it would not have been consistent with the protocols that the President and his team have established.

And again, that is what makes this all the more tragic, is that the protocol that was in place has a very high standard for only moving forward; that the operation -- the protocol is in place to ensure that the operation will only be carried out if we can be confident with near certainty that an innocent civilian will not be killed or harmed as the operation is carried out.

And in this case, despite hours, hundreds of hours of surveillance and other sources of intelligence, including near-continuous surveillance of the compound in the days leading up to the operation, the presence of these civilians was not detected.



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Q In that speech, the President also established the way by which if an American is being targeted, Congress and the Justice Department are brought into the conversation. As I gather it -- I think this is an assumption, but I just want you to confirm it -- because no one was targeted, that process was not carried out?

MR. EARNEST: There is a very process if the intelligence community determines that it's necessary to target a counterterrorism operation against a specific American citizen. That protocol -- that policy was not pursued in this instance because there was no specific American citizen who was targeted.

What was targeted was a compound that our intelligence officials assessed with a high degree of confidence, with near certainty that was frequented by al Qaeda. And again, in both of these instances, that assessment, that near-certainty assessment was correct.

Q What are we to conclude from the potency -- or about the potency of al Qaeda in this particular region that a compound in of itself was a legitimate target? That compounds without anyone identified within them, operationally, are so threatening to the United States that they must be carried out? That suggests to me a level of anxiety about the potency of al Qaeda still in that region.

MR. EARNEST: I think what you should conclude is that it demonstrates a level of determination and resolve to continue to apply pressure against the remnants of core al Qaeda that still are living in the Afghanistan-Pakistan region. And we know that these kinds of counterterrorism operations have made al Qaeda less capable of receiving recruits, have made them less capable of exercising some command and control. And we know that it has made these al Qaeda leaders intensely focused on their own personal security in a way that detracts from their ability to plan and plot against the United States.

And the President and his team are determined to keep up that pressure because we know that pressure is critical to the safety and security of the American people. At the same time, they're also determined in ensuring that these kinds of operations live up to the high standards that the President has said for not injuring or killing innocent people.

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Q Just to follow up on Jonathan's question about the Clinton revelations -- you seem very nonchalant about them. And I'm just curious if you believe the President is comfortable with everything he has learned in the last couple of days, and that to his satisfaction -- I'm not talking about the Secretary of State's compliance; this was an agreement with the President of the United States. To his satisfaction, do you believe this administration, the President of the United States is comfortable and satisfied with what's happened, what's been revealed, and what the Secretary of State did in accordance to her agreement with him?

MR. EARNEST: At this point, there has not been any evidence presented that would prompt the President or anybody at the White House to be unsettled by Secretary Clinton's conduct as Secretary of State. In fact, everyone here at the White House, including the President, continues to be very proud of her service to this country as Secretary of State of the United States.

Jared.

Q I want to follow up on a couple of Jon's questions, specifically regarding Faruq and Gadahn. Would they have been eligible targets under the criteria that Jon mentioned?

MR. EARNEST: Well, Jared, the things that I can tell you is that neither Mr. Gadahn nor Mr. Faruq --

Q I know they weren't targeted. I'm asking whether they would have been eligible targets.

MR. EARNEST: Not only were they not targeted, they were also not classified as high-value targets. But they were and had been identified as al Qaeda leaders. In the case of Mr. Gadahn, he'd even been indicted for treason and for providing material support to a terrorist organization. So that is an indication of how serious we considered the threat from them to be. We know that Mr. Faruq was a leader in al Qaeda in the Indian Subcontinent; that he was a senior official as the al Qaeda network was plotting and planning in that region of the world.

So these are individuals who had a leading role in al Qaeda and the al Qaeda network. And that is why the near-certainty assessment that a strike against

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these al Qaeda compounds would result in the death of an al Qaeda leader resulted -- or turned out to be true.

Q But I want to ask you about that indictment because you said earlier that the President has no regret for the death of Faruq or Gadaffi. They weren't taken prisoner, they weren't targeted directly. Essentially, a death penalty had already been carried out for a sentence, a trial for treason that will never now happen. Does the lawyer in the White House regret that; that this justice process wasn't able to be fully carried out?

MR. EARNEST: Well, Jared, these are very complicated issues, and these are issues that are considered in very painstaking detail in the speech that the President delivered to the National Defense University back in May of 2013. So I certainly commend a quick look at that speech when you get an opportunity.

But let me just say as a general matter that our preference, as the President said in that speech, is always to capture, detain, debrief, and prosecute terrorists. And we have a very strong track record of doing that successfully in a way that's consistent with our values and in a way that is consistent with the national security interests of the United States.

But the fact remains that there are some regions of the world where local authorities have limited will -- in some cases, it's just limited capacity -- to be able to go after these individuals. In fact, we know that that's precisely why the terrorists or the extremists are hiding out there. And in many of these cases, it's just not feasible to deploy American boots on the ground to go get them. We can't order up a Special Operations raid every time we suspect that a terrorist might be somewhere. In fact, to do so would subject our military servicemembers to an unacceptably high risk. It would pose an even higher risk to local civilian populations than some of the more narrowly tailored counterterrorism operations that we carry out that don't involve putting boots on the ground.

So this is -- in fact, we know that these kinds of narrowly tailored actions are actually the least likely to result in the innocent loss of life. And that's part of what makes them such an effective tool.

Q I guess what I'm asking about is the cavalier tone here. Because when you say there's no regret, but you say we prefer one option versus the other,

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but no regret that they're gone, that they're dead, wouldn't it have been better if they had been brought to trial? And isn't the lack of precision here contributing to that deficit?

MR. EARNEST: Well, again, I think I disagree with your characterization as the attitude that's on display today as cavalier. I think this is -- we're demonstrating a pretty seriousness of purpose here.

And what I would say is that -- I've said a couple of times now that our preference is to capture, detain, debrief, and prosecute suspected terrorists. We've done that in a large number of occasions in a way that has enhanced the national security of the American people.

So yes, I would stipulate that our preference would be, for somebody like Mr. Gadahn, to walk into a law enforcement agency and turn himself in, and have an opportunity for us to detain that individual, to debrief him; we have a process for debriefing individuals in that kind of scenario. And we would subject him to American justice. That would be our preference.

But when we're talking about these kinds of scenarios, it is just not feasible and not wise for us to deploy American boots on the ground to detain every suspected terrorist that we come across.

Q One last one. Just a quick factual one. Were any other nations involved or informed as part of either of these attacks?

MR. EARNEST: I can't speak to the involvement of any other countries. I can tell you that notifications, obviously as I mentioned, were made to the nation of Italy, specifically the Prime Minister, because of the death of the Italian hostage. I can tell you that the nations of both Pakistan and Afghanistan have received notifications about this matter because the operation was carried out in the Afghanistan-Pakistan region.

Q Were they informed before or after the attack was carried out?

MR. EARNEST: The information that was conveyed to them is the same information that was conveyed to all of you today. So this was obviously a recent notification.

Viqueira.

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Q Thanks, Josh. I want to get this question in because tomorrow marks an anniversary, an inauspicious day. It was 100 years ago, the Armenian -- the killing of 1.5 million Armenians in the waning days in the Ottoman Empire. Is the death of 1.5 -- the killing of 1.5 million people, is that a genocide?

MR. EARNEST: Mike, it has been the policy of the United States to freely acknowledge the massacre of more than 1.5 million Armenians that took place 100 years ago tomorrow. And it's a somber day and it's a somber remembrance. And in fact, there is a delegation -- an American delegation being headed by the Treasury Secretary, Jack Lew, to go and participate in the ceremonies that will mark this tragic event.

The United States mourns the loss of those who were lost in that tragic series of events. And we continue to reiterate our belief that the candid and frank acknowledgement of those kinds of tragic incidents serves to make it less likely that those kinds of events will happen in the future. And we believe that all parties have a vested interest in acknowledging the truth about that massacre.

Q Josh, you mentioned -- you used the phrase "candid and frank," so I'd like to quote back to you with when Senator Obama said when he was campaigning in 2008: "America deserves a leader who speaks truthfully about the Armenian Genocide and responds forcefully to all genocides. I intend to be that President." He used the genocide word then; he won't use it now. Armenian groups say he's betrayed them. Has he betrayed them?

MR. EARNEST: Mike, the President has spoken forcefully about the value and importance of acknowledging that particular tragic incident in history. And the President has spoken to that repeatedly. And as we have traditionally done in the past, we'll acknowledge the anniversary tomorrow in a statement from the President.

JC.

Q Josh, how intent is this administration with its allies on capturing and neutralizing the head of ISIL, Mr. al-Baghdadi?

MR. EARNEST: Well, JC, we use a wide variety of elements at our disposal, including our ongoing support for Iraqi security forces to apply significant pressure to ISIL and ISIL leaders. And the President has engaged in a

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strategy in working closely with the coalition of 60 nations to degrade and ultimately destroy ISIL. And part of that strategy involves applying pressure and, where necessary and available, taking ISIL leaders off the battlefield. And that's a strategy that we'll continue to pursue. We've enjoyed some success in that so far, and we're going to continue to pursue it.

Q And he is the Supreme Leader of ISIL, as you know. It's needless to say --

MR. EARNEST: I'm sorry?

Q And he is the ultimate, the Supreme Leader of ISIL.

MR. EARNEST: Well, I think that's how he's described himself.

Q Fair enough.

MR. EARNEST: Okay.

Q Loretta Lynch has been confirmed, Josh.

MR. EARNEST: We'll have a statement on that shortly.

Q What do you think about it? 56 to 43, she's confirmed.

MR. EARNEST: That's obviously good news and we'll have a more robust statement from the President on that shortly.

Kevin.

Q Josh, thanks. I just want to do a little housekeeping on timing. How long between when the President was briefed on what happened and today, what's the gap there?

MR. EARNEST: Just about -- several days is the way that I would describe it. And that time period was -- has been used over the last several days to work to declassify as much information as possible about these two specific operations.

Q In 2012, the New York Times in an article about the administration made the suggestion that there is a briefing, sometimes including about 100 members of the administration and security, by video-teleconference whereby

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the administration engages in sort of, for lack of a better description -- “Bob, pick who’s next in the line, who’s the next target.” And I’m curious if Gadahn in particular was one of these so-called next-in-line targets that the administration was looking for.

MR. EARNEST: Well, Kevin, what I’ll say is that neither Mr. Gadahn nor Mr. Faruq was considered to be a high-value target. We obviously were mindful of the risk posed by those two al Qaeda leaders, but they were not considered to be high-value targets. And I think I remember the story that you’re referring to. It was after that story ran that the President gave the speech at National Defense University, where he laid out in pretty specific fashion the kind of protocol and policy that should be followed when considering counterterrorism operations like this.

And imposing that kind of order and imposing those kinds of reforms to the system that would contain the way that those decisions are made was an important national security achievement. It’s important that our policies and protocols are able to adapt to our ever-changing and improving capabilities. And the President’s speech that he gave at National Defense University is indicative of his commitment to ensuring that we have an adaptive set of protocols that allows us to maximize our ability to keep the American people safe while also adhering to the kinds of values that we hold dear in this country.

Q A quick follow-up on something Jon was asking you about with regard to the former Secretary of State Hillary Clinton. You said that you’ve seen nothing, or the administration or the President has seen nothing that would shake your confidence in her or in the job that she did while she was the Secretary of State. And I’m curious if you feel like the donations to the Clinton Foundation while she was Secretary of State -- some of them from foreign governments, some not previously disclosed -- does none of that trouble the administration?

MR. EARNEST: It doesn’t, Kevin, because the President and the administration continues to have strong confidence in the decision-making of Secretary Clinton, and that she was somebody who served this country and this President extraordinarily well as the Secretary of State.

Mark.

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Q Josh, are you able to say or give any detail about the size of the compensation package you mentioned earlier?

MR. EARNEST: I don't have those details.

Q Will you at some point?

MR. EARNEST: I'll see if we can get some more details about that precisely. I can just -- what I can confirm is that both Dr. Weinstein's family and Mr. Lo Porto's family will be compensated.

Q When would an amount be arrived at?

MR. EARNEST: I'm not sure exactly how that process works, but let me know look into that.

Lalit.

Q Thank you, Josh. Do you still believe that Af-Pak border region continues to be the safe haven for al Qaeda leaders?

MR. EARNEST: Can you say it one more time?

Q Do you still believe that Af-Pak border region continues to be the safe haven for al Qaeda leaders?

MR. EARNEST: There continues to be concern that there are al Qaeda leaders that are hiding out in the Afghanistan-Pakistan region. And because of our counterterrorism efforts -- we've talked before about how core al Qaeda has been decimated, and these counterterrorism operations have had an impact on al Qaeda's ability to receive recruits. It's had an impact on their command and control capability. It's even had an impact on the freedom of movement of some al Qaeda leaders because they're so intensely focused on their own security now.

So that pressure that's been applied to those al Qaeda leaders in that region of the world has had important national security benefits for the United States. It's also had important national security benefits for both Afghanistan and Pakistan, I'd point out.

But we're mindful of the continuing threat. This is obviously a region of the world that's rather remote. We know that local forces have limited capability to



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operate in some areas of the Afghanistan-Pakistan region. And it's why we continue to use some of our capabilities in that region to protect the American people.

Q From the information that you have shared with us, since this morning it looks like this compound was inside Pakistan, not in Afghanistan. Is that a true assessment?

MR. EARNEST: I'm not in a position to be more specific about the location where this operation took place, beyond saying that it took place in the Afghanistan-Pakistan region.

Q And no prior information was shared with the governments of Afghanistan and Pakistan before the raid?

MR. EARNEST: I'm not able to speak to the specific communications between the U.S. government and the governments of Pakistan and Afghanistan in advance of the operation. But I can tell you that in recent days, after the high-confidence assessment was completed by the intelligence community that Dr. Weinstein and Mr. Lo Porto were killed in a U.S. government counterterrorism action, that this information was conveyed to both the Pakistani government and the Afghan government.

Q And why are you saying that the local authorities have limited will in handling these -- against these al Qaeda leaders? In the past, you have praised by the government of Afghanistan and Pakistan in the counterterrorism operations.

MR. EARNEST: Well, the United States values the kind of security cooperation that we obviously get from the Afghanistan central government. There's obviously an important security relationship between the United States and Pakistan. After all -- and I alluded to this in response to your earlier question -- that many of the extremists that are hiding out in this region have either planned or even carried out attacks in which the vast majority of the victims were actually Muslim citizens of Pakistan. And it's an indication that these kinds of extremist terrorist elements that are operating in the region of these two countries aren't just a threat to the American people, they're also a threat to the Afghan people and to the Pakistani people. That's why the United States government has succeed in building strong security relationships with both those countries to try to mitigate that threat.

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Toluse.

MR. EARNEST: You mentioned the Osama bin Laden raid earlier, and I wanted to sort of draw a comparison. In that raid there was human intelligence, this courier that provided information to back up whatever surveillance that the U.S. had. In this case, we've only heard about the hundreds of hours of surveillance, presumably by satellite. Can you say if there was also human in-country surveillance and intelligence that helped to back that up?

MR. EARNEST: Well, what I can say, Toluse, is that the hundreds of hours of surveillance against this specific compound was a very important part of the source of intelligence that we had against this particular compound. It was not the only source of intelligence, however. And this goes to the near-certainly determination that's required before an operation can be carried out; that our analysts consider a multiple -- consider multiple sources of intelligence before reaching that near-certain determination.

And again, the hundreds of hours of surveillance, including near-continuous surveillance in the days leading up to the mission, would obviously be a very important and rich source of intelligence, but it's not the only source of intelligence that contributed to the targeting of this specific compound.

Q And there were some intelligence officials that have said that in the wake of the Edward Snowden revelations a lot of terrorists have gone offline and underground, and that the U.S. is relying too much on technological intelligence and not doing enough of human intelligence in the country. How do you sort of respond to that kind of argument?

MR. EARNEST: Well, I'd say two things about this. We're obviously talking about a very remote area of the world where even the capability that's given by human intelligence is limited. But I think what I would -- more importantly, I think what I would point out to you is that the fact that these al Qaeda leaders have gone underground is a testament to the impact that this counterterrorism pressure has had on their ability to operate.

If you have al Qaeda leaders that are shutting themselves off from the outside world, that are not taking advantage of communications devices and are seeking to go underground, that's going to make it a lot harder for them to exercise command and control. It's going to make it a lot harder for them to be

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involved in broader organizational efforts of the network. It's going to be a lot harder for them to plan and direct attacks against the United States. And that's an indication of an important consequence of the pressure that the United States and our allies are applying against extremists.

Q One quick question on the Time Warner-Comcast deal. The FCC, the staff has come out against it. I was wondering if the President is going to get involved in this decision and if he has an opinion on it.

MR. EARNEST: This is a deal that is being evaluated by independent regulators, and so I wouldn't weigh in on it from here.

Ms. Weinberg, I'll give you the last one.

Q Thanks, Josh. I want to ask about the case of Kayla Mueller who was killed back in February. At the time, ISIS had claimed her death was because of a Jordanian airstrike. But at the time, at least for the DOD, they had said it was propaganda. So I'm wondering in light of this reassessment, why is the United States so confident in ruling that contingency out?

MR. EARNEST: For two reasons. The first is that we do not have a high-confidence assessment about what led to Ms. Mueller's tragic death. We were able, through a variety of intelligence sources, able to reach a high-confidence assessment about the tragic death of Dr. Weinstein. The second thing is, what we have said about Ms. Mueller's death is that ISIL has claimed that she was killed in a Jordanian airstrike. And what we do know and what we have made public is that there is no evidence that were Jordanian aircraft in the region at the time of the strike that resulted in her death.

So what I would just simply observe is that we are continuing to try to develop sources to get greater insight into what led to her death, but we are intensely skeptical of claims that her death was caused by a Jordanian airstrike because we know there were not Jordanian aircraft in that region at the time of that strike.

Q And that is sufficient to rule out that entirely, 100 percent?

MR. EARNEST: Well, again, we don't know anything 100 percent in that situation. That's why we're trying to gather more information about what led to her death. But we are, I think understandably, intensely dubious of claims that

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a Jordanian airstrike led to her death when the fact is that there were no Jordanian aircraft in that area when she died.

Q But the specific of the Jordanian airstrike aside, has the contingency been ruled out that it could have been collateral damage from some ISIS anti-coalition offensive, be it something like a drone strike or something like that?

MR. EARNEST: Well, as we've said at the time, this situation, this circumstance is still being reviewed by our intelligence sources to try to get greater insight into what exactly occurred.

Thanks, everybody.

Q Josh, will Lynch be sworn in today?

MR. EARNEST: I don't believe there's a plan to do that today, but we'll keep you updated.

END

2:23 P.M. EDT



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# Exhibit 46

April 2015 Burr Statement

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Key Republicans defend use of drones | TheHill

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### Key Republicans defend use of drones



Greg Nash

By **Martin Matishak** - 04/23/15 01:29 PM EDT

Several lawmakers defended the U.S.'s use of drones, saying the killing of two hostages doesn't reflect a problem with the program.

The lawmakers argued the administration and Congress should examine how these strikes ended up killing unintended targets but said it should not lead the U.S. to pull back on the use of drones.

President Obama **acknowledged Thursday** that a drone strike in January killed Warren Weinstein, an American held by al Qaeda since 2011, and Italian national Giovanni Lo Porto, a hostage since 2012.

The attack also killed Ahmed Farouq, an American who was an al Qaeda leader, according to the White House. A separate strike the same month killed Adam Gadahn, an American who served as a prominent spokesman for the terror group.

The incident that killed the hostages "does not bring into question the use of drones; you bring into question the proper use of drones. But no one — no one — believes you can't use drones anymore. That'd be crazy," Senate Armed Services Committee Chairman John McCain (R-Ariz.) told reporters.

However, there should "absolutely" be an examination of the strike, he said.

"Whenever something like this happens, you have to have a review of the operations and what went into the decisions and all that. There has to be a review of it," McCain said.

Senate Intelligence Committee Chairman Richard Burr (R-N.C.) said the panel provides "extensive oversight" of drone efforts.

"We always go back and look at any counterterrorism action that we take, and we will do it in great detail on this one," he said, noting the committee had already taken a second look at the January operation.

Burr added there are "consequences to war. When you look at our experience with collateral damage, it's minimal."

Sen. Tim Kaine (D-Va.), a member of the Senate Armed Services and Foreign Relations panels, said America's drone policy has not been overly aggressive.

"Drones can be a technology that can be very effective, and they tend to reduce — they don't eliminate — reduce the possibility of unacceptable risks to others," Kaine said.

He described drones as a "good technology" but took issue with the breadth of the 2001 authorization for the use of military force that allowed the operation against al Qaeda forces to occur.

"When you have an AUMF that doesn't have [geographic] limitation, temporal limitation, then that's what creates the controversy," Kaine told reporters. "I don't think it's the drones themselves."

Sen. Lindsey Graham (R-S.C.) said he has "no problem at all with anything that happened, other than my deepest sympathies for those who were held by al Qaeda that became collateral damage."

"We're at war. Whether you drop a bomb from an airplane and you hit a collateral damage, it's not different than if you use a drone," he added.

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Key Republicans defend use of drones | TheHill

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But when al Qaeda “does what they do, they put innocent people at risk, so you can’t stop the war. You can’t stop the drone program because of this,” said Graham, a possible 2016 presidential contender.

“They can look and see what went wrong, but I am not for stopping this program. The drone program has been a good tactical weapon in the war on terror, and I am all for keeping it,” he said.

*Updated at 5:14 p.m.*

**TAGS** [Richard Burr](#), [John McCain](#), [Lindsey Graham](#), [Tim Kaine](#)

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# Exhibit 47

April 2015 McCain Interview

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### STATE OF THE UNION

Interview With Arizona Senator John McCain; Interview With Ohio Governor John Kasich; Interview With John Legend. Aired 9-10:00p ET

Aired April 26, 2015 - 09:00 ET

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[09:00:35]

JIM ACOSTA, CNN ANCHOR: A deadly mistake in America's drone war, Hillary Clinton's big cash headache, and a Legend's call for justice.

This is STATE OF THE UNION.

Senator John McCain on the blowback from U.S. drone strikes. Ohio Governor John Kasich on whether he is running for president. Will Hillary Clinton's big money derail her campaign? And musician John Legend on why black lives matter.

Good morning from Washington. I'm Jim Acosta.

President Obama is promising a review of his administration's drone program after two Western hostages, including an American, were killed in a counterterrorism operation. Their deaths have renewed criticism of the U.S. drone strategy.

And now joining me is Senate Armed Services Committee Chairman John McCain.

Senator McCain, thanks very much for joining us. Thanks for getting up so early this morning.

SEN. JOHN MCCAIN (R), ARIZONA: Thank you, Jim.

ACOSTA: You have had a couple days to mull this over, the drone strikes that resulted in the deaths of those two hostages. Were their deaths preventable, in your view?

MCCAIN: I think it was probably preventable, in that there was an obvious breakdown in intelligence. They didn't know that they were there, and our -- as you know, all of our prayers and thoughts are with their families.

So, it was obviously preventable, but the question then is, do we continue these drone strikes, and how

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important are they? Those raises all -- that raises all of those questions, and it's clearly a subject for review by both Intelligence and Armed Services committees and the entire Congress.

ACOSTA: And I noticed this week, after the president's admission about these drone strikes and the terrible tragedy that occurred, that both he and the White House did not use the word drone, and they did not say that the CIA program existed.

But we do know that to be a fact, isn't that right, Senator, that these drone strikes are run by the CIA?

MCCAIN: Yes.

And there is kind of an internal struggle going on within the administration and within the Congress as to which -- whether it should be an armed services operation, this whole issue of drone strikes, or should it be done by the CIA? Obviously, as chairman of the Armed Services Committee, I have some bias, but it seems to me that as much as we could give responsibility and authority over to the Department of Defense, because that's really not the job of the intelligence agency.

But back to your question, I think then that raises the debate. Do we need to continue drone strikes? And if so, how? Obviously, better intelligence. But we are now facing a new form of warfare, these nonstate terrorists organizations that are spread all over hell's half-acre. And, really, the only way you can get at them that we know of now that is viable is through the drone operations.

They have taken out leadership. And we can argue -- in fact, I would argue strenuously we -- there are places where we could have done a lot more, but this is sort of an aspect of the frozen conflict, where we are not going to send boots on the ground to go get those people, and that is certainly understandable.

(CROSSTALK)

ACOSTA: And that's something that -- that's something that White House Press Secretary Josh Earnest said earlier this week, that they can't conduct an Osama bin Laden every time they want to take out terrorists on the battlefield.

But I want to pick on something you just said a few moments ago, which is -- and I know you said this a couple of years ago -- that you would like to see the drone program moved out from the CIA and over to the Pentagon. Why has that not happened?

MCCAIN: Turf battles.

ACOSTA: The CIA doesn't want to give it up?

MCCAIN: Failure to -- in all candor, obviously.

And the president said a couple years ago he wanted them moved. There is some question about the capabilities and the equipment that the CIA -- that the DOD, as compared with CIA.

What this will do, Jim, is we will renew this discussion with the administration, within Congress as to who actually should be running the drone operation.

(CROSSTALK)

ACOSTA: In your view, the CIA should not run this -- yes.

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But it's -- in your view, the CIA should not run this program? I don't mean to interrupt, but want to get that point in.

MCCAIN: I do not think so. That's why they are -- that's why they are called the intelligence agency and why we call the armed forces the -- obviously, the people that are supposed to be carrying out military operations.

[09:05:06]

And I can understand, when it was a very small operation, why it would be done by the intelligence agencies, such as U-2s and other reconnaissance aircraft, for many years. Now it has reached the point where it's an integral part of the conflict and a very essential one, so I think it should be conducted and oversight and administered by the Department of Defense.

ACOSTA: I want to turn to Iran.

As you know, earlier this week, there was the potential for this military confrontation between the U.S. and Iran when it was feared that the Iranians were sending arms through their naval ships over to Yemen to support the Houthi rebels there who are sort of fighting this proxy war on the part of the Iranians.

And the U.S. sent an aircraft carrier to -- the White House would not say that they were essentially whether there to block those weapons from being delivered. But do you think a -- some sort of military action would have been advisable if push came to shove, if it was necessary to block the shipments?

MCCAIN: Absolutely.

There is no doubt that the Houthis are sponsored, trained, and equipped, they're a proxy of the Iranians, who are again on the move in another country. You look where Yemen sits geographically, and it could be a threat to one of the world's most important waterways.

And I applaud the Saudis' efforts, their operations. And for us to continuously argue that they stop their campaign, I think, is ludicrous, part of this delusion that there is going to be a new U.S./Iranian alliance after the nuclear deal is consummated.

And so I applaud what the Saudis are doing. And it's going to be tough. And it going to be tough and hard, but they did the right thing. And why in the world the president wouldn't just say that? The president said, because we are going to preserve freedom of navigation? Come on. Let's be straight with the American people. It was all about resupply of the Houthis.

ACOSTA: Do you think he was afraid of spoiling this deal? Do you think he was afraid of spoiling this nuclear deal?

MCCAIN: Every -- so much -- so much of their actions are related to this -- this nirvana, this mirage out there that, with the nuclear deal, we are going to have some kind of new relationship throughout the Middle East.

That scared the hell out of our Sunni Arab allies. And, frankly, it scares the hell out of me, because they are on the move in the -- all of these countries, Lebanon, Syria, Iraq, and Yemen. And they are on the move in other places as well. They are carrying out very aggressive operations.

ACOSTA: And, Senator, you know that the president, a couple of weeks ago, slammed you, when he essentially accused of you trusting the ayatollah more than Secretary of State John Kerry when you said that the administration and the ayatollah were on separate pages when it comes to this nuclear deal.

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Do you think that diplomacy has any chance of success? And don't you think diplomacy should be given a chance here?

MCCAIN: I think diplomacy should be given a chance. And what I was saying is -- was -- they are the facts.

The facts are that the ayatollah depicts the state of negotiations as far as inspections are concerned, as far as lifting of sanctions are concerned and other aspects of this deal that are diametrically opposed to what John Kerry and the State Department is telling us. I mean, that's just a fundamental fact.

I think George Shultz and Henry Kissinger were correct in the op- ed they had in "The Wall Street Journal," where they said these negotiations begin in order to rid of Iran of ever having a nuclear capability to delaying Iran from having another nuclear -- a nuclear ability.

And I can assure you, Jim, that if this deal goes through the way it appears it is, you will see a nuclear-armed Middle East. And that's incredible dangerous.

ACOSTA: Let me turn to 2016, because I know there was this dust- up between you and Senator Rand Paul.

And Senator Rand Paul referred to you as a lapdog. And you said he was the worst possible candidate of the 20 or so that are running on the most important issue, which is national security. That comeback from you, wouldn't that make a great Hillary Clinton campaign ad if Rand Paul is the nominee of your party?

MCCAIN: Well, my first obligation is to the security of the country, and Rand Paul is behind leading from behind. The -- the...

(CROSSTALK)

ACOSTA: Would you serve as his running mate if he were to -- if he were to ask you to be on his ticket, would you -- would you serve on his ticket?

MCCAIN: You know, the vice president has two duties. One is to enquire daily as to the health of the president, and the other is to break a tie vote in the United States Senate. (LAUGHTER)

MCCAIN: I am not interested.

ACOSTA: So, you wouldn't -- you wouldn't serve as vice president on anybody's ticket?

What about Lindsey Graham? You are essentially his surrogate now in this upcoming campaign.

MCCAIN: Well, I just -- I just feel, Jim, that I can be far more effective as chairman of the Senate Armed Services Committee.

There are challenges -- well, again, Henry Kissinger and George Shultz and Madeleine Albright and all those people we respect have stated unequivocally we are in greater crises than we have ever been since the end of World War II. I agree with them.

[09:10:11]

ACOSTA: But, getting back to Lindsey Graham, you -- you are going to be, I suppose, his chief surrogate in this upcoming campaign.

If he were to ask you to be his vice presidential running mate, I assume you would say yes to that. Isn't that right?

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MCCAIN: Well, that's -- I don't think Lindsey would be -- he is really a smart guy. So, I don't think he would ever consider such a thing.

(LAUGHTER)

ACOSTA: Do you wish...

MCCAIN: And we are very close, and there is no doubt about that, but he understands national security as no other candidate does.

ACOSTA: And do you wish you had picked him as your running mate back in 2008?

MCCAIN: Oh, no, no, I certainly don't.

But I have watched him grow. I have watched him handle his responsibilities on the Armed Services Committee and the Budget Committee, and I have seen him. And it's one of the great life stories that we have ever had, frankly.

ACOSTA: OK.

And let me ask you about the president's remarks last night. I am sure you probably noticed or you have heard since -- since last night the president took a little swipe at you when talking about the security lapses at the White House and fence-jumpers and so forth.

He suggested -- he made a suggestion as to how to beef up security at 1600 Pennsylvania Avenue. Let's throw to that tape. (BEGIN VIDEO CLIP)

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: I am happy to report that the Secret Service, thanks to excellent reporting by White House correspondents, they are really focusing on some of the issues that have come up. And they have finally figured out a foolproof way to keep people off my lawn.

(LAUGHTER)

(CHEERING AND APPLAUSE)

(END VIDEO CLIP)

ACOSTA: Senator, I don't know if you can see it there in Arizona, but there was a picture of you basically saying "Get off my lawn" over at the White House.

What was your response to that? What did you make of that?

MCCAIN: Well, I am reporting for duty on Monday morning...

(LAUGHTER)

MCCAIN: ... in my usual laid-back, casual style, my diplomatic style.

I am telling you, I will get that Secret Service squared away. I am ready for the job.

(LAUGHTER)

ACOSTA: All right, very good.

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Senator John McCain, thanks for joining us this morning, and being a good sport there at the end. It's always great talking to you, sir.

MCCAIN: Thank you.

ACOSTA: Thank you, Senator.

And up next: Ohio's Republican governor on whether he is ready to jump into the race for president, and, later, singer John Legend on mixing art with activism.

(BEGIN VIDEO CLIP)

ACOSTA: What means more to you, winning an Academy Award, winning all these Grammys, or your political activism?

JOHN LEGEND, MUSICIAN: You know what? I'm fortunate that they're not separate.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

[09:16:34]

ACOSTA: Ohio Governor John Kasich has not officially entered the 2016 presidential race, but he is acting a lot like a candidate. Governor Kasich was the keynote speaker this week at the nonpartisan New America Foundation annual conference.

And CNN's Gloria Borger, my colleague, spoke with him after his address.

(BEGIN VIDEOTAPE)

GLORIA BORGER, CNN SENIOR POLITICAL ANALYST: I'm going to start with the question everybody wants answered, which is, are you running for president?

GOV. JOHN KASICH (R), OHIO: I don't know yet. I have taken another big step for me, which is to create a political organization to begin to accumulate more resources, so I can travel more robustly and begin to think about infrastructure.

And then, once that is done, if I can be successful in raising sort of that seed money, then I think the next step to see if people like what I have to say. And then I think it's going to be to find out around the country whether I can raise enough money to compete, at least in the early states. And if that works, I am likely to go forward.

BORGER: So, at this point, what would stop you from running?

KASICH: Lack of resources or a consideration that I wouldn't win, because I don't want to do this just for -- just to go and do it. I have got a big job in Ohio.

Being governor, I have got 11.5 million people and a lot of responsibility. So, this is not like, well, let me try, and if it doesn't work, I will try again, or I will -- you know, if it doesn't work, I will be vice president or something. I am not interested in any of that.

So, either I feel like I can win, or there is no reason to do it.



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BORGER: The last time we spoke, you said that somebody who is extreme in their politics would not be able to win in the state of Ohio.

What did you mean by that?

KASICH: Dividers. People that come in and want to divide are not going to do very well.

And that's because Americans are tired of all the division. They want to see solutions.

BORGER: Do you think Hillary Clinton can win in Ohio? KASICH: Sure. Sure, she could. I mean, of course she could. I

think anybody there on those lists are capable. It's just a matter of how they project themselves.

But she will be a very formidable candidate. She's having a lot of problems now, going to have to answer a lot of questions. But anybody that underestimates Hillary Clinton, I think, makes a mistake. They underestimated her husband.

BORGER: How do you respond to Americans believe that Republicans are too close to Wall Street, that Wall Street is too greedy?

KASICH: Well, I have said all along that I think there is too much greed on Wall Street.

And the reason I say it is because I saw it. And the fact is, there is nothing wrong with making money. There's a lot of good, but you can't just be totally dedicated to making money, without sort of doing some good in the process. I think that we have paid for the problem of greed on Wall Street. And, you know...

(CROSSTALK)

BORGER: There's a little Elizabeth Warren in you, I think.

KASICH: Nobody. John Kasich is -- maybe there is a little bit of me in her.

BORGER: Let me ask you about the Iran sanctions deal.

KASICH: Yes.

BORGER: If you were on Congress, would you vote to allow that to occur?

KASICH: Well, knowing what I know now, no.

Reagan used to say trust and verify. In regard to Iran, it should be verify, verify, verify, without the trust, because I don't trust them.

BORGER: And you don't think the administration has done that or tried to do that?

KASICH: I think they have fallen in love with this deal.

I think it's -- a lot of it is about a legacy. Look, I am not here to condemn and demonize the president, but I'm telling you that I do not like this agreement, what I have read so far.

BORGER: And let me just ask you about the president this week.

You saw that drones apparently killed two Westerners by mistake. He came out and admitted this was an error.

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[09:20:09] Should we expect deadly mistakes like this as part of our -- a

drone program?

KASICH: Well, I don't believe the drone program ought to be run out of the CIA.

The CIA is an intelligence-gathering operation. The operation, the drone program, should be operated exclusively out of the Pentagon. You know, the Air Force has the capability of doing extensive targeting. You don't have those capabilities in the CIA. And I have talked to former CIA people who have told me this.

BORGER: And let me just ask you this final question.

What do you say to Republicans who look at this field and they say, the Republican Party has grown a lot more conservative than John Kasich, who is -- supports Common Core, doesn't take a pathway to citizenship off the table on immigration reform?

KASICH: I think it's a misread of the party.

I think the party, the members of the Republican Party, the members of the Democrat Party share a lot of the same concerns and same anxiety and want to see solutions.

At the end of the day, what I have found where I travel, I don't change my message. If I am at the Detroit Economic Club or down in South Carolina or in New Hampshire, I am told by people that my message is resonating. In the great state of Ohio, 64 percent of the vote, 86 out of 88 counties, one a county that Barack Obama won by 40 points.

I must be doing something right. But we will see. If they -- if they don't like me or if they think I am not this or that, my conscience will be clear. I'm going to do the best I can. And, by the way, I am not changing my positions. I am not changing my talk. I'm going to be who I am.

(END VIDEOTAPE)

ACOSTA: OK, a straight-shooter there in John Kasich.

An interesting footnote: Next summer's Republican National Convention is in Ohio.

And up next: Is Hillary Clinton's presidential campaign already in trouble?

And, later, singer John Legend on using his art for change?

(BEGIN VIDEO CLIP)

ACOSTA: This is personal for you?

LEGEND: Well, it's personal for me because I have had family members that have gotten caught up in the system. I have family friends that I grew up with that have been caught up in the system, people that grew up in my same neighborhood. I could have been one of them.

(END VIDEOTAPE)

(COMMERCIAL BREAK)

[09:26:35]

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ACOSTA: Hillary Clinton's campaign is just three weeks old, but she is already facing a controversy over foreign donations to the Clinton Foundation.

Joining me now around the table is Republican strategist Kristen Soltis Anderson, "Wall Street Journal" White House correspondent Carol Lee, Democratic strategist Stephanie Cutter, and CNN senior Washington correspondent Jeff Zeleny.

And I am calling this the hangover edition of the White House Correspondents Dinner. This is the political side of that. We're going to get to the dinner later.

But I will put you on the spot first, Stephanie, since you have spent a long time defending Democratic candidates over the years. There is this new book out, of course, "Clinton Cash," by Peter Schweizer, who is getting all kinds of publicity, thanks to us and everybody else talking about this book.

But the book raises a lot of good questions about the money coming into the Clinton Foundation and whether or not, as that was happening while Hillary Clinton was at the State Department, some of these foreign donors were -- were actually able to pay for access.

What is your take on this? How damaging is this for Hillary Clinton? Should she be worried?

STEPHANIE CUTTER, FORMER OBAMA DEPUTY CAMPAIGN MANAGER: Well, I think, number one, the book is actually not out.

ACOSTA: Yes.

CUTTER: And even before it hits the stands, it's...

ACOSTA: It feels like it's out.

CUTTER: It certainly feels like it's out because of the media coverage of it and some of the special deals that it has gotten with media.

However, every allegation or piece of innuendo that it has been out there, it has been struck down. Even the author says that there is no evidence here of wrongdoing. And I think that's an important thing for everybody to remember.

He suggests that she was able to get the Colombia free trade deal through because of a donation to her husband's foundation. That's absolutely ridiculous. I worked on the Colombia free deal -- trade free deal for -- for years. And if one person could put their finger on the scale, believe me, I would have found that. It just was not possible.

ACOSTA: You did not see it happening?

CUTTER: It didn't happen. It's not that I just didn't see it. It's just no -- not -- the system is not set up as a way for it to happen.

ACOSTA: And, Kristen, did you expect this kind of political gift to come to the Republicans so early in the campaign?

KRISTEN SOLTIS ANDERSON, REPUBLICAN STRATEGIST: It's just been a constant drip, drip, drip. And I think we have got a long way to go until November 2016. And I think Republicans seem to be getting a new week every week.

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It doesn't take a lot to persuade voters that politicians are sort of peddling their influence to the highest bidder. What is unusual about this is that highest bidder in this case is foreign corporations and foreign governments.

Usually, Russia and uranium not involved in these sorts of stories, which sort of takes it to the next level. And voters also -- also aren't dumb. Bill Clinton's speaking fees tripling when, all of a sudden, Hillary Clinton becomes secretary of state, again, this is not a hard case that Republicans needs to make that the Clintons are in this for themselves and not for the American people and for the good of the country.

ACOSTA: And we should point out, the Hillary Clinton campaign has pointed out that Peter Schweizer is a conservative. He's written books essentially supporting conservative causes in the past.

And I want to play a piece of tape from Hillary Clinton earlier this week and then go to you, Jeff, when Hillary Clinton seemed to be saying, when it comes to the Republicans, it's all about me.

Here is what she had to say.

(BEGIN VIDEO CLIP)

HILLARY RODHAM CLINTON (D), PRESIDENTIAL CANDIDATE: We will be subject to all kinds of distraction and attack.

And I'm ready for that. It's, I think, worth noting that the Republicans seem to be talking only about me. I don't know what they would talk about if I were not in the race.

(END VIDEO CLIP)

ACOSTA: It's all about me at this point, Jeff. Is that -- is that Hillary Clinton's line of defense now?

JEFF ZELENY, CNN SENIOR WASHINGTON CORRESPONDENT: I mean, she is right about that. I was with her in New Hampshire when she said that. That's the only time she has addressed this. And she did it very briefly.

But, look, I think this raises legitimate questions that voters will have to answer about, if she was elected president, then what would happen? What role would Bill Clinton have then? So, I think that, you know, the Clinton campaign realizes that this is just the very beginning of this. They do have to answer some of these questions. And you're totally right, and there is no huge smoking gun in the book that we know of right now...

UNIDENTIFIED FEMALE: Huge (ph) smoking gun.

ZELENY: ...but it does raise questions of speaking fees, of why that one \$2.35 million donation was disclosed when she was becoming secretary of state in January of '09. She signed a document saying she would disclose all contributions to the foundation that apparently did not happen here. So, there are still more questions about this. But the bigger picture is this, (INAUDIBLE) worry about, is this going to affect the trust and credibility of her? Voters are not paying attention to this issue right now but the bigger question is, you know, are people going to say, you know, more scandal and more this?

ACOSTA: So, that's what I was going to say.

(CROSSTALK)

ZELENY: South Carolina --

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ACOSTA: I want to turn to Carol on this, because there may not be a smoking gunning but there is - when it comes to the Clintons' smoking gun fatigue and it has been going on for decades now. And I'm just curious, Carol, how big of a problem is this going to be for the White House, because when we asked Josh Earnest about this...

CAROL LEE, WALL STREET JOURNAL WHITE HOUSE CORRESPONDENT: Right.

ACOSTA: ...he said we have not been presented with evidence of any problem here?

LEE: Everybody is talking about there's no smoking gun, we (INAUDIBLE) presented with evidence, we followed the letter of the law, that's always the response. It's a perception problem that she had and that is, you know, this feeds the larger narrative that the Clintons are secretive; they don't play by the same rules. If they do they just are just within the lines. And that's what this (INAUDIBLE) the thing is. It's judging (ph) up (ph) and it's going to continue for the next 17, 18, 19 months -

(CROSSTALK)

ACOSTA: Stephanie, isn't that true? Isn't there a Clinton fatigue factor here?

STEPHANIE CUTTER, DEMOCRATIC STRATEGIST: There's a slightly different take on it. There is going to be a fatigue factor and it's going to be a fatigue factor for stories like this and how the media covers it. Because it seems like --

ACOSTA: We shouldn't cover this?

CUTTER: ...the Clinton campaign is trying to answer the questions and be forthright and transparent. However, they don't seem to be that worried about that - worried about it. And I think that's probably -- and I'm not out there campaigning with them but there is probably a very different conversation happening in Iowa, in New Hampshire and everywhere else she is traveling than what we are watching on national -- in the national media.

ACOSTA: Yes.

CUTTER: Her point about, you know, Republicans are talking about me, I think the larger point there is, yes, they are talking about Hillary Clinton. Hillary Clinton is talking about real people, and that is what elections are about. And if Republicans lose sight of that, they are guaranteed to fail.

ACOSTA: You know, going back to the late 1990s, I mean, one asset that the Clintons had on their side was Republican overreach. Bill Clinton's approval ratings went up after the impeachment.

Do you think Republicans might over play their hand once again and set the table for Hillary Clinton by overreaching this (INAUDIBLE)?

KRISTEN SOLTIS ANDERSON, REPUBLICAN STRATEGIST: I don't think that it's going to have to take a lot of effort on the part of Republicans to get Americans believing that Hillary Clinton is not particularly trustworthy. It's already showing up in lots of polls.

(INAUDIBLE) Democrat at this point I might feel a little nervous if there is no plan B if, as Jeff mentioned, you know, the layers get peeled off one by one. There is no smoking gun at the moment but it just seems that this constant drip, drip, drip of stories where the Clintons have not done the right thing or have barely have done the right thing is not going to be a helpful narrative for them over the next 18 months.

ACOSTA: (INAUDIBLE) -

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ZELNY: Stephanie is right (ph) there (ph). You did not hear Jeb Bush out there talking about that this week. I mean, we heard Mitt Romney saying, it sounds like bribery but no one who's actually running for president said that. And there is a danger, I think, of Republican overreach. But this is only one small part of it. And we have the Benghazi emails coming up. This is going to be a soundtrack of this campaign, like it or not. The voters may not be paying attention to it but it is - it is going to happen.

ACOSTA: And -

CUTTER: The Republicans are out of focus on what this election is about. I do think there is almost a guarantee that there will be Republican overreach in this election. ACOSTA: All right. All right.

Speaking of overreaching, last night Washington, once again probably could have been accused of overreaching with The White House Correspondents Dinner. We're going to talk about that coming up. The four of you will stick around. When we get to that we'll be talking about President Obama's turn as comedian in chief, something he's used to doing and we will talk about that and some highlights in a few moments.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

[09:38:24] RONALD REAGAN, FORMER PRESIDENT OF THE UNITED STATES: I am aware of my age. When I go in for a physical now, they no longer ask me how old I am, they just carbon date me.

BILL CLINTON, FORMER PRESIDENT OF THE UNITED STATES: I have actually shown up here for eight straight years. Looking back, that was probably a mistake.

GEORGE H.W. BUSH, FORMER PRESIDENT OF THE UNITED STATES: Members of the White House correspondents' association, distinguished guests, ladies and gentlemen, here I am.

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: Now to the mid-term elections, my advisers asked me, Mr. President, do you have a bucket list? And I said, well, I have something that rhymes with bucket list.

(END VIDEO CLIP)

ACOSTA: And it's a good thing he pulled that off and there wasn't any miscue there in terms of pronouncing, bucket list, which I was afraid to say this morning. Welcome back.

Highlights from an annual ritual here in Washington, The White House Correspondents Dinner, is an event where Hollywood celebrities and politicians mingle and the president of the United States gets to have the last laugh. And last night President Obama appeared at the dinner for the seventh year in a row and got some big-time zingers in there.

Our round table is back and I just want to show some pictures of my evening. I got to see a few celebrities. Well, there's Huma Abedin, Hillary Clinton's assistant. Jane Fonda was sitting at our table last night, that was something else. And I got to meet Julie Bowen from "Modern Family", you know, I was checking - and there's Jane Fonda as well. And I was checking, you know, my Twitter feed last night and - posting these pictures just immediately provoked this backlash.

There's a lot of people out there who think, this stinks. That these celebrities and these politicians, and these people in the media should not be doing this. What do you think, Carol? [09:40:00] LEE: Well, I'm on the board of the White House

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Correspondents Association. I will be president next year, and I disagree. I think that that's what gets a lot of the focus, obviously, that's what people are interested in.

But we do a lot of things that have nothing to do with celebrities or all the parties and the glitz that followed - surround the dinner. You know, also last night, we honored people who won awards for doing great journalism, covering the White House.

We have scholarship recipients, the next generation of reporters who are -

ACOSTA: And we featured the "Washington Post" reporter who is behind bars in Iran right now.

LEE: That's right. And we acknowledged everybody in the room who is covering the beat, who is dedicated to this. And we talked about transparency and access, which is what we do day in and day out.

So, once a year the spotlight is on us and our dinner, and unfortunately no one wants to take a picture with -- sorry, Jeff, but Jeff and me -- I mean, I do, you know, and they want to take a picture with Jane Fonda and that's what gets on Twitter.

ACOSTA: And Jeff, you have been doing a number of these. Is this obscene, do you think? You know, "The New York Times" doesn't go to this.

ZELENY: They don't anymore, right.

And I was at the "New York Times" when that decision but - look, I think, it -- there is a lot of talk about how obscene this is. It's one night.

I thought last night's was actually more in check than previous years, not as many celebrities. There's no Ozzy Osbourne kind of, you know, standing up on a chair and having his ways. I always think the most interesting thing is how the president reacts.

We get a great window into what the president is thinking, his frustrations, his humor in this kind of speech. So, that's the value that I've seen. And we saw President Bush in '06, I mean, that was a very funny evening. So, I think that's the value in this, seeing his humanity.

ACOSTA: Yes. I sort of feel like more effort goes into writing the president's jokes at this dinner than maybe some of his policy speeches. I mean, that was a well-crafted work of art last night.

Let's show a clip from that because he had a little anger translation going on and it was probably the highlight of the evening. Let's toss to that.

(BEGIN VIDEO CLIP) OBAMA: Protecting our democracy is more than ever. For example,

the Supreme Court ruled that the donor who gave Ted Cruz \$6 million was just exercising free speech.

LUTHER: Yes, it's the kind of speech like this, I just wasted \$6 million.

OBAMA: And it's not just Republicans. Hillary will have to raise huge sums of money, too.

LUTHER: Oh, yes, she's going to get that money. She's going to get all the money. Khaleesi is coming to Westeros.

(END VIDEO CLIP)

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ACOSTA: Great stuff.

Stephanie, the jokes work because, you know, it's funny and it's true.

CUTTER: You know, I think it's the one night where the president can poke fun of himself, poke fun some of -- other fellow electives but and also poke fun of the media, you know, and in that regard it's a good time.

ACOSTA: And I talked to a White House official last night who said, you know, the president does relish this opportunity to...

CUTTER: He does.

ACOSTA: ...dish (ph) it back at the press.

CUTTER: He does.

ACOSTA: So, he gets to save up of all that frustration over the course of the year.

What do you think about this? What did you make of some of the jokes last night? There was a lot of jokes at the expense of Ted Cruz, Rand Paul and others.

ANDERSON: I think the Republicans running for president are all big boys and girls. I think they can take it. Yes, I mean, I think the dinner to the extent that it becomes this weird spectacle with tons of celebrities. It's kind of an odd note for Washington to hit.

But in general I think this is the story that most Americans are probably not talking about this morning.

ACOSTA: They don't really care about us, right, as much as we would like to talk about ourselves?

And let's go (ph) to another clip from the president talking about - this clip actually sort of shocked me, because I thought, you know, some of these jokes can kind of go close to the edge. This one was right there or maybe went over it. Let's play that clip.

(BEGIN VIDEO CLIP)

OBAMA: A few weeks ago Dick Cheney says he thinks I am the worst president of his lifetime, which is interesting, because I think Dick Cheney is the worst president of my lifetime.

(END VIDEO CLIP)

ACOSTA: That was a zinger and then there was another one for Hillary Clinton, where the president said she has been living out of a van or something like that in Iowa. I mean, I guess, the subjects of these jokes have to take it in good form, I suppose.

LEE: Yes. And most of them seem to, except there was one year when Donald Trump did not seem to take the jokes very well.

ACOSTA: Yes. Donald Trump was sitting very close to me last night and he seemed to be enjoying himself a lot more than the last time around during that whole birth certificate controversy. And you know, this is one of those opportunities, Jeff, where, you know, if we can't laugh at ourselves, who can we laugh at, right? We (ph) have (ph) to (ph) do (ph) it (ph).

ZELENY: Right.



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ACOSTA: It's a healthy form of catharsis.

(CROSSTALK)

ZELENY: Sure. And the worst thing that is probably not being mentioned in this situation.

I mean, Martin O'Malley, who is probably running against -- or for president on the Democratic side. He was mentioned a few times. Even he was the butt of jokes, but at least he was mentioned. I think the - and the biggest thing is -

(CROSSTALK)

ACOSTA: Some of the best advertisings he has had.

ZELENY: Yes. I mean, there were not a lot of Jeb Bush jokes in there. A lot of Democrats are concerned about his candidacy. So, you know, I think, that by Monday morning all of us will be back to work and this is a memory for one more year.

[09:45:04] ACOSTA: All right. Very -- and a good one as well.

Carol Lee, Jeff Zeleny, Stephanie Cutter, Kristen Solis Anderson, thank you very much. We appreciate it.

And my conversation with John Legend, on everything from his Oscar winning song, "Glory," to the cause he plans to take up with President Obama. Some surprising words for the president coming up in just a moment.

(COMMERCIAL BREAK)

ACOSTA: He has won nine Grammys and took home the Oscar this year for best original song since his debut album "Get Lifted" was released in 2004. John Legend has continued to create hit after hit, but for the talented singer, song writer, producer and philanthropist social activism is just as important to him as art.

(BEGIN VIDEOTAPE)

ACOSTA: Thanks for being on State of the Union.

JOHN LEGEND, MUSICIAN AND ACTIVIST: Thanks for having me.

ACOSTA: Just in the last week or so what's flared up in Baltimore has heightened the awareness once again of this issue of police brutality.

LEGEND: Yes.

ACOSTA: In Baltimore, allege police brutality. Do you think there's an epidemic of police brutality happen in this country right now?

LEGEND: Well, I think for too long the criminal justice system implemented by the police but not solely run by the police has treated black people as though our lives are not as valuable, as though we are enemies in our communities rather than community members, and we need our police to look at us as community members they care about and want to keep safe and healthy and treat us with the same fairness they would treat any other person.

[09:50:00]

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Far too often that hasn't been the case. And that's why you see so many people walking around with signs, the black lives matter. And the reason we have to be specific and say, black lives matter, is because so many forces in American life are telling us that our lives don't matter, that our lives are expendable. That when we're killed, when we're unarmed, that we can't get justice for that. When we are the perpetrators of crime, even though it's the same crime as someone else we get longer sentences or we get treated worse by the criminal justice system.

ACOSTA: And a do you think that we're just seeing a greater number of these types of cases right now or is it because -

(CROSSTALK)

LEGEND: I honestly think it's just because - I think there's more awareness. I think there's more technology that allows us to have transparency, but I think this has been happening --

ACOSTA: Cell phone cameras?

LEGEND: Yes, cell phone cameras.

And I think in some ways it's a good thing, but in other ways it's almost like it's numbing the extent to which we're seeing it because we're seeing something new almost every other day.

ACOSTA: The case in South Carolina --

LEGEND: Yes, South Carolina. We're seeing in Baltimore. We're seeing all over the country.

It's almost to the point where it seems so commonplace that I don't want us to get too used to it. We still need to be outraged about these things.

ACOSTA: I'm just curious. We have not heard from President Obama on this situation in Baltimore and on the situation in South Carolina. For the last couple of weeks he hasn't comment on - he has a lot on his plate obviously.

LEGEND: Sure.

ACOSTA: He's working on a lot of different issues. You have been a big supporter of his over the years.

LEGEND: Yes.

ACOSTA: Do you think he's said enough on this?

LEGEND: I think there's more to be said, but I also think it's not as important that he comments on every case. It's important that we reform the system on the federal level, the state and local level as well. And it's not just about these killings, which are very important and a huge concern in the community, but it's also about what I have been talking about for a bit in the past couple weeks is mass incarceration and the overall way that the criminal justice system treats particularly black and brown communities, poor communities.

We are the most incarcerated nation in the world, and we have gotten there through a set of policies that have been in existence over the last 40 years. We have to have more than just press conferences. We need to have real changes in policies.

ACOSTA: And John, I remember when you launched this campaign you went to a prison...

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LEGEND: Yes.

ACOSTA: ...to perform if I'm not mistaken. What was that like?

LEGEND: Yes, I went to a prison in Austin. I went to a prison in Sacramento. I went to the old Folsom prison where Johnny Cash performed. And I also visited other facilities in California. And today actually here in D.C. we went to go visit an alternative program for youth who get caught up in the juvenile justice system. And --

ACOSTA: Have you - have you found some solutions to this issue of mass incarceration?

LEGEND: Well, I think - actually what we saw today was a great thing because it was saying that we don't need prison as the solution for every problem.

So when our young people get in trouble, a lot of times it's nonviolent. A lot of times it's minor fights and things like that. A lot of times they have been sent to the prison system, to the juvenile justice system and locked up when there are other ways to deal with them, and other ways that are more community based and more focused on restoring them so that they can come back and live a good life and pursue their dreams.

These are kids that are 15, 16 years old. For us to give up on them and throw their lives away at that age is just a travesty. And so we've seen that.

We've seen people who have gone through all kinds of trauma who are living in a cycle of broken lives where, you know, they've had issues with their own parents, issues in their own communities. They've seen people get killed. They have seen family members get locked up. And so they're already broken. They're already people who have gone through so much, and then when they get in trouble, they end up back in that same system and so we need to find ways that are better --

ACOSTA: You have to figure out how to get to these at-risk kids before they become incarcerated.

LEGEND: Exactly.

So, I spent so much time focusing on schools and I still do. We focus on helping make sure that teachers that are doing a great job, are getting their solutions funded and getting their work seen around the country so that we improve our schools, improve the instruction quality that we have for the kids. Make sure that the resources that they need are there. Make sure that if they have emotional traumas that they've gone through that we offer support for them.

But it's also important that -- for the kids that slip through the cracks who all these interventions haven't gotten to yet that we find solutions that aren't always about locking them up. We have made a decision as a country over the last 40 years that we're going to deal with most problems like poverty, drug dependency, mental health issues by putting people in prison. And -

(CROSSTALK)

ACOSTA: Can I challenge you on that for a second? Let me challenge you on that because if you look at the crime statistics across the country, crime is at a generation low levels.

LEGEND: Yes, and incarceration hasn't gone down...

ACOSTA: Yes.

LEGEND: ...to reflect that the crime has gone down. And -

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(CROSSTALK)

ACOSTA: But isn't incarceration -

(CROSSTALK)

LEGEND: They recently did a study because intuitively you might say, well, the reason why the crime went down is because we locked all the bad people up. A recent study said that's statistically just not the case. There's a small percentage of it that impacted the crime rate early on but over the last 10 or 15 years incarceration hasn't improved the crime rate.

ACOSTA: I'm going to get in a lot of trouble if I don't ask you about your work because you have a lot of fans not only at CNN but around the country, around the world.

You won an academy award for the song "Glory"...

LEGEND: Yes.

ACOSTA: ...which you co-wrote with Common.

LEGEND: Yes.

ACOSTA: And you said more black men are under correctional control than they were under slavery in 1850.

LEGEND: Mm-hmm.

ACOSTA: This is personal for you.

LEGEND: Well, it's personal for me because I have had family members that have gotten caught up in the system. I have had family friends that I grew up with that have been caught up in the system. People that grew up in my same neighborhood, I could have been one of them.

And so I do take this personally, but I have seen it destroy way too many families. I've seen it destroy way too many communities. And as I go through our schools and through our communities and see the results of these -- this situation where you see so many kids growing up without a father, for instance, so many kids that have some kind of parent in prison or under probation or parole, can't get a job, can't vote for various reasons, you just have to think that there's a better way to do this than what we're doing right now.

ACOSTA: And what means more to you, winning an Academy Award, winning all these Grammys, or your political activism?

LEGEND: You know what, I'm fortunate that they're not separate.

You know, my music has given me be an opportunity and particularly winning the Oscar for "Glory," for a film "Selma" which is all about fighting for justice and equal rights for all. "One day when the glory comes it will be ours, it will be ours

oh, glory."

It gave me an opportunity to speak out on behalf of people who may be voiceless otherwise, who people may not listen to otherwise. And I'm trying to back that - back that up with actual action.

ACOSTA: You sound like somebody who might want to run for political office one day. We are in Washington...

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LEGEND: I have no interest.

ACOSTA: ...I have to ask the question.

LEGEND: I have no interest.

ACOSTA: Reporters like me will always say that's not a no.

LEGEND: No.

(CROSSTALK)

ACOSTA: It's like saying, I'm not running right now.

LEGEND: No, I don't want to ever run for political office. I feel like my political activism can exist outside of me running for a political office.

ACOSTA: Finally, President Obama, how would you grade his presidency right now?

LEGEND: I think there has been a lot of successes. I think health care reform is one that I'm particularly proud of. I think the fact that --

ACOSTA: You worked hard to get him elected.

LEGEND: Yes. Absolutely.

Health care being affordable and accessible to so many more Americans now is going to go down in history. I think is a huge accomplishment. I think the stimulus package, I thought it could have been a little bigger, but I think what it did accomplish was bringing the unemployment rate down to where it is now.

ACOSTA: What if he doesn't get a handle on this policing issue?

LEGEND: I think there's more to do, and I'm going to push the president to get more involved in criminal justice reform. I'm going to suggest some ideas that we think could help improve the situation.

But a lot of it has to do with state and local governments as well. That's why we went to the state house in Texas. That's why we were in Sacramento with Gavin Newsom because a lot of these laws are enacted on a state level and so we need take by state change as well. It's important that the president is behind us, but it's also important that we get legislators and governors across the country to do it as well.

ACOSTA: If you change your mind about running for office, give CNN the scoop, will you?

LEGEND: I will. I will.

ACOSTA: John Legend -

LEGEND: Don't hold your breath. Don't hold your breath.

ACOSTA: We might just a little bit.

But John Legend, thank you very much for your time.

LEGEND: Thank you.

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ACOSTA: It's great talking with you.

LEGEND: Thank you.

(END VIDEOTAPE)

[09:58:55] ACOSTA: John legend recently launched the Free America campaign which will focus on ending mass incarceration and reforming the criminal justice system.

We'll be right back.

(COMMERCIAL BREAK)

ACOSTA: Thanks for watching STATE OF THE UNION. I'm Jim Acosta in Washington.

"FAREED ZAKARIA GPS" starts right now.

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# Exhibit 48

May 2015 NSC Statement

**A-853**



## A-854

The Washington Post

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National Security

# Debate is renewed on control of lethal drones operations

By **Karen DeYoung** May 5

The revelation last month that a CIA drone strike in Pakistan had [killed an American hostage](#) has reawakened a long-running debate on whether the intelligence agency should be in the drone business at all, or if such lethal strikes are best left to the military.

Sen. John McCain (R-Ariz.), chairman of Senate Armed Services Committee, said last week that he would use this year's defense authorization bill to promote such a shift. The Senate Intelligence Committee's chairman and ranking Democrat indicated that they would oppose him.

The public disagreement has exposed a legislative turf battle that began nearly two years ago, when President Obama said he favored military control. He still does, according to the White House.

But with the military-intelligence divide on Capitol Hill reflecting similar differences between the Defense Department and the CIA, the president has not taken action either way.

Obama "has explained his belief that we must be more transparent about both the basis of our counterterrorism actions, including lethal operations, and the manner in which they are carried out," said National Security Council spokesman Edward C. Price.

"He has indicated that he will increasingly turn to our military to take the lead and provide information to the public about our efforts," Price said. "We continue to work diligently toward this goal."

The deaths of al-Qaeda hostages [Warren Weinstein](#) and [Giovanni Lo Porto](#), an Italian aid worker, in the CIA drone strike have "rekindled the debate and maybe given it some new momentum," said Rep. Adam B. Schiff (Calif.), the senior Democrat on the House Intelligence Committee. Schiff has bucked the predominant view, at least on the Senate intelligence panel, and said he favors military control.

Schiff disagrees with Sen. Dianne Feinstein (Calif.), the senior Democrat on the Senate Intelligence Committee, who said last week that "we have much more oversight over the intelligence program than we have over the military program, and that's just a fact."

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Feinstein and others have argued that the CIA is better at lethal strikes and, despite Weinstein's accidental death, is responsible for less collateral drone damage than the military.

"I haven't seen any evidence that the DOD is not perfectly competent to do this," Schiff said in response. "I think people are going more on their gut sense than any empirical data."

The administration has said that turning the program over to the military would allow it to be more transparent than it can be about CIA drone strikes, which are considered covert actions that can be disclosed only with presidential permission.

But the deaths of Weinstein and Lo Porto marked the first time the administration has acknowledged civilian deaths in a strike by either the CIA or the military outside of war operations in Afghanistan. Witnesses, human rights organizations and even partner governments have reported numerous instances of such unintended consequences from CIA drone strikes in Pakistan since 2008 and strikes conducted by the CIA and the military's Joint Special Operations Command in Yemen.

Although figures vary among independent tallies, the Bureau of Investigative Journalism has documented 415 strikes in Pakistan and Yemen since the Sept. 11, 2001, terrorist attacks, the vast majority of them under the Obama administration. The organization estimates that from 423 to 962 of those killed have been civilians. The administration has said those casualty figures are greatly inflated, while offering no accounting of its own.

Regardless of what Congress decides, Schiff said, "there is nothing to prevent the administration from being more transparent any time they decide they want to be" by providing "an annual accounting of how many people have been killed — civilians and combatants — and how they are defining each. There is no reason why this should require legislation," although both he and Feinstein have proposed bills ordering Obama to provide the figures.

But "to argue that this is solely about who is better at collateral-damage issues is to miss the wide array of added strategic, political, legal and ethical issues at play," said Peter W. Singer, a senior fellow at the New America Foundation who specializes in modern warfare. "There are fundamental differences when a campaign is being designed, authorized and operated under military command and control versus . . . civilian intelligence agencies."

Questions include "how are you putting this within an overall strategy," Singer said. "The lawyers involved . . . the arguments they make for or against, the laws they turn to for guidance . . . the reporting of it. Then, the feedback loop of both how it goes well and what happens when it goes bad."

There is a clear history of accountability for strikes gone awry in the Afghan war, including courts-martial and payments made to bereaved citizens on the ground, he said. But none of that occurs when the military is involved in drone attacks under the auspices of clandestine counterterrorism operations.

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When Obama first announced new lethal targeting guidelines and a push toward military control in a 2013 speech, administration officials said that one of their principal goals was to establish a “playbook” that would lock down the rules for future administrations.

But by not fully implementing his own changes, Obama has left the issue open for the next president. It is early in the 2016 campaign “and no one’s talking about it,” Singer said. All declared and likely candidates have been generally supportive of the drone program.

The administration is also using armed drones as part of its air campaign in Iraq and Syria against the Islamic State, whose global footprint is expanding across the Middle East and into Africa and Southeast Asia. “Now we get to the real nitty-gritty,” Singer said. “Who will control” an expansion against the Islamic State.

Another goal of the administration playbook was to set rules — and an example — that could be imposed on other countries. Nations now flying armed drones include Britain, Israel, Nigeria, Iran, Pakistan and China, while a number of others are developing them.

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Karen DeYoung is associate editor and senior national security correspondent for the Washington Post.

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# Exhibit 49

June 2015 Pentagon Statement

**A-858**

## A-859

6/19/2015

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 nytimes.com

[http://www.nytimes.com/2015/06/15/world/middleeast/us-airstrike-targets-qaeda-operative-in-libya.html?\\_r=2](http://www.nytimes.com/2015/06/15/world/middleeast/us-airstrike-targets-qaeda-operative-in-libya.html?_r=2)

## U.S. Airstrike in Libya Targets Planner of 2013 Algeria Attack

By ERIC SCHMITT

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WASHINGTON — The United States carried out an airstrike in [Libya](#) early Sunday against the mastermind of the [2013 terrorist seizure of an Algerian gas plant](#) that left 38 foreign hostages dead, American and Libyan officials said on Sunday.

The Libyan government issued a statement Sunday night saying that the airstrikes killed the terrorist leader, [Mokhtar Belmokhtar](#), and “a number” of Libyan terrorists in the eastern part of the country.

American officials confirmed that Mr. Belmokhtar was the target of the strike, carried out by multiple American F-15E fighter jets. But they expressed caution about his fate, saying forensic proof was needed to declare with certainty that Mr. Belmokhtar had been killed. Given the likely extent of the damage — multiple bombs were dropped on the target, officials said — that determination could take some time unless terrorist websites issue an official statement of mourning.

The Libyan statement said: “The Libyan government announces that American planes undertook action that resulted in the death of the wanted terrorist Mokhtar Belmokhtar and a number of Libyans belonging to one of the terrorist groups in Eastern Libya, after consultation with the Libyan interim government to take action on terrorist leadership present on Libyan soil.”

### Photo

An undated image of Mokhtar Belmokhtar, an Algerian militant leader reported to have been killed in an American airstrike. Credit via Agence France-Presse — Getty Images



If confirmed, the death of Mr. Belmokhtar would be a major counterterrorism victory for the United States against one of the world’s most wanted militants.

“I can confirm that the target of last night’s counterterrorism strike in Libya was Mokhtar Belmokhtar,” said Col. Steven H. Warren, a Defense Department spokesman. He said Mr. Belmokhtar “has a long history of leading terrorist activities” and “maintains his personal allegiance to [Al Qaeda](#).”

The United States government, he said, was “continuing to assess the results of the operation and will provide more details as appropriate.”

Mr. Belmokhtar is an Algerian militant with a long history in the Sahel region, which falls on the southern flank of the Sahara stretching from Senegal to Chad. Although his direct operational ties to Al Qaeda may have lessened, his stature as a terrorist leader has grown.

Called the Prince by his entourage, he was considered the last major surviving figure among the jihadists in North Africa. All the others have been killed in French raids. He is certainly the most feared among them

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because of his operational and planning skills.

Born in [Algeria](#), he fought in the Algerian civil war of the 1990s. He joined a militant group based in Algeria and took up smuggling and kidnapping for ransom; one terrorist raid included the [abduction of a Canadian diplomat](#) in late 2008.

Mr. Belmokhtar's success in maneuvering largely unhindered for years in the deserts of northern Mali and southern Algeria and Libya was a result of his masterful integration into the local populations. He married a woman from Timbuktu, Mali; spoke the local dialects; and shared some of his rich takings from more than a decade of kidnapping Westerners.

The Canadian diplomat, Robert Fowler, a former United Nations special envoy, [was released](#) after four months. He said in a 2013 interview, "I was always impressed by the quiet authority he exhibited." Mr. Fowler met with Mr. Belmokhtar several times during his captivity in the desert.

Among his militant names is Laouar, or the One-Eyed, because it is said he may have lost an eye while fighting the Soviets in Afghanistan, where he learned combat skills. A major cigarette trafficker, he is also known as Marlboro Man.

Mr. Belmokhtar became a leading figure in Al Qaeda in the Islamic Maghreb, or A.Q.I.M., the Qaeda affiliate in North Africa. He was the most experienced of four leaders of Al Qaeda in the Islamic Maghreb until he broke with the group to lead Al Mulathameen Battalion, which was officially [designated as a foreign terrorist organization](#) by the State Department in 2013.

Photo



An Algerian soldier near the gas plant where a terrorist attack in January 2013 resulted in the deaths of 38 foreign hostages, including three Americans. Mokhtar Belmokhtar led the attack. Credit Louafi Larbi/Reuters

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In January 2013, Mr. Belmokhtar led the attack on a gas plant in Algeria that resulted in the death of 38 civilians, including three Americans. Four months later, his group joined with a West African terrorist faction — the Movement for Oneness and Jihad in West Africa — to carry out [attacks in Niger](#) that killed at least 20 people, the State Department said.

In August 2013, Mr. Belmokhtar's faction and the West African extremists announced that they were joining to form yet another group, Al Murabitoun. But the merger fell apart, and the other militants split from Mr. Belmokhtar's group. This year they announced they had joined the Islamic State.

Mr. Belmokhtar has remained loyal to Al Qaeda. His last public statement was a rebuke of his colleagues who had gone to the Islamic State, who he said had "violated the foundation" of their organization.

Western diplomats say that intelligence agencies have been tracking Mr. Belmokhtar in and out of Libya at least since a late 2012 spotting in Tripoli. But the targeting by American air power came up in just the past 48 to 72 hours, a senior American official said. Officials confirmed that American surveillance drones had been part of the effort to track the terrorist leader.

"It was a strike on an extremist leadership target whom we believed posed a threat against American and Western interests," said one official, who spoke on the condition of anonymity to discuss confidential intelligence reports.

The attack marked the first time the American military has carried out any kind of airstrike in Libya since the [NATO operation there in 2011](#) that helped oust Col. Muammar el-Qaddafi.

American commandos, though, have carried out other operations in Libya since the NATO air war.

In October 2013, American forces [captured a Libyan militant](#) who had been indicted in 2000 for his role in the 1998 bombings of the United States embassies in Kenya and Tanzania. The militant, born Nazih Abdul-Hamed al-Ruqai and known by his nom de guerre, Abu Anas al-Libi, had a \$5 million bounty on his head.

In June 2014, American commandos operating under the cover of night seized the man suspected of leading the [deadly 2012 attack on the United States Mission](#) in Benghazi, Libya, ending a manhunt that had dragged on for nearly two years and inflamed domestic and international politics. About two-dozen Delta Force commandos and two or three F.B.I. agents descended on the outskirts of Benghazi in predawn raid to grab the suspect, [Ahmed Abu Khattala](#). No shots were fired, and the suspect was removed from Libya to a United States Navy warship in the Mediterranean, on which he was transported to Washington for prosecution.

The airstrike against Mr. Belmokhtar came as the group's chief ideological rival, the Islamic State, also known as ISIL or ISIS, has expanded its presence inside Libya, alarming Western officials because of the country's proximity to Europe, across the Mediterranean.

Four years after the removal of the Qaddafi regime, the near-collapse of the Libyan government has left no central authority to check the group's advance or even to partner with Western military efforts against it.

Two armed factions, each with its own paper government, are fighting for control, and each has focused more on internal quarrels than on defeating the Islamic State.



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# Exhibit 50

June 2015 White House Statement

**A-863**

## A-864

7/9/2015

Statement by NSC Spokesperson Ned Price on the Death of Al-Qa'ida in the Arabian Peninsula Leader Nasir al-Wahishi | whitehouse.gov



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# Statement by NSC Spokesperson Ned Price on the Death of Al-Qa'ida in the Arabian Peninsula Leader Nasir al-Wahishi

the WHITE HOUSE President Barack Obama

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The White House

Office of the Press Secretary

For Immediate Release

June 16, 2015

The Intelligence Community has concluded that Nasir al-Wahishi, the leader of al-Qa'ida in the Arabian Peninsula (AQAP) and deputy to al-Qa'ida leader Ayman al-Zawahiri, has been killed in Yemen. Wahishi's death strikes a major blow to AQAP, al-Qa'ida's most dangerous affiliate, and to al-Qa'ida more broadly. Wahishi had led AQAP since its founding in 2009 and oversaw the group's plotting against the United States, U.S. interests in the Arabian Peninsula, and those of our allies in the region. Wahishi was responsible for the deaths of innocent Yemenis and Westerners, including Americans, but—through the concerted efforts of our counterterrorism professionals—we were able to thwart many of his attack plans.

The President has been clear that terrorists who threaten the United States will not find safe haven in any corner of the globe. While AQAP, al-Qa'ida, and their affiliates will remain persistent in their efforts to threaten the United States, our partners, and our interests, Wahishi's death removes from the battlefield an experienced terrorist leader and brings us closer to degrading and ultimately defeating these groups.



**A-865**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....X  
AMERICAN CIVIL LIBERTIES UNION and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

15 Civ. 1954 (CM)

U.S. DEPARTMENT OF JUSTICE, including its  
components the OFFICE OF LEGAL COUNSEL  
and OFFICE OF INFORMATION POLICY,  
DEPARTMENT OF DEFENSE,  
DEPARTMENT OF STATE, and CENTRAL  
INTELLIGENCE AGENCY,

Defendants.

.....X

**NOTICE OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE THAT, upon the Declarations of John E. Bies, Douglas R. Hibbard, Andrew L. Lewis, John F. Hackett, Martha M. Lutz, John Bradford Wiegmann, and Jennifer L. Hudson, and the accompanying memorandum of law, as well as the classified declarations and index filed for the Court’s *ex parte* and *in camera* review, defendants the Department of Justice, including its components the Office of Legal Counsel and the Office of Information Policy, the Department of Defense, the Department of State, and the Central Intelligence Agency, by their attorneys, Preet Bharara, United States Attorney for the Southern District of New York, and Benjamin C. Mizer, Principal Deputy Assistant Attorney General, will move this Court before the Honorable Colleen McMahon, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, for an order granting

**A-866**

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partial summary judgment in favor of defendants with respect to items (1) and (2) of plaintiffs' request under the Freedom of Information Act.

Dated: New York, New York  
October 2, 2015

BENJAMIN C. MIZER  
Principal Deputy Assistant  
Attorney General

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By: /s/ Elizabeth J. Shapiro  
ELIZABETH J. SHAPIRO  
AMY POWELL  
STEPHEN ELLIOTT  
U.S. Department of Justice  
Federal Programs Branch

By: /s/ Sarah S. Normand  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>AMERICAN CIVIL LIBERTIES UNION and AMERICAN CIVIL LIBERTIES UNION FOUNDATION,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>DEPARTMENT OF JUSTICE, including its components the OFFICE OF LEGAL COUNSEL and the OFFICE OF INFORMATION POLICY, DEPARTMENT OF DEFENSE, DEPARTMENT OF STATE, and CENTRAL INTELLIGENCE AGENCY,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>No. 15 Civ. 1954 (CM)</p> <p style="text-align: center;"><b>ECF CASE</b></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

**SECOND DECLARATION OF MATTHEW SPURLOCK**

I, Matthew Spurlock, pursuant to 28 U.S.C. § 1746, hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief:

I am an attorney at the American Civil Liberties Union Foundation and co-counsel for Plaintiffs in this litigation. Attached hereto are true and correct copies of the following:

<b>Exhibit #</b>	<b>Short Title</b>	<b>Full Citation</b>
Exhibit 51	Report on Associated Forces	DOD, Report on Associated Forces (July 2014)
Exhibit 52	Report on Process	DOD, Report on Process for Determining Targets of Lethal or Capture Operations (Mar. 6, 2014)

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<b>Exhibit #</b>	<b>Short Title</b>	<b>Full Citation</b>
Exhibit 53	January 2014 Rizzo Book	John Rizzo, <i>Company Man: Thirty Years of Controversy and Crisis in the CIA</i> (2014) *
Exhibit 54	November 2015 Panetta Statement	Chris Whipple, ' <i>The Attacks Will Be Spectacular</i> ', Politico, Nov. 12, 2015

Date: December 1, 2015

Respectfully submitted,

/s/ Matthew Spurlock

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\* Exh. 53 is additional material—the copyright page—from the source of Spurlock Decl. Exh. 35 (January 2014 Rizzo Book), ECF No. 34-35.

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# Exhibit 51

Report on Associated Forces



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**(U) Report on Associated Forces  
July 2014**

(U) **Background.** The Joint Explanatory Statement to accompany the National Defense Authorization Act for Fiscal Year 2014 requests that the Secretary of Defense provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on “definitions and the process to determine if an entity is an affiliate, associated force and/or an adherent of al Qaeda or the Taliban; and an assessment of the groups or entities that the Department considers to be affiliates or adherents of al Qaeda.” The Joint Explanatory Statement requests that the same information be provided to the Committee on Foreign Relations of the Senate and Committee on Foreign Affairs of the House of Representatives. This report responds to that information request contained in the Joint Explanatory Statement.

(U) Additionally, this report updates and supplements a similar communication from then-Assistant Secretary of Defense for Special Operations and Low Intensity Conflict Michael Sheehan to the Senate Armed Services Committee in June 2013.

~~(S)~~ Summary. (b) (1)

[REDACTED]

[REDACTED]. Pursuant to Presidential policy guidance, the use of military

---

<sup>1</sup> ~~(S//NF)~~ Definition of “Associated Force.” An associated force is a group that (1) is an organized, armed group that has entered the fight alongside al-Qa’ida and (2) is a co-belligerent with al-Qa’ida in hostilities against the United States or its coalition partners. The legal conclusion that a group is an associated force against whom military force may be used is distinct from the intelligence assessment that a group is “affiliated” with al-Qa’ida.

(b) (1)

[REDACTED] (The definition of an “associated force” is public; the definition of an “affiliate” for purposes of intelligence analysis is classified.)

<sup>2</sup> (U) The fact that AQAP is considered part of al-Qa’ida, or at least an associated force of al-Qa’ida, is public.

~~(S)~~ (b) (1)

[REDACTED]

Derived From: Multiple Sources  
Declassify On: July 16, 2024

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force against terrorist targets outside areas of active hostilities involves target-by-target analysis of legal and policy considerations.

(U) **Al-Qa'ida, the Taliban, and Associated Forces**

- ~~(S)~~ Core al-Qa'ida, the Taliban, and Other Groups Fighting in Afghanistan. In Afghanistan, the U.S. Armed Forces conduct operations pursuant to the 2001 AUMF against al-Qa'ida, the Taliban, and other terrorist and insurgent groups, notably including the Haqqani Network, that are engaged alongside al-Qa'ida and the Taliban in hostilities against the United States or its coalition partners. (b)(1)

- (U) Al-Qa'ida in the Arabian Peninsula. In Yemen, the U.S. military conducts direct action targeting members of al-Qa'ida in the Arabian Peninsula (AQAP), which is an organized armed group that is part of, or at the very least an associated force of, al-Qa'ida.

(U) **Other al-Qa'ida Affiliates**

- ~~(S)~~

(b)(1)

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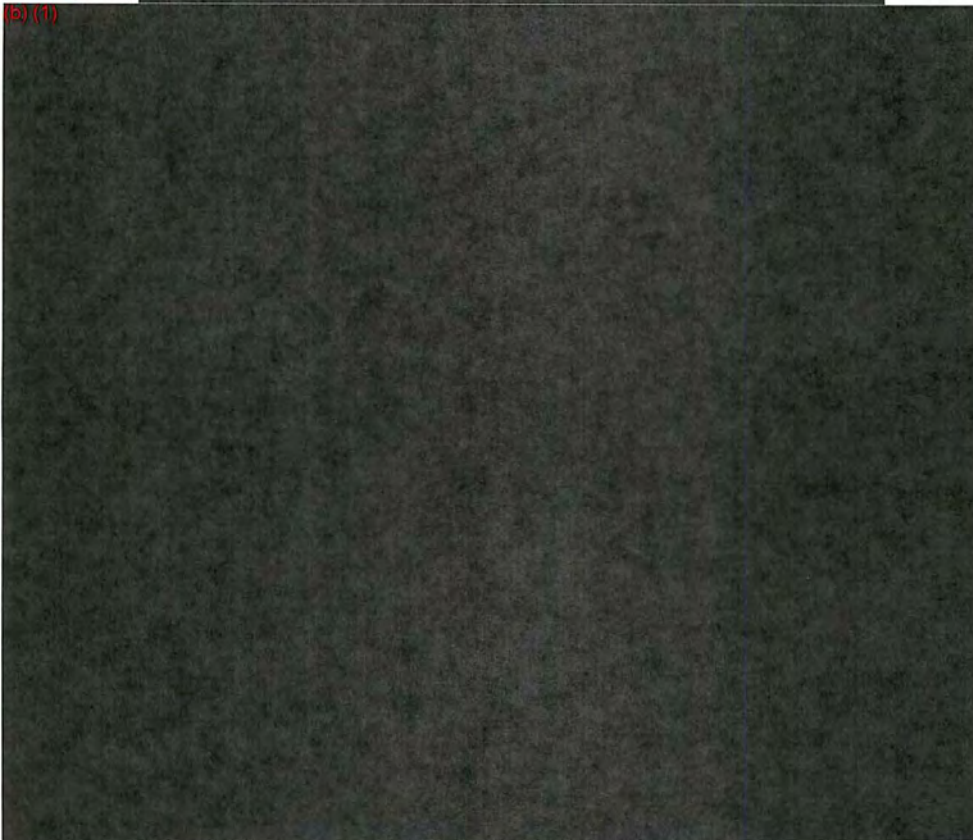
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- (U) In October 2013 U.S. forces captured Abu Anas al-Libi in Libya; al-Libi was assessed to be part of al-Qa'ida.

**(U) Other Notable Terrorist Groups**

- ~~(S//NF)~~ [REDACTED]

(b) (1)



**(U) Further Review and Alternative Legal Authorities**

(U) The fact that a terrorist group has not been determined to be an “associated force” of al-Qa’ida for purposes of the AUMF does not mean that the United States has made a final determination that the group is not an “associated force.” The Administration is prepared to review this question whenever a situation arises in which it may be necessary to take U.S. military direct action against an organized terrorist group.

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(U) Additionally, the AUMF is not the only authority under which the President may use force in order to keep the United States and its people safe. The President has authority under the U.S. Constitution, for example, to use military force as needed to defend the nation against armed attacks and imminent threats of armed attack. Thus, the President has the authority to respond with military force to future terrorist attacks or threats thereof, should it become necessary to do so. There also exists legal authority separate from the AUMF to arrest and bring to justice individual terrorists based on probable cause to believe that they have committed certain crimes under U.S. law. In addition, the United States works closely with partner nations in addressing the threat posed by terrorist groups.

(S)



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**(U) Report on Congressional Notification of  
Sensitive Military Operations and  
Counterterrorism Operational Briefings**

Submitted in compliance with the reporting requirement  
contained in sections 1041 and 1042 of the  
National Defense Authorization Act  
for Fiscal Year 2014 (P.L. 113-66)



Preparation of this study/report cost the Department of Defense  
a total of approximately \$1,620 in Fiscal Year 2014.

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(U) This report is provided pursuant to the requirement in section 1041 and 1042 of the National Defense Authorization Act for Fiscal Year 2014 (P.L. 113-66). Section 1041 provides that the Secretary of Defense shall establish and submit to the congressional defense committees procedures for notifying in writing the congressional defense committees of certain military operations. Section 1042 provides that the Secretary of Defense shall provide quarterly briefings outlining Department of Defense counterterrorism operations and related activities.

(U) Notification of Sensitive Military Operations

~~(TS//NF)~~ 10 U.S.C. 130f requires notice in writing to the congressional defense committees following certain military operations. Additionally, the Presidential Policy Guidance (PPG) on [REDACTED] requires prompt notification to appropriate Members of Congress [REDACTED]

~~(TS//NF)~~ The Under Secretary of Defense for Policy is responsible for drafting, coordinating, approving, and delivering appropriate written and oral notifications to the Chairman and the ranking minority member of the Armed Services Committees and the Defense Appropriations Subcommittees [REDACTED]. Written notifications will contain, as applicable:

[REDACTED]

~~(TS)~~ The Under Secretary of Defense for Intelligence will provide appropriate notifications to the Intelligence Committees following written notifications to the Armed Services Committees and Defense Appropriations Subcommittees.

~~(TS//NF)~~ [REDACTED]

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(U) Quarterly Counterterrorism Operations Briefings

~~(TS//NF)~~ The PPG and 10 U.S.C. 485 also require that appropriate Members of Congress will be provided, no less than every three months, updates on certain counterterrorism matters. The Under Secretaries of Defense for Policy and Intelligence will collaborate on these updates to ensure uniform presentation to the congressional defense and intelligence oversight committees.

(U) Each quarterly briefing will include the following:

1. (U) A global update on activity within each geographic Combatant Command and how such activity supports the respective theater campaign plan;
2. (U) An overview of authorities and legal issues, including limitations;
3. (U) An overview of interagency activities and initiatives;
4. (U) Any other matters the Secretary of Defense considers appropriate; and
5. ~~(TS)~~ ~~(b) (1)~~ 

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# Exhibit 52

## Report on Process



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**Report on Process for Determining  
Targets of Lethal or Capture  
Operations (U)**

**An explanation of the legal and policy considerations and approval processes used in determining whether an individual or group of individuals could be the target of a lethal or capture operation conducted by the Armed Forces of the United States outside the United States and outside of Afghanistan (U)**

Submitted in response to the reporting requirement contained in section 1043 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66).



The estimated cost of report or study for the Department of Defense is approximately \$5,260 for the 2014 Fiscal Year. This includes \$50 in expenses and \$5,210 in DoD labor.

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(U) This report is provided in response to the requirement in section 1043 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66), which provides that “the Secretary of Defense shall submit to the congressional defense committees a report containing an explanation of the legal and policy considerations and approval processes used in determining whether an individual or group of individuals could be the target of a lethal operation or capture operation conducted by the Armed Forces of the United States outside the United States and outside of Afghanistan.”

(TS//NF)

(U)

(TS//NF) The Secretary of Defense approved Department of Defense guidance for implementation of the PPG on December 12, 2013. That DoD guidance outlines the process:

(1)

This report, therefore, outlines the legal, policy, and operational considerations, and the approval process used by DoD in determining whether an individual or group of individuals will be the target of a lethal operation or capture operation conducted by the Armed Forces of the United States outside the United States and outside of Afghanistan.

(U) The policy of the U.S. Government is that capture operations are always preferable to the use of lethal force in counterterrorism operations, because capturing a terrorist offers the best opportunity to gather meaningful intelligence to mitigate and disrupt terrorist plots. Capture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with applicable law and consistent with respect for the sovereignty of other States. Lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Lethal force is only used to prevent or stop attacks against U.S. persons, and even then, only when capture is not feasible and no other reasonable alternatives exist to address the threat effectively.

(U) Decisions to capture or otherwise use force against individual terrorists outside the United States and areas of active hostilities (e.g., Afghanistan) are made at the most senior levels of the U.S. Government, informed by departments and agencies with relevant expertise and institutional roles. Senior national security officials—including the deputies and heads of key departments and agencies—review proposals to make sure that U.S. policy standards are met, and attorneys—including the senior lawyers of key departments and agencies—review proposals to determine their legality.

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### Legal Considerations (U)

(U) All proposals for direct action, whether for a capture or a lethal operation, must undergo a legal review to ensure that the activity is lawful and may be conducted in accordance with applicable law. A legal review is done whether the intended operation is against, for example, a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct a terrorist attack.

(U) The principal domestic legal basis for DoD direct action operations is the 2001 Authorization for the Use of Military Force (Public Law 107-40) (AUMF). Another potential legal basis is Article II of the U.S. Constitution. The United States remains in a state of armed conflict with al-Qa'ida, the Taliban, and associated forces. The AUMF, enacted one week after the attacks of September 11, 2001, explicitly authorizes the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any further acts of international terrorism against the United States by such nations, organizations or persons." The AUMF does not geographically restrict the use of military force against al-Qa'ida and associated forces to Afghanistan.

(U) As a matter of international law, the United States may use lethal force in accordance with the laws of war in order to prosecute its armed conflict with al-Qa'ida and associated forces in response to the September 11, 2001 attacks, and the United States may also use force consistent with our inherent right of national self-defense. Moreover, whenever the U.S. military uses force on the territory of another State, international legal principles, including respect for another State's sovereignty and the law of armed conflict, imposes important constraints on the ability of the United States to act unilaterally – and on the way in which the United States can use force.

(U) We take extraordinary care to ensure that all offensive military operations are conducted in a manner consistent with well-established law of armed conflict requirements, including: (1) *military necessity*, which requires that the use of military force (including all measures needed to defeat the enemy as quickly and efficiently as possible, which are not forbidden by the law of war) be directed at accomplishing a valid military purpose; (2) *humanity*, which forbids the unnecessary infliction of suffering, injury, or destruction; (3) *distinction*, which requires that only lawful targets—such as combatants and other military objectives—may be intentionally targeted; and (4) *proportionality*, which requires that the anticipated collateral damage of an attack not be excessive in relation to the anticipated concrete and direct military advantage from the attack.

(U) These well-established rules that govern the use of force in armed conflict apply regardless of the type of weapon system used. From a legal standpoint, the use of remotely

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piloted aircraft for lethal operations against identified individuals presents the same issues as similar operations using manned aircraft. However, advanced precision technology gives us a greater ability to observe and wait until the enemy is away from innocent civilians before launching a strike, and thus to minimize the risk to innocent civilians.

Policy Considerations (U)

(TS//NF) The policy criteria that are considered for all DoD proposals for direct action by U.S. military forces, whether capture or lethal operations, are outlined in the PPG. First and foremost is the determination that the contemplated operation will protect U.S. lives. [REDACTED]

[REDACTED]

(TS//NF) For lethal operations, an informed, high-level official of the U.S. Government must determine that the proposed target poses a continuing, imminent threat to U.S. persons.

[REDACTED]

[REDACTED] The use of lethal operations against a proposed target is only proposed if there is a clear determination that no other reasonable alternatives to lethal action by U.S. military forces exist to address the threat to U.S. persons effectively. The criteria used in this assessment include a determination that the relevant governmental authorities in the country where action is contemplated against a proposed target consent or are unable or unwilling to address the threat to U.S. persons effectively, and that there are no other reasonable alternatives to lethal action to address the threat to U.S. persons effectively.

(TS//NF) [REDACTED]

(TS//NF) [REDACTED]

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[REDACTED]

(TS//NF) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(TS//NF) [REDACTED]  
[REDACTED]  
[REDACTED]

Operational Considerations (U)

(TS//NF) The PPG is clear that capture operations offer the best opportunity for meaningful intelligence gain from CT operations and the mitigation and disruption of terrorist threats. Therefore, the first operational consideration for proposals is whether a capture operation can be conducted and, if capture is feasible, how such an operation would be conducted. Only if capture is not feasible will a direct action lethal operation be conducted.

[REDACTED]  
[REDACTED]  
[REDACTED]

(TS//NF) Another factor in the operational assessment is the PPG requirement for near certainty that the identified target is present. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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[REDACTED]

(TS//NF) Another operational requirement is near certainty that non-combatants will not be injured or killed. Non-combatants are understood to be individuals who may not be made the object of attack under the law of armed conflict. The term "non-combatant" does not include an individual who is targetable as part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense.

(TS//NF) [REDACTED]

(TS//NF) [REDACTED]

Approval Process (U)

(TS//NF) [REDACTED]

(TS//NF) [REDACTED]

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**A-884**

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[REDACTED]

(S) [REDACTED]

**Section 1043 of the NDAA for FY 2014**

**SEC. 1043. REPORT ON PROCESS FOR DETERMINING TARGETS OF LETHAL OR CAPTURE OPERATIONS.**

*Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing an explanation of the legal and policy considerations and approval processes used in determining whether an individual or group of individuals could be the target of a lethal operation or capture operation conducted by the Armed Forces of the United States outside the United States and outside of Afghanistan.*

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# Exhibit 53

January 2014 Rizzo Book



# pany Man

e family lawyer in *The Godfather*, and you begin to  
n and heard. . . . If you're interested in the inside life

—**DAVID IGNATIUS**, *Washington Post* columnist and  
selling author of *Body of Lies* and the forthcoming *The Director*

ouble, it called John. . . . Rizzo knows where the bodies  
them. *Company Man* reads like the CIA's conscience:  
fted from collecting information to killing terrorists  
y interrogate suspects and then destroy the evidence?

—**RICHARD ENGEL**, *NBC News* chief foreign correspondent  
and author of *War Journal*

revealing insider account to date of the top ranks of  
and controversial—era. There is news and humor in  
nd myself wondering why the CIA's prepublication  
—**DANA PRIEST**, two-time Pulitzer Prize-winning journalist  
for *The Washington Post* and coauthor of *Top Secret America*

reciation for the politics of espionage, *Company Man*  
dern CIA." —**ROBERT BAER**, *New York Times*—bestselling  
author of *See No Evil* and *The Perfect Kill*

the scope of his fascinating career in *Company Man*.  
spionage and covert actions of the decades he served,  
tical lesson for all liberal democracies—the centrality  
eign policy and intelligence."

, *New York Times*—bestselling author of *The Art of Intelligence*,  
, and twenty-four-year veteran of the CIA's clandestine service

eat style, nobody worked harder to protect the nation  
an John Rizzo. *Company Man* offers fresh insights  
ed national security issues of our time."

—**GEORGE J. TENET**, former director of the CIA

Company Man  
John Rizzo

# Company Man

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CONTROVERSY AND  
CRISIS IN THE CIA

# John Rizzo

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52800  
9 781451 673937



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All statements of fact, opinion, or analysis expressed are those of the author and do not reflect the official positions or views of the CIA or any other U.S. government agency. Nothing in the contents should be construed as asserting or implying U.S. government authentication of information or Agency endorsement of the author's views. The material has been reviewed by the CIA to prevent the disclosure of classified information.



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First Scribner trade paperback edition October 2014

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Cover design by Eric White

Manufactured in the United States of America

Library of Congress Control Number: 2013431157

1 3 5 7 9 10 8 6 4 2

ISBN 978-1-4516-7393-7

ISBN 978-1-4516-7394-4 (pbk.)

ISBN 978-1-4516-7395-1 (ebook)

For my family

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# Exhibit 54

November 2015 Panetta Statement

## A-889

CIA Director Documentary: Case 1:15-cv-01954-GM Document 53-4 Filed 12/01/15 Page 2 of 7

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# POLITICO

## THE FRIDAY COVER

### 'The Attacks Will Be Spectacular'

An exclusive look at how the Bush administration ignored this warning from the CIA months before 9/11, along with others that were far more detailed than previously revealed.

By CHRIS WHIPPLE | November 12, 2015



Getty

**"B** *in Laden Determined to Strike in U.S.*" The CIA's famous Presidential Daily Brief, presented to George W. Bush on August 6, 2001, has always been Exhibit A in the case that his administration shrugged off warnings of an Al Qaeda attack. But months earlier, starting in the spring of 2001, the CIA repeatedly and urgently began to warn the White House that an attack was coming.

By May of 2001, says Cofer Black, then chief of the CIA's counterterrorism center, "it was very

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evident that we were going to be struck, we were gonna be struck hard and lots of Americans were going to die." "There were real plots being manifested," Cofer's former boss, George Tenet, told me in his first interview in eight years. "The world felt like it was on the edge of eruption. In this time period of June and July, the threat continues to rise. Terrorists were disappearing [as if in hiding, in preparation for an attack]. Camps were closing. Threat reportings on the rise." The crisis came to a head on July 10. The critical meeting that took place that day was first reported by Bob Woodward in 2006. Tenet also wrote about it in general terms in his 2007 memoir *At the Center of the Storm*.

But neither he nor Black has spoken about it publicly in such detail until now—or been so emphatic about how specific and pressing their warnings really were. Over the past eight months, in more than a hundred hours of interviews, my partners Jules and Gedeon Naudet and I talked with Tenet and the 11 other living former CIA directors for *The Spymasters*, a documentary set to air this month on Showtime.

The drama of failed warnings began when Tenet and Black pitched a plan, in the spring of 2001, called "the Blue Sky paper" to Bush's new national security team. It called for a covert CIA and military campaign to end the Al Qaeda threat—"getting into the Afghan sanctuary, launching a paramilitary operation, creating a bridge with Uzbekistan." "And the word back," says Tenet, "'was 'we're not quite ready to consider this. We don't want the clock to start ticking.'" (Translation: they did not want a paper trail to show that they'd been warned.) Black, a charismatic ex-operative who had helped the French arrest the terrorist known as Carlos the Jackal, says the Bush team just didn't get the new threat: "I think they were mentally stuck back eight years [before]. They were used to terrorists being Euro-lefties—they drink champagne by night, blow things up during the day, how bad can this be? And it was a very difficult sell to communicate the urgency to this."

That morning of July 10, the head of the agency's Al Qaeda unit, Richard Blee, burst into Black's office. "And he says, 'Chief, this is it. Roof's fallen in,'" recounts Black. "The information that we had compiled was absolutely compelling. It was multiple-sourced. And it was sort of the last straw." Black and his deputy rushed to the director's office to brief Tenet. All agreed an urgent meeting at the White House was needed. Tenet picked up the white phone to Bush's National Security Adviser Condoleezza Rice. "I said, 'Condi, I have to come see you,'" Tenet remembers. "It was one of the rare times in my seven years as director where I said, 'I have to come see you. We're comin' right now. We have to get there.'"

Tenet vividly recalls the White House meeting with Rice and her team. (George W. Bush was on a trip to Boston.) "Rich [Blee] started by saying, 'There will be significant terrorist attacks against the

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United States in the coming weeks or months. The attacks will be spectacular. They may be multiple. Al Qaeda's intention is the destruction of the United States.'" [Condi said:] 'What do you think we need to do?' Black responded by slamming his fist on the table, and saying, 'We need to go on a wartime footing now!'"

"What happened?" I ask Cofer Black. "Yeah. What *did* happen?" he replies. "To me it remains incomprehensible still. I mean, how is it that you could warn senior people so many times and nothing actually happened? It's kind of like *The Twilight Zone*." Remarkably, in her memoir, Condi Rice writes of the July 10 warnings: "My recollection of the meeting is not very crisp because we were discussing the threat every day." Having raised threat levels for U.S. personnel overseas, she adds: "I thought we were doing what needed to be done." (When I asked whether she had any further response to the comments that Tenet, Black and others made to me, her chief of staff said she stands by the account in her memoir.) Inexplicably, although Tenet brought up this meeting in his closed-door testimony before the 9/11 Commission, it was never mentioned in the committee's final report.

And there was one more chilling warning to come. At the end of July, Tenet and his deputies gathered in the director's conference room at CIA headquarters. "We were just thinking about all of this and trying to figure out how this attack might occur," he recalls. "And I'll never forget this until the day I die. Rich Blee looked at everybody and said, 'They're coming here.' And the silence that followed was deafening. You could feel the oxygen come out of the room. 'They're coming here.'"

Tenet, who is perhaps the agency's most embattled director ever, can barely contain himself when talking about the unheeded warnings he says he gave the White House. Twirling an unlit cigar and fidgeting in his chair at our studio in downtown Washington, D.C., he says with resignation: "I can only tell you what we did and what we said." And when asked about his own responsibility for the attacks on 9/11, he is visibly distraught. "There was never a moment in all this time when you blamed yourself?" I ask him. He shifts uncomfortably in his chair. "Well, look, there ... I still look at the ceiling at night about a lot of things. And I'll keep them to myself forever. But we're all human beings."

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Only 12 men are alive today who have made the life-and-death decisions that come with running the CIA.

Once a year, the present and former CIA directors—ranging from George H.W. Bush, 91, to the

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current boss, John Brennan, 60—meet in a conference room at CIA headquarters in Langley, Virginia. The ostensible reason: to receive a confidential briefing on the state of the world. (Robert Gates, who hates setting foot inside the Beltway, is a perennial no-show.) “They mostly tell us stuff we already know, and we pretend we’re learning something,” says Tenet, the longest-serving director (lasting seven years, under Presidents Clinton and Bush II). But the real point of their annual pilgrimage is to renew bonds forged in the trenches of the war on terror—and to debate the agency’s purpose in the world.

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**“** And I’ll never forget this until the day I die. Rich Blee looked at everybody and said, ‘They’re coming here.’”

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On the burning questions of the day, the directors are profoundly torn: over the CIA’s mission, its brutal interrogation methods after 9/11, and the shifting “rules of engagement” in the battle against Al Qaeda and the Islamic State. What is fair game in the fight against terrorism: Torture? Indefinite detention? Setting up “black sites” in foreign countries for interrogation? Should the CIA be in the business of killing people with remotely piloted drones? Was the agency really to blame for 9/11? Or did the White House ignore its repeated warnings?

On these and other questions, the directors were surprisingly candid in the interviews they did with me—even straying into classified territory. (They often disagree about what is actually classified; it’s complicated, as Hillary Clinton is learning.) A controversial case in point: drone strikes. “He can’t talk publicly about *that*,” protests Gen. David Petraeus when I tell him that one of his counterparts has opened up to me about “signature strikes.” (These are lethal attacks on unidentified targets—a kind of profiling by drone—that several directors find deeply troubling.) Gen. Petraeus might have had good reason to be reticent; only a week before he had accepted a plea bargain to avoid prison time—for sharing classified information with his mistress, Paula Broadwell.

Here are some of the other secrets we learned from the surprisingly outspoken men who have run the world’s most powerful intelligence agency.

Even CIA chiefs can’t agree about “torture”

“In the period right after 9/11, we did some things wrong,” said Barack Obama. “We tortured some folks. We did things that were contrary to our values.” Jose Rodriguez, who oversaw the CIA’s so-

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called enhanced interrogation program (EIT), has a two-word reply: "That's bullshit." Tenet concurs. "People are throwing the word 'torture' around—as if we're *torturers*," he complains. "Well, I'm not ever gonna accept the use of the word 'torture' for what happened here." From sleep deprivation to waterboarding, Tenet and his lieutenant Rodriguez insist the techniques were all approved—by *everybody*.

"The attorney general of the United States told us that these techniques are legal under U.S. law," says Tenet, "and do not in any way compromise our adherence to international torture statutes." Contrary to the claim by the SSCI (Senate Select Committee on Intelligence) Majority Report, Tenet insists: "We briefed members of Congress fully on what we were doing at all times. There was never a hint of disapproval." And Tenet says that George W. Bush was so hands-on, "he read the memo, looked at the techniques, and decided he was gonna take two techniques off the table himself." Tenet says he does not recall which EITs the president rejected (Rodriguez believes one of them was "mock executions.")

Tenet and his post-9/11 successors—Porter Goss, Michael Hayden and acting director Michael Morell (sometimes called the "wartime directors")—say the techniques were a necessary evil, justified by the context of the times. It was an article of faith at the CIA that the United States was about to be struck again in a "second wave" attack. And that "high-value detainees," beginning with Al Qaeda leader Abu Zubaydah, knew more than they were telling. "Every day," says Rodriguez, "the president was asking George Tenet, 'What is Abu Zubaydah saying about the second wave of attacks and about all these other plots?' Well, he was not saying anything. We had to do something different." Tenet says they had persuasive intelligence that indicated Osama bin Laden had met with Pakistani nuclear scientists—and was seeking the blueprint for a bomb. There was a credible report, he adds, that a nuke had already been planted in New York City. "People say, 'didn't you think about the moral and ethical consequences of your decision?'" says Tenet. "Yeah, we did. We thought that stopping the further loss of American life and protecting a just society was equally important."

Did the techniques produce intelligence that disrupted plots or saved lives? The SSCI study looked at 20 cases and said no useful evidence was obtained. Tenet insists, "They are wrong in all 20 of the cases. The report is dead wrong on every account, period, end of paragraph." But Tenet's fellow spy chiefs are sharply—even passionately—divided about such procedures. "Our Constitution does prohibit 'cruel and unusual' treatment and if it's cruel, we shouldn't be doing it," says William Webster, 91, regarded by his fellow spymasters as a voice of reason (and the only DCI who also served as FBI director). "You cross a line at some point in your effort to get the information when



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you go that route. There have to be limitations and monitoring and they must be observed. Our country stands for something and it loses something when we don't." Stansfield Turner, now 91—who as Jimmy Carter's director authorized the ill-fated attempt to rescue American hostages in Tehran—agrees: "I just don't think a country like ours should be culpable of conducting torture. I just think it's beneath our dignity."

The directors who oppose torture are not just bleeding hearts. "Nobody was responsible for more detainees than I was," says Gen. Petraeus, who was commander of the multinational forces in Iraq. "We visit violence on our enemies, but we should not mistreat them, even though they have done unspeakable things to our soldiers and to civilians. That does not justify us doing it to them. You will pay a price for what you do, and it will be vastly greater than whatever it is you got out of taking this action." And Director Brennan sees no circumstance in which the CIA would torture again: "If a president tomorrow asked me to waterboard a terrorist, I would say, 'Mr. President, sorry—I do not believe that is in our best interest as a country.'" Hayden is even more emphatic. "If some future president is going to decide to waterboard," he says, "he'd better bring his own bucket—because he's going to have to do it himself."

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
.....X  
AMERICAN CIVIL LIBERTIES UNION and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

15 Civ. 1954 (CM)

DEPARTMENT OF JUSTICE, including its  
components the Office of Legal Counsel and  
Office of Information Policy, DEPARTMENT  
OF DEFENSE, DEPARTMENT OF STATE, and  
CENTRAL INTELLIGENCE AGENCY,

Defendants.

.....X

**DECLARATION OF SARAH S. NORMAND**

SARAH S. NORMAND, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an Assistant United States Attorney in the office of Preet Bharara, United States Attorney for the Southern District of New York, attorney for defendants the Department of Justice, the Department of Defense, the Department of State, and the Central Intelligence Agency (collectively, the “government”) in the above-named case. Together with attorneys with the Department of Justice, Federal Programs Branch, I have been assigned to defend this matter, and I am fully familiar with the facts pertaining to it. I submit this declaration

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in support of the government's cross-motion for partial summary judgment, and in opposition to plaintiffs' motion for summary judgment, in this case.

2. Attached hereto as Exhibit A is a true and accurate copy of an excerpt of the appellate brief filed by the government in *New York Times Co. v. Department of Justice*, Nos. 14-4432(L), 14-4764(Con) (2d Cir.), which is cited on page 14 of plaintiffs' consolidated memorandum of law in opposition to the government's motion for summary judgment and in further support of plaintiffs' motion for partial summary judgment ("ACLU Opposition Brief"). See ECF No. 52.

3. Attached hereto as Exhibit B is a true and accurate copy of a transcript of the interview of Secretary of State John Kerry with Miriam Chaudhry of Pakistan TV, dated August 1, 2013. This transcript is available on the State Department's website, at <http://m.state.gov/md212627.htm> (last visited Dec. 22, 2015). See ACLU Opposition Brief at 30 (discussing "August 2013 Kerry Statement").

4. Attached hereto as Exhibit C is a true and accurate copy of a transcript of the first 6:45 minutes of the documentary entitled "The Spymasters: CIA in the Crosshairs." See ACLU Opposition Brief at 31 (discussing "November 2015 Panetta Statement").

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
December 22, 2015

/s/ Sarah S. Normand  
SARAH S. NORMAND  
Assistant United States Attorney

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TS/ [ ] NF

**No. 14-4432(L),**  
**No. 14-4764(Con)**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket Nos. 14-4432(L), 14-4764(Con)

THE NEW YORK TIMES COMPANY, CHARLIE SAVAGE, SCOTT SHANE, AMERICAN CIVIL  
LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION,  
*Plaintiffs-Appellants,*

v.

UNITED STATES DEPARTMENT OF JUSTICE, INCLUDING ITS COMPONENT THE OFFICE OF  
LEGAL COUNSEL, UNITED STATES DEPARTMENT OF DEFENSE, INCLUDING ITS COMPONENT  
U.S. SPECIAL OPERATIONS COMMAND, CENTRAL INTELLIGENCE AGENCY,  
*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF FOR DEFENDANTS-APPELLEES

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TS/ [ ] NF

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TS// [redacted] /NF

disclosure, including information about intelligence sources and methods.” (SPA 46, *cited in* SPA 100). This Court should reject plaintiffs’ unfounded contention that legal analysis is categorically excluded from protection under Exemptions 1 or 3.

**4. (U) The OLC Memoranda Do Not Constitute Agency Working Law**

(U) Plaintiffs also argue that legal analysis in the OLC memoranda cannot be withheld under Exemption 5 because it constitutes “working law” under *Brennan Center* and similar cases. Their position, which is largely a repeat of arguments rejected in the prior appeal, is mistaken.

(U) First, it is unnecessary for this Court even to consider the “working law” issue as to the vast majority of the withheld material because, putting to the side the question whether legal analysis in the withheld OLC memoranda could constitute working law that would not be protected under Exemption 5, the government nonetheless would be justified in withholding the same documents and information on alternate grounds, as explained above. The government invoked not only Exemption 5 over the withheld documents and information, but also Exemptions 1 and 3. The district court upheld withholding on the ground that, *inter alia*, disclosure would reveal classified information. (CA 455-57, 463-65, 468-70, 472-73). Plaintiffs do not argue that their “working law” arguments would

TS// [redacted] /NF

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~~TS/~~ [REDACTED] ~~NF~~

justify disregarding the protections afforded to classified and statutorily protected information.<sup>11</sup>

(U) Furthermore, plaintiffs are wrong to argue that an OLC opinion constitutes “working law” that loses the protections of Exemption 5. This Court held in *Brennan Center* that “‘working law’ analysis is animated by the affirmative provisions of FOIA,” 697 F.3d at 200, which require disclosure of “those policies or rules, and the interpretations thereof, that either create or determine the extent of the substantive rights and liabilities of a person.” *Afshar*, 702 F.2d at 1141 (quotation marks and citation omitted). Examples given by this Court in *Brennan Center* include Department of Energy interpretations of regulations given precedential effect within the agency, and IRS documents setting out the agency’s “final *legal* position concerning the Internal Revenue Code, tax exemptions, and proper procedures.” 697 F.3d at 200-01.

(U) This Court recognized in *Brennan Center* that OLC opinions are of an entirely different character. In *Brennan Center*, OLC provided advice to two agencies about “the constitutional and legal propriety” of implementing a federal

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<sup>11</sup> (U) Only two documents at issue in this appeal contain discrete portions that, although privileged, are not also classified and statutorily protected. The first—the February 2010 Aulqi Memorandum—contains privileged portions that are similar to portions of the OLC-DOD Memorandum that this Court redacted from the publicly-released version. (CA 229, 160-61; SPA 165-66). The second is a document that has no connection to the public statements that plaintiffs rely on in arguing “working law.” (CA 315-329).

~~TS/~~ [REDACTED] ~~NF~~

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statute, but “[n]o one at the OLC made the decision” that the statute would not be implemented. 697 F.3d at 202-03. This Court emphasized that, as an OLC official explained in a declaration in that case, “OLC’s legal advice and analysis informs the decisionmaking of Executive Branch officials on matters of policy, but OLC’s legal advice is not itself dispositive as to any policy adopted.” *Id.* at 203 (quoting declaration of Paul Colborn, OLC Special Counsel).

(U) It was precisely on this basis that the Court concluded in *Brennan Center* that the OLC advice was not working law. 697 F.3d at 203. The D.C. Circuit has reached the same conclusion, noting that OLC provides legal advice to an agency that may define “the legal parameters of what the FBI is *permitted* to do,” but that “OLC [does] not have the authority to establish the ‘working law’ of the FBI” and its advice “is not the law of the agency unless the agency adopts it.” *Electronic Frontier Foundation v. DOJ*, 739 F.3d 1, 8-10 (D.C. Cir. 2014).

(U) The same principles control here. OLC provided legal advice that “inform[ed] the decisionmaking of Executive Branch officials on matters of policy, but OLC’s legal advice [was] not itself dispositive as to any policy adopted.” 697 F.3d at 203. Plaintiffs rely heavily on John Brennan’s general statement at his confirmation hearing that “Office of Legal Counsel advice establishes the legal boundaries within which we can operate,” ACLU Br. 32-33, but that statement does not transform confidential legal advice into “working law.” As in *Electronic*

~~TS~~ [REDACTED] ~~NF~~

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~~TS//~~ [REDACTED] ~~/NF~~

*Frontier Foundation*, the Executive Branch was “free to decline” to undertake the actions “deemed legally permissible in the OLC Opinion.” 739 F.3d at 10.

(U) Under plaintiffs’ proposed approach, any OLC legal advice to an agency about a contemplated course of action would lose Exemption 5 protection if the agency decides to undertake that action. That dramatic expansion of “working law” is contrary to binding precedent, and should be rejected. Privileged, predecisional legal advice from OLC to Executive Branch decisionmakers is fundamentally and wholly different from the “working law” required to be disclosed under FOIA.

### 5. (U) The District Court Properly Performed a Segregability Analysis of Each Responsive Memorandum

(U) Finally, plaintiffs wrongly contend that the district court failed to consider whether the documents contain any reasonably segregable, non-exempt material. In fact, the district court ordered the government to provide an *ex parte* filing specifically addressing each memorandum withheld in full, and each redaction in the memorandum withheld in part. (JA 931-32). The district court then conducted a painstaking examination of each of the responsive memoranda, in many instances reviewing individual sections or even lines of the documents to determine whether any additional portion could be disclosed. (CA 454-74). Although it may not be

~~TS//~~ [REDACTED] ~~/NF~~



## A-902

Interview With Mariam Chaudhry of Pakistan TV

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[MAIN MENU](#)

### INTERVIEW WITH MARIAM CHAUDHRY OF PAKISTAN TV

#### Interview

#### **John Kerry**

Secretary of State

**Islamabad, Pakistan**

**August 1, 2013**

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**QUESTION:** Mr. Secretary, a pleasure and honor to have you in Pakistan.

**SECRETARY KERRY:** Thank you. Glad to be here.

**QUESTION:** Let me start by asking you: How have your interactions been today in Pakistan. Were they fruitful?

**SECRETARY KERRY:** Very positive, very constructive conversations. Very grateful for a very generous welcome.

**QUESTION:** Well, like I said, it's always a pleasure to host somebody like you and Pakistanis see a friendly face in you, and we're hoping that a lot of mutual misunderstandings would be resolved by your presence here.

Mr. Secretary, let's start with the end-game in Afghanistan. I think that's posing the largest questions in South Asia. A lot of people are asking, while the Taliban have been engaged, or an effort has been made to engage them in a conversation, things seem to not work out in a repetitive cycle. Could you first share an update vis-a-vis what's exactly happening and what's the game plan vis-a-vis the U.S. withdrawal in 2014?

**SECRETARY KERRY:** Well, first of all, it's not a withdrawal. We are drawing down the number of troops, but we're not withdrawing. And the President of the United States, at the appropriate time, will make a decision about how many troops he plans to leave in order to continue to do counterterrorism and training, advising, and equipping the Afghan military.

So the Afghan military is now already taken the lead on security operations in Afghanistan. We're already in a support role, and that's the way it should be. The Afghans need to be taking on the responsibility of security for their country. But there's a very strong, serious effort that's been made to try to build up their army, give it the capacity to defend their country.

Our belief is that with the election next year, Afghans will have the ability to choose their future, find new leadership, and hopefully, together with Pakistan and our help and the help of many other countries, Afghanistan can share a democratic future.

**QUESTION:** What is the progress vis-a-vis the talks with the Taliban? And why is there a general sentiment prevailing that talks with the Taliban always fizzle out and there's been no success even with the recent overtures towards them?

## A-903

Interview With Mariam Chaudhry of Pakistan TV

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**SECRETARY KERRY:** Well, you'll have to ask the Taliban. We're ready to negotiate.

**QUESTION:** Surely there must be an assessment from the U.S. side whether there's actually going to be --

**SECRETARY KERRY:** Well, the assessment is that the Taliban broke their word in Doha. They had accepted a certain set of requirements and they went back on their word. Our plans do not hinge on having the Taliban talks. Is it better to have the talks? Yes, of course. Because it's always better to have a political settlement that people agree on. But we're proceeding whether the talks take place or not to continue to help the Afghans be able to defend themselves against any threat.

**QUESTION:** Well, Pakistanis are always glad to play the role of the facilitator, but in this scenario Pakistanis are wondering what exactly does the U.S. demand from the Pakistani side? Or what exact deliverables are you hoping that Pakistan will be able to offer up as a facilitator in this situation?

**SECRETARY KERRY:** Well, let me be clear: A friend does not demand of a friend. And we want a good relationship with Pakistan, so we're not demanding. What we're doing is we're talking together about the mutual interests that we have.

Pakistan is facing its own insurgency. Pakistan has Tehrik-e Taliban, it has Haqqani Network, al-Qaida, other threats on the ground, Lashkar-e Tayyiba, there are others. And so Pakistan as an interest in making sure that its own security is strong. We want to work with Pakistan as closely as we can, respecting its interests, respecting the country, and find a way to cooperate to deal with the mutual threats we face. They are threats that come from the western part of the country mostly and people crossing over into Afghanistan and engaging in violent activities. We think we can find a good means of cooperation, and we look forward to working with Pakistan on many other issues.

I want to make it very clear: President Obama does not want the relationship of the United States and Pakistan defined by counterterrorism, by Afghanistan, by al-Qaida, et cetera. We want a relationship with the people of Afghanistan<sup>[1]</sup>, which is why today I went to an energy plant to talk about how we can help provide more energy. We've already helped provide an additional 1,200 megawatts of power for 16 million Pakistanis. There are many other things we would like people in Pakistan to know that we're doing.

**QUESTION:** We will definitely ask you a question about that. But just to speak a little bit more on this terrorism issue, Pakistan has been facing a grievous scenario vis-a-vis internal security. There has been a lot of tension between the United States and Pakistan, especially vis-a-vis the subject of drones. People in Pakistan feel that not only has it been causing human casualty in Pakistan, but also it has been kind of a blatant disregard of the territorial sovereignty of Pakistan. Can we expect a cessation in these drone strikes, which are causing and mobilizing a lot of sentiment against the Pakistani Government and the United States?

**SECRETARY KERRY:** Well, President Obama is very, very sensitive and very concerned about any kind of reaction to any kind of counterterrorism activities, whatever they may be. And the President has spoken very directly, very transparently, and very accountably to our -- to all of our efforts. We want to work with the Government of Pakistan, not against it.

This is a program in many parts of the world where the President has really narrowed, whatever it might be doing, to live up to the highest standards with respect to any kind of counterterrorism activities. And I believe that we're on a good track. I think the program will end as we have eliminated most of the threat and continue to eliminate it.

**QUESTION:** And there is no timeline that you envisage for ending this strike?

**SECRETARY KERRY:** Well, I do. And I think the President has a very real timeline and we hope it's going to be very, very soon.

## A-904

Interview With Mariam Chaudhry of Pakistan TV

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**QUESTION:** And you don't care to share that at the moment?

**SECRETARY KERRY:** I think it depends really on a number of factors, and we're working with your government with respect to that.

**QUESTION:** All right. There's been a great public demand in Pakistan, which people feel would improve relations between the United States and Pakistan, and that has been the release of Dr. Aafia Siddiqui. People feel that if some kind of pardon is envisaged or maybe a prisoner swap or something along those lines is thought out of, it would help regain goodwill and a good sentiment in Pakistani people vis-a-vis U.S. Can we hope for such a scenario?

**SECRETARY KERRY:** Well, we could hope. You can always hope. Hope springs eternal, right? But I don't know that there's anything specific at this moment that is doable because of the nature of the offenses and the legal process. But I'm going to investigate it when I get back to the United States, but I don't want to make any promises that I can't keep.

**QUESTION:** But you're going to try?

**SECRETARY KERRY:** Well, I'm going to look into what – there were very serious charges. She fired a gun, I mean, shot at American personnel, and is currently under an 87-year sentence in a Texas prison, and I'd have to see what the circumstances are. I'm not – that's not normally my department, so I'll take a look at it.

**QUESTION:** Secretary, you've been credited with a lot of success in the Middle East, and some people are wondering whether you'd be possibly able to play a role in breaking the ice vis-a-vis the detente that Pakistan and India have over Kashmir. And do you think that you could possibly play a role in the future, given that that has also been a source for jihadist propaganda in this region?

**SECRETARY KERRY:** Kashmir has been too long a source of conflict, obviously. I know that president – that Prime Minister Sharif was very focused on this when he was prime minister previously. We talked about it today. I would certainly hope that over time that tension could be worked out. I know there have been three wars with India, mostly around Kashmir. It would be wonderful if something were able to be done. But I think we need to sort of approach it carefully and slowly, and I want to talk to a lot of different people before I make any commitments at this point in time.

**QUESTION:** One last --

**PARTICIPANT:** Thank you very much. It was really great question. I'm so glad I don't have to answer them.

**QUESTION:** Okay. Can I just take one last comment, because there was a lot of disturbance in the room?

**PARTICIPANT:** No, I'm sorry --

**SECRETARY KERRY:** Make good on that. One last comment, come on.

**QUESTION:** Okay. Secretary Kerry, basically people are attaching a lot of hopes with your visit vis-a-vis a reset between the relationship of the U.S. and Pakistan in hopes that it could be more comprehensive. Is there a new game plan that you've envisaged vis-a-vis making this a broader based relationship, something that is not purely overshadowed by the conflict in Afghanistan?

**SECRETARY KERRY:** Absolutely, for certain. And I think today we began that. I think the Prime Minister was very focused on trying to broaden this. I'm focused on it. President Obama is very committed to having this not be a transactional relationship but a strategic, larger relationship. I know he looks forward to visiting with the

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Interview With Mariam Chaudhry of Pakistan TV

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Prime Minister in the United States sometime in September or October, and we really look forward to seeing him here.

**QUESTION:** Mr. Secretary, best of luck in your endeavors here.

**SECRETARY KERRY:** Thank you. Thank you so much.

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[1] Should be "the people of Pakistan"

PRN: 2013/T11-06

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### The Spymasters: CIA in the Crosshairs

**LEON PANETTA:** That memory of going to Arlington to bury one of my officers from the CIA, Elizabeth Hanson, is one that will be with me for a long time. They put their lives on the line to serve this country, and that's what Elizabeth Hanson did.

I knew that the CIA officers were there because I ordered them to be there. I had to bear some of the responsibility for having taken this risk.

**NEWS BROADCASTER:** Initial reports indicate the bomber was being recruited by the CIA as a source.

**NEWS BROADCASTER:** This was the worst single loss of life for the CIA since 1983 when a truck bomber blew up the American Embassy.

**LEON PANETTA:** This person obviously turned out to be a double agent and had blown himself up as well as our officers. It's hard to find the words when suddenly you're told that seven of your officers have been killed and others seriously wounded. What went through my mind was the families out there who within a few hours were going to be informed that someone who they loved had been killed.

We spent a lot of time trying to figure out who were the ones who pushed that button. We have a lot of sources that we rely on, spies, and so we immediately asked the question: Who the hell was involved in this tragic suicide bombing? We were able to get pretty good intelligence.

And so we knew who the individual was. This was a bad guy, and he was clearly a leader, been involved not only in going after our officers, but in killing members of our own forces in Afghanistan. And it was on the day of Elizabeth Hanson's funeral that I got a call from our Operations Center. They thought they had pretty good information about where this individual was.

Unfortunately, this individual had family and wife and children around him, and so one of the tough questions was, you know, what should we do? If there were women and children in the shot, we normally would not take the shot.

I remember calling the White House, and they were aware how tough a decision this is and basically said, "Look, you're going to have to make a judgment here," so I knew at that point that it was a decision that I was going to have to make. I mean, I'm the one who's going to have to say Hail Marys here.

I was raised a Catholic. I believe in my faith, and I rely a great deal on my faith, you know, throughout my life. I've always carried a rosary and always said a hell of a lot of Hail Marys in

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tough situations, and suddenly, you know, I found that I was making decisions on life and death as Director. And those decisions are never easy, and frankly, they shouldn't be easy.

I felt it was really important in that job to do what I could to protect this country. So I passed on the word. I said, "If you can isolate the individual and take the shot without impacting on women or children, then do it, but if you have no alternative and it looks like he might get away, then take the shot."

And it did involve collateral damage, but we got him. These are tough decisions, and you're damn right, they are tough decisions. But, you know, this is a war. This is a war. 9/11, these people didn't hesitate a moment to kill 3,000 people and take down the Trade Centers and hit the Pentagon. These are individuals that would not hesitate to attack us again.

In the end, what you do I think has to be based on what your guts tell you is right, and that's really what it's all about. You have to be true to yourself as to what you think is right and hope that ultimately God agrees with you.

• • •

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I, Jennie Malloy, do hereby certify that the above-referenced excerpt of a video recording was furnished to me by Stephen M. Elliott, Trial Attorney, U.S. Department of Justice, and thereafter reduced to typewriting by me or under my direction; that I am not related to any of the parties in this matter; and that this transcript is a true and accurate record of said video recording to the best of my ability.

I hereby certify a pledge of confidence, and I will not discuss or release the content or any information contained herein.

Jennie Malloy  
Malloy Transcription Service

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JAMEEL JAFFER  
DEPUTY LEGAL DIRECTOR



April 13, 2016

**BY ECF**

Hon. Colleen McMahon  
United States District Judge  
Daniel P. Moynihan United States Courthouse  
500 Pearl Street, Room 1640  
New York, New York 10067

**Re: *ACLU v. DOJ*, No. 15 Civ. 1954 (CM)**

Dear Judge McMahon:

We write respectfully on behalf of the American Civil Liberties Union and American Civil Liberties Union Foundation to bring to the Court's attention remarks made by President Obama at the University of Chicago Law School on April 8, 2016. A transcript of the president's remarks and the question-and-answer session that followed is attached.

Following his official remarks, in response to a question about the legality of the targeted-killing program, President Obama discussed the Central Intelligence Agency's operational role in the program. *See, e.g.*, Tr. at 26 (“[T]his drone program initially came through the intelligence side under classified programs, as opposed to the military.”); *id.* at 25 (explaining that “decision-making” in the early years of the drone program “was embedded in decisions that are made all the time about . . . an intelligence team trying to take out a terrorist”); *id.* at 28 (“I think the way that [the drone program] got built up through our intelligence and what’s called our Title 50 programs meant that it . . . wasn’t subject to the same amount of democratic debate as when we are conducting what are called Title 10 Department of Defense conventional operations.”); *see generally id.* at 24–28.

President Obama’s acknowledgment that the CIA conducts drone strikes is the latest in a series of official acknowledgments concerning the intelligence agency’s operational role in targeted killings. *See* Mem. in Supp. of Pls.’ Mot. for Summ. J. at 15 (S.D.N.Y. Aug. 28, 2015), ECF No. 33; Waiver Table at 20–25, 26–27, 28–29, 32–33 (S.D.N.Y. Aug 28, 2015), ECF No. 33-1.

Respectfully submitted,

/s/ Jameel Jaffer

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the WHITE HOUSE



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For Immediate Release

April 08, 2016

# Remarks by the President in a Conversation on the Supreme Court

## A-911

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# Nomination

University of Chicago Law School  
Chicago, Illinois

2:43 P.M. CDT

PROFESSOR STRAUSS: Well, Mr. President, it's a tremendous honor for the University and the law school. Welcome back.

THE PRESIDENT: It is good to be back. (Applause.) It is good to be back. As some of you may know, I actually spent 10 years teaching classes and seminars here, and it was really fun. (Laughter.) And I missed it. And I thought, well, why don't I come back and say hi to everybody.

So there are a couple of people I want to acknowledge because they helped to facilitate this. First of all, I want to thank Dean Miles for closing down the school, I guess, for a day. (Applause.) Thank you. Special acknowledgements for Geoff Stone and Doug Baird, who were great friends when I was teaching here and were partly responsible for having me actually take on some responsibility straight out of law school to mold the minds of students who were just barely younger than me. I know that because some of them I saw and they all have gray hair now -- (laughter) -- which is a little troubling.

We've got a terrific congressional delegation who's here, and I just want to acknowledge them. First of all, your outstanding senior Senator for the great state of Illinois, Dick Durbin is here. (Applause.) And we've got Congressman Bobby Rush. (Applause.) Congressman Danny Davis. (Applause.) Congressman Bill Foster. (Applause.) And Congressman Mike Quigley. (Applause.) We also have Lisa Madigan, the Attorney General of Illinois. (Applause.) And my former seatmate in Springfield when we were both in the State Senate together, and is doing a terrific job.

And I want to thank David, who I was joking before we came out, is one of the country's foremost constitutional experts -- and a nice guy. (Applause.) And you guys are lucky to have him. In fact, when I was teaching here I think I stole his Con Law class for a while, and he

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graciously gave it up because despite the privilege of grading 60 or 70 bluebooks -- (laughter) -- he apparently thought it was important for me to have that privilege as well.

The last thing I'll say by way of introduction -- I had a chance to talk to some young people over in the overflow room, mostly students, and I just said to them that having now been in politics for quite some time, seeing what lawyers are capable of doing every single day, working on a whole range of issues that are of huge importance to our democracy and to our society, I hope that all the students here are excited about the incredible changes and good that you are going to be able to do when you get out of here.

I know that sometimes the news feeds cynicism and democracy at this moment seems particularly frustrating. But each and every day, I see lawyers not that much older than you who are helping young people get an education, are making sure that consumers are protected, are helping to keep America safe, are ensuring that our health care system works for everybody, are helping to preserve the planet and fight against climate change. It is remarkable what you can do with your talents. And it doesn't always get a lot of publicity, but you can make a really meaningful difference.

So one of the reasons I wanted to come back is to recruit you. (Laughter.) To stay engaged, get involved, make a difference. It doesn't mean you have to run for office. It doesn't mean you have to run for office. It doesn't mean you even have to work for government. There are a lot of ways of serving. But I do hope that one of the things that you will take away from our discussion today and your extraordinary education here at the University of Chicago is the incredible high that you can get from serving this country.

So with that, what do you want to talk about, David? (Laughter.)

PROFESSOR STRAUSS: Well, let me start back when you were here as a teacher. I know you taught constitutional law, so you were thinking about the Supreme Court and thinking about the justices and what would make someone -- or what make someone a great justice or a successful justice. But you're in a different spot now. (Laughter.) Has your thinking

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changed?

THE PRESIDENT: Surprisingly, not as much as you would have expected. Obviously, we're having a substantial argument in Washington right now about not just a particular judge, but also about the process of appointing judges to the federal courts and appointing nominees to the Supreme Court.

And to get this out of the way, Merrick Garland is an extraordinary jurist who is indisputably qualified to serve on the highest court in the land. And nobody really argues otherwise. I just want to be clear here. If the question is qualifications and excellence, it is uniformly viewed by not just Democrats but also Republicans, those who have served -- lawyers, judges, legal scholars, members of the current Supreme Court -- that he is as good of a judge as we have in this country right now. That he's fair, he's smart, he's objective. He's a consensus builder. He shows judicial restraint. He's appreciative of the unique role of the Court, but also respectful of the role of the other branches of government.

So no one has plausibly made an argument that this is not the kind of person we'd want on the Supreme Court. The question then becomes, why is it so hard for the guy just to get a hearing and a vote?

And this speaks to what's happened, generally, when it comes to the process of appointing federal judges. It used to be that people read the Constitution and Article II powers fairly straightforwardly. It says the President shall make these nominations with the advice and consent of the Senate. And unless there was some sort of real problem with that judge's character or qualifications, it was fairly routine at every level -- both at the district court level, the appellate court level, and the Supreme Court -- that the person would be confirmed in short order. There would be a hearing. People would ask the potential judge a question or two or five or 10. There would be questionnaires. And once they had satisfactorily performed that process, then the Senate would vote.

And it was presumed -- it was understood that just as the President had a constitutional duty to make the appointment that the Senate had a constitutional duty to at least make a determination as to whether this person should be on the bench.

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What has been unique in this process has been the growing attitude inside of the Senate that every nomination, no matter how well-qualified a judge, is a subject of contention. In some cases, it's simply because one party or the other wants to gum up the works and so they will drag out confirmation longer and longer. Even if, ultimately, the judge gets confirmed by voice vote, by unanimous consent in the Senate, they'll drag it out for two or three months, because if you're bogged down with judges, then it means other business can't be done. So sometimes it's just strategic.

In other cases, the view has been that despite all the talk about people wanting objective judges who are just calling balls and strikes and don't bring any views to bear, that there are litmus tests that are applied that prevent a judge from getting a fair vote, even though they're qualified, because they don't meet the particular views of the party that's objecting.

And this problem got bad enough in previous administrations, but came to a head under my administration, in which we had a situation where we were starting to see six months pass or nine months pass before a judge could get a hearing. This was when Democrats were in charge of the Senate, but because of the particular rules of the filibuster that previously had been used for just a few things but now were routinely deployed on everything, we just couldn't get judges through. And you started seeing a crisis in vacancies across districts and circuits everywhere.

Finally, the Democrats said, we're ending the ability for Senate members to filibuster when it comes to district court and appellate court justices, but we're going to preserve it for the Supreme Court.

We now have a situation, after Judge Scalia's passing, in which it's not just that the Republican majority in the Senate intend to vote against a highly qualified judge, we now have a situation where they're saying, we simply will not consider the nomination itself. We're just going to shut down the process. And as a consequence, we have a 4-4 tie in the Supreme Court and potentially at least two Supreme Court terms in which this vacancy will remain.

That is unprecedented. Not only are they not willing to hold a vote at this point, they have refused to hold hearings on Judge Garland. And in some

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cases, Mitch McConnell and others have said, we will not even show the courtesy of meeting with the judge to find out what he thinks. And I think what's important for all of you to understand -- because you're going to be not just lawyers appearing in court, potentially, but custodians of our legal system and our democracy -- is if you start getting into a situation in which the process of appointing judges is so broken, so partisan that an eminently qualified jurist cannot even get a hearing, then we are going to see the kinds of sharp, partisan polarization that has come to characterize our electoral politics seeping entirely into the judicial system. And the courts will be just an extension of our legislatures and our elections and our politics.

And that erodes the institutional integrity of the judicial branch. At that point, people lose confidence in the ability of the courts to fairly adjudicate cases and controversies. And our democracy can't afford that. Our system is designed to make sure that this branch works. And it requires a broad consensus, even if we don't agree on any particular ruling, that the court's rulings itself are legitimate and consistent with our democratic design. And that's why this is so important. It's not just a matter of who is occupying that ninth seat in the Supreme Court. It has to do with how we, as a democracy, operate, and the particular authority that a court has to bring in order for our democracy to work.

That was a really long answer. Others will not be as long. (Laughter.)

PROFESSOR STRAUSS: Well, let me ask you about that, Mr. President. How did we get to this point? You hear sometimes that the problem is the Supreme Court has injected itself into political issues, and so, of course, it gets enmeshed in politics. But the Supreme Court has been controversial almost from the beginning -- from the Jeffersonians' attack on the Marshall Court, all the way through the "Impeach Earl Warren" billboards in parts of the country in the '50s and '60s. And we haven't had this before. So is there -- do you have an explanation for what it is that brought us to this position?

THE PRESIDENT: I think there are a variety of explanations. First of all, it's important to underscore what you just said. And all of you law students, even if you're not critical, legal theorists, or what have you, I think just from reading cases, you will acknowledge that there's politics in legal

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rulings. When we make decisions about right, wrong, what are the rules governing our society, et cetera, that that's an extension of our broader political and democratic conversation. Nobody is denying that.

And you're right. There have been controversies in the past about how we should decide the balance between liberty and security, about how do we treat minority groups to assure that they are protected from majority rule. How do we make sure that the political process itself has integrity and that our votes count? Those are all issue where passions are real and people have opinions. And there's nothing wrong with that.

But I think what changed was when the Congress itself, and the Senate in particular, began to change. I think in some ways the judicial process is a casualty of some broader trends in our democracy. First of all, our politics have become much more polarized. There's been something called the "great sorting" because of gerrymandering, because of how our media works where folks either watch Fox News or they read The New York Times, but rarely do both. Positions get hardened and reinforced. Partisans carry more weight within each party. The notion of a liberal Republican or a conservative Democrat -- those things broke down. And so politics itself got more polarized.

That, then, fed into a culture in Congress in which basic comity and habits of courtesy and process and institutional respect for people that you can agree with, those things began to break down. The filibuster, as I said, started becoming just standard practice. There's nothing in the Constitution that says every item that comes before the Senate is supposed to get a super majority. It used to be that the filibuster -- it doesn't have a very distinguished history -- was used principally for blocking civil rights and anti-lynching and voting rights legislation. That was bad enough. It then suddenly became the norm for everything as minority parties started to decide that they wanted to block what the majority of senators were in favor of. And so all of this I think contributed to a breakdown of the process.

Now, in fairness, Democrats are not blameless on this. If you talk to Republicans, they'll also often point to the Bork nomination as where this all started. And there have been times where Democrats used the filibuster to block what Republican Presidents or conservative legal

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theorists viewed as eminently qualified jurists. I will say that there has not been a circumstance in which a Republican President's appointee did not get a hearing, did not get a vote, and as a general proposition, they have been confirmed even where there have been strong objections.

So what you have here is, I think, a circumstance in which those in the Senate have decided that placating our base is more important than upholding their constitutional and institutional roles in our democracy in a way that is dangerous. And there are other examples of it, but this judicial nomination process I think has become an extreme example.

PROFESSOR STRAUSS: Let me take you back a step to how -- to your thinking about when you're making an appointment. And I'm going to try to put it in an historical context a little bit. You have Presidents who really set out to reshape the Court. And Franklin Roosevelt may be the clearest example. He was determined to find justices who would uphold New Deal legislation. Richard Nixon wanted justices who would limit the rights of people accused of crimes, and that's sort of one model.

And then you have Presidents who did not have any particular agenda. And I think President Eisenhower is an example. He appointed three of the great justices of the 20th century -- Chief Justice Warren, Justice Harlan, Justice Brennan. But his appointees came from different backgrounds, no identifiable tendency in the way they thought about the Constitution.

So do you see yourself as one of those models, or something different from both?

THE PRESIDENT: There's no doubt that in making my appointments, the values of the justice matter to me. And what I mean by that is not how they'd rule on a particular issue. In fact, we're very careful when I interview candidates not to ask them about a particular case or controversy that might make it seem as if I want a particular outcome. But what I've been consistently looking for -- and this is what I saw in Justice Sotomayor, what I saw in Justice Kagan -- is people who, number one, have intellectual integrity. And what that means is, is that they look at the facts and the law, and even if it's uncomfortable to them, they don't like the outcome, they follow the law, and they recognize that that's their



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job.

Number two, that they bring a humanity to the job. And what I mean by that is that, particularly on the Supreme Court, nine out of 10 cases -- well, certainly in the federal courts -- nine out of 10 cases we can probably arrive at an outcome just by applying basic tenets to constitutional interpretation. There's not going to be a lot of controversy. The cases that really matter are the ones where there's ambiguity, where there's a lack of clarity, where it requires constitutional principles being applied in a way that is true to precedent, is true to basic legal tenets, but also that understands the unique role of the Court in making sure that people who are locked out of the political process, for example, are not permanently locked out, that they have some recourse; that we have justices who understand how the world works so that they are not entirely blind to the history of racial discrimination or gender discrimination, or how money operates in our world.

Not because that necessarily leads them to rule on a particular issue, but because it means that when they're looking at a tough case in which statute or the Constitution does not provide an immediate, ready answer, that they can apply judgment, grounded in how we actually live and the ideals and principles that have made this such an extraordinary country. I want them to have lived a little and be able to see the wide spectrum of people that they're going to be wielding this enormous power over.

And so, a lot of times when I talk to the candidates for the judiciary, I spend time asking about their families and them growing up, and what were formative experiences in their minds. And in some ways, that reveals more than anything.

And part of the reason that I think Merrick Garland would be such an extraordinary judge is not just because he's already been an extraordinary judge, but I think about his life story. And I mentioned this in the introduction -- when he was a high school kid, as class valedictorian, he's got a student speaking ahead of him who lambasts the Vietnam War, and parents are trying to unplug the guy's mic, and Merrick comes in and -- not because he necessarily agrees with the student, but, impromptu, provides a vigorous defense of free speech. As a 17- or 18-year-old kid -- that tells me something about him. It gives me confidence that this is

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somebody who's thought about what our values and ethics are as a society.

When you hear about the work he did in the Oklahoma City bombing, and he's presiding over the investigation at the Justice Department, and the fact that he was meticulous in how he conducted that investigation, and didn't cut corners -- even though, in the wake of those kinds of terrorist attacks, oftentimes it's convenient, because people aren't going to call you on it, to cut corners -- and at the same time, how he kept the program mourning the deceased from the memorial because he knew that each one of those people who had been killed, and each one of those families had been affected in such profound ways -- that tells me something about who he is.

And that, as much as anything, I think is going to give me confidence that that's the kind of person where, if I'm before a judge, I want to make sure that I've got somebody who's wise and who cares about people and is not arbitrary, and can provide confidence to the justice system. And I also think part of the reason I thought Merrick was ideal now is precisely because of all the polarization we were talking about earlier. What a good moment for us to have somebody who is respected by both sides, and who Chief Justice Roberts served with on the Appellate Court and befriended, and consistently said -- despite being on the opposite ends of a bunch of decisions -- said this is somebody who, if he says you're wrong, you've got to think long and hard about it.

He embodies and models what it is that we want to see in our jurisprudence.

PROFESSOR STRAUSS: Let me sort of pick up on that. I mean, as you know, some people on the left were disappointed with your choice of Chief Judge Garland. They thought you should have appointed someone who would be more aggressive in moving the Court in a certain direction. And I just -- I guess what I want to say is, those of us who knew you "back then" could have said you shouldn't be surprised, because if I remember correctly -- and correct me if I don't -- when you were teaching constitutional law, there are people in that line of work who hold up the Warren Court as the model and say the Court's job is to be really on the front lines of attacking society's problems. And if I remember correctly,

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you were skeptical of that when you were a law professor. So am I right in remembering that, and has the skepticism carried over?

THE PRESIDENT: No, no, I think you're right about this. It's an adage in con law, and you're familiar with this -- probably the students are too -- that the courts are a terrific shield, but they're not always a very effective sword. And what I mean by that is, is that there have been moments in history -- Brown v. Board of Education being the best example, and on the other end of the spectrum, a decision like Dred Scott, which was antithetical to what we want to see a court do -- there are certain moments where, like in Brown, that democracy has broken down in a fundamental way. The majority has shut down access for the petitions for redress from a minority group. There are times where an individual who is engaging in, let's say, highly unpopular speech is not going to be able, through the political process, to uphold the values that we, collectively, have decided are pretty important to uphold.

And so, in those circumstances, I have a very progressive view of how the courts should operate. But as I think Judge Garland said, being a federal judge doesn't mean that you have this broad writ to simply remake society. Ideally, you've got a political process that does that; that we argue about issues, and we elect representatives, and we get votes, and we pass bills, and we get a new administration and they overturn stuff that we passed. And it's rough, and it's tumble, and it's not always elegant, but that's the constitutional design. And it has the benefit of making sure that separation of powers and decentralization of power in our society keeps this lumbering ship moving in a pretty good direction.

And so it's been rare -- and this is by design -- that the Court engages in massive social engineering. Now, I care deeply about -- there are a whole range of progressive causes that I will continue to fight for as long as I have a breath. I believe in a society that is doing something about climate change in an aggressive way. I believe in a society in which every child is able to get a decent education and opportunity. I believe that everybody should have health care in a society that's wealthy -- it's not a privilege, it's a right. (Applause.) I believe that our criminal justice system is flawed in a whole range of ways.

A couple of weeks ago, or maybe it was last week, I had lunch with a

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sampling of the people that I've pardoned for nonviolent drug offenses. And I've got a woman sitting next to me who, at a very young age, in her early 20s, was sentenced to life in prison for a nonviolent drug offense. That's crazy. It makes no sense. It was unjust and counterproductive, and leaves huge scars not just in that woman's family and her children, but in our society as a whole.

So there are a whole bunch of things I've done as President and I intend to continue to do and to advocate for. Those are not things, though, that typically a Supreme Court justice is in the position to get done. They don't have taxing power. They don't necessarily have the expertise to be designing programs to get at the things that we care about. And so I do have a modesty in terms of my expectations for what the Court should do.

But I want the court to do what it should do really well. I want a court that does believe that equality under the law is equality under the law -- not just the words, but that it is operationalized, that it's real. I want a court that is treating a poor indigent criminal defendant the same as a wealthy criminal defendant, and that justice is blind with respect to -- she agrees with me. (Laughter.)

So modesty in the scope and the nature of what the law is, but doing really well what the Court is designed to do -- that's what I'm looking for in a justice.

PROFESSOR STRAUSS: I think we can open it up.

THE PRESIDENT: Let's open it up to questions. There you go, a little Socratic method here. (Laughter.) State the case! (Laughter.) No, I'm teasing. I'm teasing. This young lady right here in the green -- yes. Do we have a mic? Let's give them mics so everybody can hear you. Introduce yourself, by the way.

Q Hi.

THE PRESIDENT: Hi.

Q My name is Amelia.

THE PRESIDENT: Hey, Amelia.

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Q I actually had the opportunity to ask you a question when I was 15 years old, in New Hampshire.

THE PRESIDENT: Wow. (Laughter.)

Q So I'm really happy to --

THE PRESIDENT: Are you a student here now?

Q I am.

THE PRESIDENT: That's very cool. Did I answer your question the last time?

Q You did, very well. (Laughter.)

THE PRESIDENT: Thank goodness. All right, what do you got?

Q So I'm really happy to hear that you said you were going to continue to push for the issues that you care about, because I, of course, believe that the push for the Supreme Court nomination is incredibly important. I'm just a little concerned that other issues could get left behind. One such issue, for example, is criminal justice reform -- specifically, the problem of mass incarceration. So I was wondering if you could speak to what more you'll do in your last 10 months to address this issue.

THE PRESIDENT: Great. It's a great question. We're in this really interesting moment where generally Congress is thoroughly unproductive -- not, by the way, because of the members of Congress who are here -- (laughter) -- who are all doing great work -- (laughter) -- but in the aggregate it's not doing much.

One exception has been this growing interest, this movement in criminal justice reform. And it's bipartisan and it's sincere on the part of all sides on this. And it's an interest convergence. You have fiscal conservatives who have been seeing how expensive it is to incarcerate people year after year after year, and how it's breaking the bank -- particularly at the state level, where if you track spending on public education and spending on incarceration over the last 25, 30 years, there is almost a direct line between more people in jail and less support for public universities, for example. So there's a fiscal concern.

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You've got a libertarian strand of conservatives who really believe why is it the government's business if somebody is taking -- smoking pot, let's say, and why would we want to jail them for 20 years? You've got a very sincere evangelical movement that oftentimes is involved in reentry programs or prison ministries, and so have embraced the idea of a second chance.

And so you combine that with law enforcement that I think has begun to recognize that a lot of how we have prosecuted the war on drugs has been unproductive, and that recidivism is inevitable if people are getting no skills. They're incarcerated for decades, and then we're just releasing them with no possible support. And then the long-standing progressive view that a lot of our criminal justice system has been tainted by racial discrimination and class bias. All those things are converging.

And so now we've got some really interesting coalitions. You've got the ACLU and the Koch brothers agreeing on this, which does not happen often. (Laughter.) Dick Durbin has been one of the key leaders in the Senate in shaping a criminal justice reform bill that has a real chance of passage. And I think it's really important to understand the nomination process with Judge Garland is not holding back our ability to move forward.

It would be one thing if Mitch McConnell was saying, man, it's going to take so long to schedule all the hearings and the votes, and we won't have time because we're just so busy that we can't then do criminal justice instead. But since there has been a spike in the number of days off in this Congress, and, typically, a judicial confirmation takes less than three months from the time that person is nominated -- Judge Alito, for example, took 82 days -- this is something that shouldn't prevent us from getting done the criminal justice issues.

I think what's been tougher is just managing the traditional politics around being soft on crime versus being tough on crime. And right now because crime rates -- sadly except for in certain neighborhoods in Chicago and a few other cities -- have been going down in ways that are remarkable and nobody can fully explain, there is less profit in saying I'm going to be tough on crime.

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But there is always a hesitance on the part of legislators because very rarely is a politician punished for having been too tough on crime and sentencing. But occasionally, á la Willie Horton, they feel that a vote that can be perceived as lenient might come back to bite them.

The good news is that, so far at least, people have stuck with it. And I'm modestly optimistic that we can get something done this year. It won't solve the problem of mass incarceration -- because that was a process that took 20, 30 years to get to where we are now, where we account for 5 percent of the world's population and 25 percent of the world's prisoners, so it's going to take some time to reverse. But the legislation that's pending right now provides meaningful reductions in the standards for sentencing around nonviolent drug crimes. It does some very important work in terms of reentry, diversion programs. It breaks this psychology that we just have to lock people up in order to keep ourselves safe.

One last element to this that has been interesting is the opioids crisis that some of you may have read about. Right now painkillers -- overdoses of people taking painkillers kills more people than traffic accidents. It's a remarkable statistic. There has been this huge spike in painkiller addiction, which is then leading to heroin addiction, because oftentimes heroin is cheaper than painkillers. And four out of five people who get addicted to heroin start their addiction with OxyContin or some other painkiller addiction. And unlike crack, it's not just affecting inner-city African American or Latino communities. It's widespread. It's pervasive. It's seeping into rural areas. And it's a tragic issue that we are really spending a lot of time focused on.

But what's interesting is, is that the politics of this changes a little bit where when elected officials see kids who are like their kids getting hooked and going through these terrible things, there's been a greater predisposition to think of this as a public health issue rather than a criminal justice and incarceration issue.

And that's -- I'm just being blunt -- that's the truth. But it actually has had an impact in terms of an openness I think to re-examining some of our drug laws.

Good question. I'm sure your question eight years ago was really good,

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too. (Laughter.)

All right, I'm going to go boy-girl-boy-girl just to make sure this is fair. We monitor these things. (Laughter.) Yes, gentleman right here, in the tie. You. Yes, you look sharp. (Laughter.) Do you wear a tie every day to class? That's good, man.

Q I'm Jimmy. I'm also a 1L. I've never asked you a question before. (Laughter.)

THE PRESIDENT: Okay.

Q So this might not go very well. (Laughter.) But I've written it down so hopefully I can read it. Mr. President, we are currently in the midst of a polarizing, political election cycle dividing both major parties along populist and establishment fault lines. Do you anticipate this divergence within the Democratic Party widening to the extent we saw with the tea party's emergence within the ranks of the Republican Party? And if not, what do you worry about for the future of the Democratic Party?

THE PRESIDENT: Short answer is, no, I don't. The cleavages inside the Democratic Party are not comparable to what we're seeing in the Republican Party right now. The argument inside the Democratic Party is a little bit more about means, less about ends.

If you look at our two Democratic candidates, they believe that everybody should get health care. They believe that every child should get a good education. They believe that climate change is real and that we should do something about it. They believe in equality for the LGBT community. Right? If you go through the list, there's not a huge divergence there.

I think that in the Democratic Party, there is a populist impulse that grows out of what I also think has happened for folks who are voting in the Republican primary, this frustration in the wake of the financial crisis and the bottom falling out for people who lost their jobs, or lost their homes, or lost their pensions; that the world is moving fast, the ground is not firm under their feet. And even before that crisis, wages and incomes were not going up at the same pace as productivity, corporate profits, and so forth. And so there is a sense the game is rigged. And we have to more fundamentally change that game, that system -- whether it's Wall Street,



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or how Washington operates, or what have you.

Some of that impulse is healthy. I think you want people to be asking hard questions about injustice economically and the way that insiders in the political process may not fully represent the interest of everyone.

The danger, whether for Democrats or Republicans, is in a closed-loop system where everybody is just listening to the people who agree with them, that you start thinking the way to get to where I want to go is to simply be as uncompromising as possible, and hold the line, and not pay attention or listen to what the other side has to say. And that is sort of a tea party mentality. And that anybody who suggests, well, there's another point of view, or there's a whole half of the country that completely disagrees with us that we have to work with, well, then you must be a sellout, or you must be corrupted, or you must be on the take, or what have you.

And that is not, I think, useful. It's not say that there isn't corruption, that there isn't compromise -- people compromising principles for less-than-noble means, et cetera. Those things happen and they should be called out.

But a lot of the reason why a lot of Democrats who supported me and still support me got frustrated is because a bunch of the country doesn't agree with me or them, and they have votes, too, and they elect members of Congress. And that's how our democracy works. It's not a situation, if you don't get everything you want, it's always because the person you elected sold you out. It may just be because in our system you end up taking half loaves.

I could not be prouder of the Affordable Care Act, but it was a messy process. It doesn't have a public option. It's not single-payer. If I were designing a system from scratch, I would have designed a more elegant system and a more efficient system. But that's not what was possible in our democracy -- in the same way that Social Security when it first started was a meagerly program providing benefits to just a few people and historically cut out for purely racist reasons domestic servants or sharecroppers or what have you. And then over time you kept on improving it. That's how change generally happens.

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And I think the thing that Democrats have to guard against is going in the direction that the Republicans are much further along on, and that is in this sense of we are just going to get our way, and if we don't, then we'll cannibalize our own and then kick them out and try again, and we narrow our viewpoints more and more until finally we stake out positions that are so extreme that they alienate the broad public.

I don't see that being where the Democrats go. But it's always something that we have to pay attention to.

Q Thank you so much for being here. I'd like to know how have your views on the Supreme Court nomination process changed since you taught constitutional law here at the University of Chicago.

THE PRESIDENT: My views on how it should work hasn't changed. My views on how it currently works obviously are a source of frustration. Look, just to kind of wrap up this Supreme Court conversation, I think it is perfectly acceptable for Republicans to decide that even though Merrick Garland is highly qualified, even though he's indisputably a good and fair judge, even though he's gotten the highest ratings from all the bar organizations and others that have examined his record, that I just don't agree with him on X, Y, Z, and I'm going to vote against him because I believe in something different on important issues.

What's not acceptable is not giving him a vote, not giving him a hearing, not meeting with him. What's not acceptable, I believe, is the increasing use of the filibuster for somebody who's clearly within the mainstream, or to essentially say that we are going to nullify the ability of a President who is from another party from making an appointment. And we're going to wait to see if maybe we can get a guy from our party to make the appointment. That is where you have a process foul that corrodes the ability of the Court to function effectively.

If you play out how much of a problem this could end up being -- if, in fact, Mitch McConnell sticks to not giving a hearing and not giving a vote, and let's say, from their perspective, everything works out great and their nominee, whoever that might be, wins and takes over the White House, and they, then, make an appointment -- the notion that Democrats would then say, oh, well, we'll just go along with that -- (laughter) -- that is

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inconceivable. Right?

So now the Democrats say, well, what's good for the goose is good for the gander, we'll wait four more years to see how the next President comes in, at which point what's most likely then is Mitch McConnell will then eliminate the filibuster possibility for Supreme Court justices, as it was eliminated for the other judicial appointments. And now it's just a majoritarian exercise inside the Senate of who controls the presidency and who controls the Senate. And if different parties control the White House and the Senate during that period of time, you're not going to get any appointments done -- which is a disaster for the courts, generally.

For two reasons. One is, there's a lot of work that needs to get done and you need judges. And right now, there are emergency situations in districts across the country. But the second thing that happens is people will, at that point, just become more and more cynical about decisions that are coming down from the Court. They're already cynical because so much of so many opinions just end up being straight 5-4, and it starts feeling like this is just a partisan alignment. But it gets much worse under these circumstances. People then just view the courts as an extension of our political parties -- polarized political parties.

And if confidence in the courts consistently breaks down, then you start seeing our attitudes about democracy generally starting to break down, a legitimacy breaking down in ways that are very dangerous.

It's a gentleman's turn. Right here in the front. I am impressed by the way you guys did all get dressed up. (Laughter.) Was there a memo sent out? Did the Dean say, you guys, we want you to all -- because you aren't going to class like this. (Laughter.) I know. I remember. (Laughter.)

Q Hello, Mr. President. Thank you very much for being here with us today. I'm a 2L here at the law school. My question for you is, what sorts of constitutional questions were at the forefront of your mind when deciding who your nominee should be? And what sorts of constitutional questions do you think Americans should be asking themselves when assessing your selection and thinking about the 2016 presidential election?

THE PRESIDENT: Well, I will tell you, as I said before, I'm very careful not

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to delve too specifically into a candidate's position on live issues. You're a well-informed 2L, you know the issues that people debate. There's a standard set of social issues that have been roiling society and the courts for a long time -- whether it's LGBT rights, or abortion, or civil rights.

What's interesting is there are a set of new issues that are going to be coming up that, for your generation, I think are going to be increasingly salient. One great example is this whole debate around encryption, which I think is just the tip of the iceberg of what we're going to have to figure out. In a society in which so much of your life is digitized, people have a whole new set of privacy expectations that are understandable. They also expect, though, that since their lives are all digitized, that the digital world is safe, which creates a contradictory demand on government -- protect me from hackers, protect me from terrorists, protect me from et cetera, et cetera, et cetera, but I don't want you to know any of your [sic] business and I don't even want you to have the ability to investigate some of that business when it happens because there's broader implications and we're worried about Big Brother. And so there's going to be a whole series of issues around that that I think will be coming up.

I think there are a range of economic issues that date back very far, to the earliest days of the Court and were prominent during the Great Depression and FDR's era that have gone into abeyance -- people don't pay attention to them as much in terms of monopoly concentration, or antitrust issues, et cetera -- but I think in this current environment are going to be coming more prominent over time.

And then, political participation issues and voting issues I think, and money in politics issues -- that's a whole series of issues that I do believe are an important role for the Court to play. Because if we're not effectively setting the rules of the political process, if that is delegitimized, then whatever outcomes are generated are subject to just endless contention.

And this is separate from the judiciary. This is your President editorializing. (Laughter.) We really are the only advanced democracy on Earth that systematically and purposely makes it really hard for people to vote. And we sort of take it for granted. I mean, we sort of just assume, yeah, that's I guess how it is. There's no other country on Earth that does

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that. And there's a legacy to that that grows directly out of a history in which first property men, then white men, then white folks didn't want women, minorities to participate in the political process and be able to empower themselves in that fashion.

Now, that's the history. We should be a society in which, at this point, we said, yeah, that history wasn't so good, that's not who we are, and there was a Civil War fought about all this stuff, and we passed a whole series of laws like the Voting Rights Act, and at this point we should be at the point where we say, you know what, we want everybody to vote because that's the essence of our democracy. But we have not just federal laws, but state laws, that unabashedly discourage people from voting -- which is why we have some of the lowest voting rates of any advanced democracy in the world.

And that's a problem. That's not something that -- I'm saying that to Congress, as well as to the presidency, as well as to governors, as well as state legislators, as well as to courts. That can't be right! There's no justification for that! You can't defend it!

And I've always said -- and this goes back to the young man's question earlier about political polarization -- maybe the single biggest change that we could make in our political process that would reduce some of the polarization, make people feel more invested, restore integrity to the system, would be just make sure everybody is voting. Australia has got mandatory voting. You start getting 70-80 percent voting rates, that's transformative.

All right. How much time do we have, by the way? How many?

MODERATOR: Time for one more.

THE PRESIDENT: We'll take two. (Laughter.) The young lady in the green, right there in the sweater. Yes, that's you. Yes. You didn't remember what you were wearing today, did you? (Laughter.)

Q So I think we can agree that in our nation, we celebrate diversity. Diversity of ethnicity is the basis, the background. And I'm just wondering -- well, of course, U of Chicago is a diversity of ideas. I'm just wondering what diverse characteristics Judge Garland would bring to the Supreme

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Court.

THE PRESIDENT: Well, he's from Skokie -- (laughter and applause) -- which is very important. It's a great place. It's a great town. The way I've thought about diversity is not to think about any single seat as, oh, I've got to fill this slot with this demographic, but rather if I've got a broad set of nominees to make -- and this is true across the board -- how do I make sure that I'm intentional throughout that process so that the talent of every American is, and every potential candidate gets a fair look, and I have confidence that if I stick to that, if I do that, if I make sure that I'm broadening the search, broadening the pool, looking at a bunch of folks even if they're not going through the conventional paths, that I'll end up -- the process will result in diversity.

And that, in fact, is what's happened. I am -- not to brag, but I have transformed the federal courts from a diversity standpoint with a record that's been unmatched. (Applause.) We've got more African Americans on the circuit courts than we ever has before. We've got -- I've appointed more African American women to the federal courts than any other President before. I've appointed more Latinos than any President before. I've appointed more Native Americans, more Asian Americans, more LGBT judges than ever before.

But at no point did I say, oh, you know what, I need a black lesbian from Skokie -- (laughter) -- in that slot. Can you find me one? (Laughter.) I mean, that's just not how I've approached it. It turns out that if the process is fair and you are saying that it's important that our courts are reflective of a changing society, you'll end up with a really good cross-section of people who are excellent. And that's who we've been able to appoint.

And so, when I looked at Merrick Garland, that was the person that -- the difference between the Supreme Court is just a handful of seats come up at any given time now. I appointed a Latino woman and another woman right before that, so, yeah, he's a white guy, but he's a really outstanding jurist. Sorry. (Laughter.) I think that's important.

But this speaks to the broader debate about diversity that I think is important and obviously churns up in college campuses a lot. The

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question is, have you set up a process and are you intentional about giving everybody a shot? And are you thinking about roadblocks to why we're not seeing a more diverse population? And when you start asking those questions -- in whatever institution. I mean, I just met with the Chairman of the Joint Chiefs of Staff and the Combatant Commanders, our key military leaders. And the U.S. military, interestingly, has probably done as good of a job as any institution in our society when it comes to integration and bringing diverse people in, but, as you go up the ranks, you start seeing that it becomes less and less reflective of the broader population and the troops, the men and women in uniform who are coming in.

And so we had a really interesting conversation about what's happening? How much of this is that the young African American or Latino officer, or woman officer isn't mentored by the person right above them, and steered into particular assignments that are less likely to achieve a promotion? And what can we do about a different set of financial burdens that may exist? And if a lot of those folks are going in as enlisted men and women, because that's the opportunity that was presented to them and nobody told them they could apply to West Point, what are we doing to find outstanding enlisteds, and saying, you'd make a good officer and we're going to groom you?

And all of that -- that's not as satisfying as, when it comes to publicity, as just checking a box and saying, look, I appointed this person or that person in any particular slot. But that's where you start changing systems, and you start changing institutions, and you end up with a really broad-based change in access. And that's something that I really care deeply about because, just as is true in the military, it's true generally. Look, our society is changing. You cannot have a successful America if we are leaving out big chunks of the population from opportunity and leadership. It just doesn't work.

And it's the same argument I make internationally in countries that are still repressing women -- saying, your society cannot work, it doesn't work if more than half your population is constrained. If the half of that population that is most likely to be raising your children and teaching the next generation is not getting opportunity, your society will fail over the long term. And that's just true generally.

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All right, one last question.

Q What happens --

THE PRESIDENT: Excuse me, you were not called on. (Laughter.) And you are a journalist. And I'm calling on students. So, thank you very much. This wasn't a press conference.

So, let's just see -- it's a gentleman's turn. This gentleman right there.

Q Hi, my name is Seth. I'm a 3L. If you don't mind me reading my question --

THE PRESIDENT: It's okay. This is what I was saying about you guys and your phones. (Laughter.) By the way, are you now -- I'm assuming you can't carry your phones into court, can you?

Q Actually, it depends. (Laughter.)

THE PRESIDENT: I'm going to say, you guys might want to practice -- (laughter and applause.)

Q I'll try to work on that. (Laughter.) So one issue that Judge Garland would likely never be able to consider if he were confirmed concerns the President's authority to conduct **drone** strikes away from active battlefields. And these are strikes that you have continuously authorized on the basis of vague legal standards that you unilaterally deem to be satisfied in each case without ever appearing before a court, and in the process killing hundreds of innocent civilians as well as, in some cases, American citizens. So my question is, how are these killings morally and legally justified? And what kind of message does this **drone** program send about America's values to the world, the American people, and to law students like myself who refuse to put our trust in an opaque process?

THE PRESIDENT: I think that's a great question -- although I will say that I will dispute some of the underlying premises that you asserted as facts. But I think it's an important topic, and it's a fair one.

When I came into office, we were still in the midst of two wars, in Iraq and Afghanistan. And in the border regions between Afghanistan and Pakistan, al Qaida was still highly active. And **drone** technologies began

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to develop in parallel with -- had developed prior to my presidency, but started to really accelerate in terms of the technology and the precision with which strikes could be taken.

And the challenge for me as Commander-in-Chief has consistently been how do you think about this new technology in a way that is consistent with morality, ideals, laws of war, but is also consistent with my first priority as President and Commander-in-Chief, which is to keep all of you safe, including you.

And so I think it's fair to say that in the first couple of years of my presidency, the architecture -- legal architecture, administrative architecture, command structures -- around how these were utilized was underdeveloped relative to how fast the technology was moving. So another way of saying this is our military or our intelligence teams started seeing this as really effective. And they started just going because the goal was let's get al Qaeda, let's get these leaders. There's a training camp here. There's a high-value target there. Let's move. And it was -- the decision-making was not ad hoc, but it was embedded in decisions that are made all the time about a commander leading a military operation, or an intelligence team trying to take out a terrorist. And there wasn't enough of an overarching structure, right?

So you may recall -- but if not, I'm sure we can send it to you -- I gave a speech at the National Defense University in which I said that we have to create an architecture for this because the potential for abuse -- given the remoteness of these weapons and their lethality, we've got to come up with a structure that governs how we're approaching it. And that's what we've done. So I've put forward what's called a presidential directive. It's basically a set of administrative guidelines whereby these weapons are being used.

Now, we actually did put forward a non-classified version of what those directives look like. And it says that you can't use these weapons unless you have near certainty that there will not be civilian casualties; that you have near certainty that the targets you are hitting are, in fact, terrorist organizations that are intending to do imminent harm to the United States. And you've got all the agencies who are involved in that process, they have to get together and approve that. And it goes to the highest,

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most senior levels of our government in order for us to make those decisions.

And what I've also said that we need to start creating a process whereby this -- whereby public accountability is introduced so that you or citizens or members of Congress outside of the Intelligence Committee can look at the facts and see whether or not we're abiding by what we say are these norms.

And we're actually -- there's a lot of legal aspects to this because part of the problem here is, is that this **drone** program initially came through the intelligence side under classified programs, as opposed to the military. Part of what I've also said is I don't want our intelligence agencies being a paramilitary organization. That's not their function. As much as possible this should be done through our Defense Department so that we can report, here's what we did, here's why we did it, here's our assessment of what happened.

And so slowly we are pushing it in that direction. My hope is, is that by the time I leave office there is not only an internal structure in place that governs these standards that we've set, but there is also an institutionalized process whereby the actions that the U.S. government takes through **drone** technology are consistently reported on, on an annualized basis so that people can look.

And the reason this is really important to me -- and this was implied in your question -- is there is a lot of misinformation about this. There is no doubt -- and I said this in an interview I think recently -- there is no doubt that some innocent people have been killed by **drone** strikes. It is not true that it has been this sort of willy-nilly, let's bomb a village. That is not how folks have operated. And what I can say with great certainty is that the rate of civilian casualties in any **drone** operation are far lower than the rate of civilian casualties that occur in conventional war.

So the irony -- let's take an example like the bin Laden raid. This was as precise, as effective an operation that I don't think anybody would dispute was in the national security interests of the United States. And we put our best people in there who operate as precisely and as effectively as any group of individuals probably ever have in the history of the planet. And

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they executed their mission flawlessly. But there were a number of people who were killed in that who you might describe as not the targets of the mission -- members of bin Laden's family, for example. Now, that would be counted as a civilian casualty under the standards from which you drew your information. And if you calculated it as a percent, there was actually a pretty high civilian casualty rate for this extraordinarily precise mission.

Now, imagine during the height of the Iraq war, or when we were still actively fighting in Afghanistan, the number of civilians who were killed in normal military operations. We talk about the number of U.S. troops that were killed in Iraq. The number of Iraqis that were killed -- primarily by AQI and those we were fighting, but also by U.S. military that was trying to be as careful as possible in chaotic situations, like Fallujah or Ramadi -- were in the tens of thousands.

So part of my job as President is to figure out how I can keep America safe doing the least damage possible in really tough, bad situations. And I don't have the luxury of just not doing anything and then being able to stand back and feel as if my conscience is completely clear. I have to make decisions because there are folks out there who are genuinely trying to kill us and would be happy to blow up this entire room without any compunction, and are actively trying to find ways to do it.

And I wish I could just send in Iron Man -- (laughter) -- no, no, I don't mean that as a joke. I just mean I wish that the tragedy of war, conflict, terrorism, et cetera, did not end up creating circumstances where we, wielding kinetic power, don't end up hurting anybody who shouldn't have been hurt.

But what I try to do is to set up the system as best as I can. And I think it is very important for those who are critics of the U.S. government -- and this includes folks on the outside -- to examine the incredible progress that we've made over the course of a couple of decades. Because this conversation didn't even exist, it did not even cross the minds of people in the White House as recently as 30 or 40 years ago. I mean, it wasn't even a factor. And we anguish over this in a very serious way.

But what I do think is a legitimate concern is, is that the transparency

## A-937

4/11/2016

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issues. I think that the way that this got built up through our intelligence and what's called our Title 50 programs meant that it did not -- it wasn't subject to the same amount of democratic debate as when we are conducting what are called Title 10 Department of Defense conventional operations. And that's done a disservice not only to the public being able to examine where we made mistakes and create corrective action, it's actually also done a disservice to the incredibly dedicated men and women in intelligence and in operations who perform these operations who are subject to accusations that somehow they're irresponsible and bloodless and going around blowing up children, which is not the case.

And our popular media I think has been able to just project a whole bunch of scenarios that are generally not accurate.

I guess I should stop there. (Laughter.) But thank you for the question. It was a legitimate one.

I'll end where I started. Just based on the quality of the questions and your very sharp appearances -- (laughter) -- you guys have an enormous amount to contribute. Don't let the day-to-day noise and news and frustrations with our democracy discourage you from being involved.

I'm phasing out of this particular part of my life. But I've said this before -- and I believed it when I was teaching here, I believe it even more now after having been President -- the most important office in a democracy is the office of citizen. I really believe that. Change happens when citizens are informed, are engaged, are paying attention, are asking tough questions -- asking tough questions of themselves, by the way, not just of others -- not too comfortable in whatever dogmas that we all attach ourselves to. And you are learning the kind of critical thinking in this school that will allow you to become really good citizens. Use it.

Thanks.

PROFESSOR STRAUSS: Thank you, Mr. President. (Applause.)

END

4:12 P.M. CDT

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## A-938.1



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U.S. Department of Justice

*United States Attorney  
Southern District of New York*

*86 Chambers Street  
New York, New York 10007*

April 18, 2016

Hon. Colleen McMahon  
United States District Judge  
Daniel P. Moynihan United States Courthouse  
500 Pearl Street, Room 1640  
New York, NY 10007

Re: *ACLU v. Department of Justice*, 15 Civ. 1954 (CM)

Dear Judge McMahon:

We write respectfully on behalf of defendants (the "Government") in the above-referenced case, and in response to the ACLU's letter of April 13, 2016. Contrary to the ACLU's assertions, the President's remarks to the University of Chicago Law School did not constitute an "acknowledgement that the CIA conducts drone strikes." Rather, the President underscored broad transparency themes that he has addressed repeatedly in the past in the context of counterterrorism operations. The President has been clear, for example, that "we must be more transparent about both the basis of our counterterrorism actions and the manner in which they are carried out." Accordingly, he has stressed that he "will increasingly turn to our military to take the lead and provide information to the public about our efforts." *See* Remarks by the President at the United States Military Academy Commencement Ceremony, May 28, 2014, reproduced at <https://www.whitehouse.gov/the-press-office/2014/05/28/remarks-president-united-states-military-academy-commencement-ceremony>. The President addressed these same themes at the University of Chicago.

That the intelligence community may contribute to or play an unspecified role in the U.S. government's drone program is not new information and does not constitute an official confirmation that "the CIA conducts drone strikes." Indeed, the President made no mention of the CIA, and the ACLU's claim that "President Obama discussed the Central Intelligence Agency's operational role in the program" is simply not accurate. The President's remarks addressed only broad, undefined classified intelligence activities that necessarily limited the degree of transparency that could be achieved in public discourse, and specifically noted that these activities involved "men and women in intelligence *and* in operations" (emphasis added). The President's comments highlighted that the nature and details of the intelligence community's role in U.S. government drone strikes remain highly sensitive and classified.

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Respectfully,

BENJAMIN C. MIZER  
Principal Deputy Assistant  
Attorney General

PREET BHARARA  
United States Attorney for the  
Southern District of New York

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**A-939**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

AMERICAN CIVIL LIBERTIES UNION, and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

15 Civ. 1954 (CM)

-against-

DEPARTMENT OF JUSTICE, et al.,

Defendants.

X

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/25/16
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SUMMARY OF SEALED ACTIVITY FOR PUBLIC RECORD

McMahon, C.J.:

The following is placed on the public record:

Without having completed its classification review of the court's decision dated June 21, 2016, the Government submitted, under seal, what was, in essence, a motion for reargument, couched in the form of calling to my attention material that it thought I might have overlooked in connection with two rulings. All but one of the attachments to the Government's letter were part of the original record before the court. The newly-attached document, which was "inadvertently" not submitted the first time around, is classified.

The docket sheet does not show any sealed filing by the Government last week. The Government is directed to make sure the docket sheet is updated to reflect the sealed filing.

I have responded to the Government's submission by adding a few paragraphs and making a few modest changes (none of which altered the conclusions reached) to the decision, which is now the decision of July 21, rather than June 21, 2016. It will be clear from the text of the additions what the court added in response to the Government's submission.

I have today received a letter from the ACLU dated July 22, 2016 (Docket # 79), asking that I order the Government to finish its classification review. It strikes the court that, the Government's disclaimers notwithstanding, this is a task that should have been accomplished by now – and nothing in the few modest additions made by the Court last week adds to that burden. I thus grant the ACLU's request and direct that the Government finish its classification review by August 5, 2016.



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Dated: July 25, 2016

A handwritten signature in black ink, appearing to read "C. H. H.", is written above a horizontal line.

Chief United States District Judge

# A-941

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION and  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

*Plaintiffs,*

v.

DEPARTMENT OF JUSTICE, including its  
components the OFFICE OF LEGAL COUNSEL  
and the OFFICE OF INFORMATION POLICY,  
DEPARTMENT OF DEFENSE, DEPARTMENT  
OF STATE, and CENTRAL INTELLIGENCE  
AGENCY,

*Defendants.*

No. 15 Civ. 1954 (CM)

**ECF CASE**

**PLAINTIFFS' NOTICE OF ERRATA AND CORRECTED EXHIBIT 54**

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Plaintiffs respectfully submit this Notice of Errata regarding Exhibit 54 to the Second Spurlock Declaration, (ECF No. 53-4). \* Upon reading the Court's August 8, 2016 decision, Plaintiffs became aware that the last four pages of the Exhibit 54 were inadvertently omitted from the version submitted to the Court with Plaintiffs' motion for partial summary judgment. Plaintiffs respectfully request the Court substitute the corrected Exhibit attached to this Notice for Exhibit 54 filed last year. Plaintiffs regret any inconvenience caused by this error, and do not seek reconsideration of the Court's decision.

Dated: August 17, 2016

Respectfully submitted,

/s/ Jameel Jaffer

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---

\* Chris Whipple, 'The Attacks Will Be Spectacular', Politico, Nov. 12, 2015, <http://www.politico.com/magazine/story/2015/11/cia-directors-documentary-911-bush-213353?paginate=false>.

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# CORRECTED

## Exhibit 54

November 2015 Panetta Statement

## A-944

8/10/2016

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## POLITICO

THE FRIDAY COVER

### **'The Attacks Will Be Spectacular'**

An exclusive look at how the Bush administration ignored this warning from the CIA months before 9/11, along with others that were far more detailed than previously revealed.

By CHRIS WHIPPLE | November 12, 2015



Getty

## A-945

8/10/2016

CIA Director Documentary: The Attacks Will Be Spectacular / POLI ICO Magazine  
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“**B**in Laden Determined to Strike in U.S.” The CIA’s famous Presidential Daily Brief, presented to George W. Bush on August 6, 2001, has always been Exhibit A in the case that his administration shrugged off warnings of an Al Qaeda attack. But months earlier, starting in the spring of 2001, the CIA repeatedly and urgently began to warn the White House that an attack was coming.

By May of 2001, says Cofer Black, then chief of the CIA’s counterterrorism center, “it was very evident that we were going to be struck, we were gonna be struck hard and lots of Americans were going to die.” “There were real plots being manifested,” Cofer’s former boss, George Tenet, told me in his first interview in eight years. “The world felt like it was on the edge of eruption. In this time period of June and July, the threat continues to rise. Terrorists were disappearing [as if in hiding, in preparation for an attack]. Camps were closing. Threat reportings on the rise.” The crisis came to a head on July 10. The critical meeting that took place that day was first reported by Bob Woodward in 2006. Tenet also wrote about it in general terms in his 2007 memoir *At the Center of the Storm*.

But neither he nor Black has spoken about it publicly in such detail until now—or been so emphatic about how specific and pressing their warnings really were. Over the past eight months, in more than a hundred hours of interviews, my partners Jules and Gedeon Naudet and I talked with Tenet and the 11 other living former CIA directors for *The Spymasters*, a documentary set to air this month on Showtime.

The drama of failed warnings began when Tenet and Black pitched a plan, in the spring of 2001, called “the Blue Sky paper” to Bush’s new national security team. It called for a covert CIA and military campaign to end the Al Qaeda threat—“getting into the Afghan sanctuary, launching a paramilitary operation, creating a bridge with Uzbekistan.” “And the word back,” says Tenet, “was ‘we’re not quite ready to consider this. We don’t want the clock to start ticking.’” (Translation: they did not want a paper trail to show that they’d been warned.) Black, a charismatic ex-operative who had helped the French arrest the terrorist known as Carlos the Jackal, says the Bush team just didn’t get the new threat: “I think they were mentally stuck back eight years [before]. They were used to terrorists being Euro-lefties—they drink champagne by night, blow things up during the day, how bad can this be? And it was a very difficult sell to communicate the urgency to this.”

## A-946

8/10/2016

CIA Director Documentary: The Attacks Will Be Spectacular | POLI.ICO Magazine  
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That morning of July 10, the head of the agency's Al Qaeda unit, Richard Blee, burst into Black's office. "And he says, 'Chief, this is it. Roof's fallen in,'" recounts Black. "The information that we had compiled was absolutely compelling. It was multiple-sourced. And it was sort of the last straw." Black and his deputy rushed to the director's office to brief Tenet. All agreed an urgent meeting at the White House was needed. Tenet picked up the white phone to Bush's National Security Adviser Condoleezza Rice. "I said, 'Condi, I have to come see you,'" Tenet remembers. "It was one of the rare times in my seven years as director where I said, 'I have to come see you. We're comin' right now. We have to get there.'"

Tenet vividly recalls the White House meeting with Rice and her team. (George W. Bush was on a trip to Boston.) "Rich [Blee] started by saying, 'There will be significant terrorist attacks against the United States in the coming weeks or months. The attacks will be spectacular. They may be multiple. Al Qaeda's intention is the destruction of the United States.'" [Condi said:] 'What do you think we need to do?' Black responded by slamming his fist on the table, and saying, 'We need to go on a wartime footing now!'"

"What happened?" I ask Cofer Black. "Yeah. What *did* happen?" he replies. "To me it remains incomprehensible still. I mean, how is it that you could warn senior people so many times and nothing actually happened? It's kind of like *The Twilight Zone*." Remarkably, in her memoir, Condi Rice writes of the July 10 warnings: "My recollection of the meeting is not very crisp because we were discussing the threat every day." Having raised threat levels for U.S. personnel overseas, she adds: "I thought we were doing what needed to be done." (When I asked whether she had any further response to the comments that Tenet, Black and others made to me, her chief of staff said she stands by the account in her memoir.) Inexplicably, although Tenet brought up this meeting in his closed-door testimony before the 9/11 Commission, it was never mentioned in the committee's final report.

And there was one more chilling warning to come. At the end of July, Tenet and his deputies gathered in the director's conference room at CIA headquarters. "We were just thinking about all of this and trying to figure out how this attack might occur," he recalls. "And I'll never forget this until the day I die. Rich Blee looked at everybody and said, 'They're coming here.' And the silence that followed was deafening. You could feel the oxygen come out of the room. 'They're coming here.'"

Tenet, who is perhaps the agency's most embattled director ever, can barely contain himself when talking about the unheeded warnings he says he gave the White House. Twirling an unlit cigar and fidgeting in his chair at our studio in downtown Washington,

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8/10/2016

CIA Director Documentary: The Attacks Will Be Staged (8/7/16) POLI ICO Magazine  
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D.C., he says with resignation: “I can only tell you what we did and what we said.” And when asked about his own responsibility for the attacks on 9/11, he is visibly distraught. “There was never a moment in all this time when you blamed yourself?” I ask him. He shifts uncomfortably in his chair. “Well, look, there ... I still look at the ceiling at night about a lot of things. And I’ll keep them to myself forever. But we’re all human beings.”

\*\*\*

**Only 12 men are alive today** who have made the life-and-death decisions that come with running the CIA.

Once a year, the present and former CIA directors—ranging from George H.W. Bush, 91, to the current boss, John Brennan, 60—meet in a conference room at CIA headquarters in Langley, Virginia. The ostensible reason: to receive a confidential briefing on the state of the world. (Robert Gates, who hates setting foot inside the Beltway, is a perennial no-show.) “They mostly tell us stuff we already know, and we pretend we’re learning something,” says Tenet, the longest-serving director (lasting seven years, under Presidents Clinton and Bush II). But the real point of their annual pilgrimage is to renew bonds forged in the trenches of the war on terror—and to debate the agency’s purpose in the world.

---

**“** And I’ll never forget this until the day I die. Rich Blee looked at everybody and said, “They’re coming here.””

---

On the burning questions of the day, the directors are profoundly torn: over the CIA’s mission, its brutal interrogation methods after 9/11, and the shifting “rules of engagement” in the battle against Al Qaeda and the Islamic State. What is fair game in the fight against terrorism: Torture? Indefinite detention? Setting up “black sites” in foreign countries for interrogation? Should the CIA be in the business of killing people with remotely piloted drones? Was the agency really to blame for 9/11? Or did the White House ignore its repeated warnings?

On these and other questions, the directors were surprisingly candid in the interviews they did with me—even straying into classified territory. (They often disagree about what is actually classified; it’s complicated, as Hillary Clinton is learning.) A controversial case in point: drone strikes. “He can’t talk publicly about *that*,” protests Gen. David Petraeus when I tell him that one of his counterparts has opened up to me about “signature strikes.” (These are lethal attacks on unidentified targets—a kind of profiling by drone—that several



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8/10/2016

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directors find deeply troubling.) Gen. Petraeus might have had good reason to be reticent; only a week before he had accepted a plea bargain to avoid prison time—for sharing classified information with his mistress, Paula Broadwell.

Here are some of the other secrets we learned from the surprisingly outspoken men who have run the world’s most powerful intelligence agency.

**Even CIA chiefs can’t agree about “torture”**

“In the period right after 9/11, we did some things wrong,” said Barack Obama. “We tortured some folks. We did things that were contrary to our values.” Jose Rodriguez, who oversaw the CIA’s so-called enhanced interrogation program (EIT), has a two-word reply: “That’s bullshit.” Tenet concurs. “People are throwing the word ‘torture’ around—as if we’re *torturers*,” he complains. “Well, I’m not ever gonna accept the use of the word ‘torture’ for what happened here.” From sleep deprivation to waterboarding, Tenet and his lieutenant Rodriguez insist the techniques were all approved—by *everybody*.

“The attorney general of the United States told us that these techniques are legal under U.S. law,” says Tenet, “and do not in any way compromise our adherence to international torture statutes.” Contrary to the claim by the SSCI (Senate Select Committee on Intelligence) Majority Report, Tenet insists: “We briefed members of Congress fully on what we were doing at all times. There was never a hint of disapproval.” And Tenet says that George W. Bush was so hands-on, “he read the memo, looked at the techniques, and decided he was gonna take two techniques off the table himself.” Tenet says he does not recall which EITs the president rejected (Rodriguez believes one of them was “mock executions.”)

Tenet and his post-9/11 successors—Porter Goss, Michael Hayden and acting director Michael Morell (sometimes called the “wartime directors”)—say the techniques were a necessary evil, justified by the context of the times. It was an article of faith at the CIA that the United States was about to be struck again in a “second wave” attack. And that “high-value detainees,” beginning with Al Qaeda leader Abu Zubaydah, knew more than they were telling. “Every day,” says Rodriguez, “the president was asking George Tenet, ‘What is Abu Zubaydah saying about the second wave of attacks and about all these other plots?’ Well, he was not saying anything. We had to do something different.” Tenet says they had persuasive intelligence that indicated Osama bin Laden had met with Pakistani nuclear scientists—and was seeking the blueprint for a bomb. There was a credible report, he adds, that a nuke had already been planted in New York City. “People say, ‘didn’t you think about the moral and ethical consequences of your decision?’” says Tenet. “Yeah, we did. We

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CIA Director Documentary: The Attacks Will Be Spectacular / POLI MAGAZINE  
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thought that stopping the further loss of American life and protecting a just society was equally important.”

Did the techniques produce intelligence that disrupted plots or saved lives? The SSCI study looked at 20 cases and said no useful evidence was obtained. Tenet insists, “They are wrong in all 20 of the cases. The report is dead wrong on every account, period, end of paragraph.” But Tenet’s fellow spy chiefs are sharply—even passionately—divided about such procedures. “Our Constitution does prohibit ‘cruel and unusual’ treatment and if it’s cruel, we shouldn’t be doing it,” says William Webster, 91, regarded by his fellow spymasters as a voice of reason (and the only DCI who also served as FBI director). “You cross a line at some point in your effort to get the information when you go that route. There have to be limitations and monitoring and they must be observed. Our country stands for something and it loses something when we don’t.” Stansfield Turner, now 91—who as Jimmy Carter’s director authorized the ill-fated attempt to rescue American hostages in Tehran—agrees: “I just don’t think a country like ours should be culpable of conducting torture. I just think it’s beneath our dignity.”

The directors who oppose torture are not just bleeding hearts. “Nobody was responsible for more detainees than I was,” says Gen. Petraeus, who was commander of the multinational forces in Iraq. “We visit violence on our enemies, but we should not mistreat them, even though they have done unspeakable things to our soldiers and to civilians. That does not justify us doing it to them. You will pay a price for what you do, and it will be vastly greater than whatever it is you got out of taking this action.” And Director Brennan sees no circumstance in which the CIA would torture again: “If a president tomorrow asked me to waterboard a terrorist, I would say, ‘Mr. President, sorry—I do not believe that is in our best interest as a country.’” Hayden is even more emphatic. “If some future president is going to decide to waterboard,” he says, “he’d better bring his own bucket—because he’s going to have to do it himself.”

### **The CIA really *does* pull the trigger on lethal drone attacks.**

Officially, it is a taboo subject. The CIA has never acknowledged publicly that it operates lethal drones. But former Director Leon Panetta gives a riveting account of the ethical dilemma he confronted when the CIA had a top Al Qaeda terrorist in the cross hairs of a drone over Pakistan. (CIA censors forced him to truncate the story in his 2014 memoir.) The target was the Al Qaeda mastermind behind a suicide bombing that killed seven officers at the CIA station in Khost, Afghanistan, in December 2009. “We knew who the individual was,” Panetta says. “This was a bad guy. And he was clearly a leader who had

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been involved not only in going after our officers, but in killing members of our own forces in Afghanistan.”

Panetta’s dilemma: “Unfortunately, this individual had family and wife and children around him, so one of the tough questions was, What should we do? If there were women and children in the shot, we normally would not take the shot.” Panetta called the White House and spoke with Brennan, then Obama’s counterterrorism adviser. “What does Leon say I said?” Brennan asks me, arching an eyebrow, when I tell him about Panetta’s out-of-school account (which essentially had Brennan bouncing the ball back to him). Brennan wears a tight smile that seems to say, *There goes Leon again*.

The judgment call fell to the devoutly Catholic Panetta, once an altar boy. “The White House said, ‘Look, you’re going to have to make a judgment here,’” he recalls. “So, I knew at that point it was a decision that I was going to have to make. *I’m* the one who’s going to have to say Hail Marys here. Suddenly, I found that I was making decisions on life and death as director. And those are never easy, and frankly they shouldn’t be easy. But I felt it was really important in that job to do what I could to protect this country. So I passed on the word. I said, ‘If you can isolate the individual and take the shot without impacting on women or children, then do it. But if you have no alternative and it looks like he might get away, then take the shot.’ And it did involve collateral damage, but we got him.” In the end, says Panetta, “What you do has to be based on what your gut tells you is right. You have to be true to yourself—and hope that ultimately God agrees with you.”

Brennan, the current director, concedes that he is often called upon to make judgments with high stakes. “I’m forced to make decisions every day that have significant risks, that sometimes can result in deaths,” he says. “You try to make sure that you consider all angles. You take into account whatever information, intelligence data that you have available. You weigh the pros and cons. And you then make the best decision you can.” How high is the bar when deciding to pull the trigger on a lethal drone strike? “There needs to be near certainty of what’s called ‘no collateral,’” Brennan says. “No noncombatants who will be affected by it.”

But “near certainty” does not always apply. Last January, a drone attack on an Al Qaeda compound inadvertently killed an American and an Italian hostage, who happened to have been held there. Gen. Hayden, Bush’s third director, cautions: “Near certainty: What does that exactly mean? Because look, the president [Obama] was very candid after those recent strikes in which he talked about the ‘fog of war.’ There is fog even when you think you’ve got ‘near certainty’ and near certainty is never certainty.”

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And what if the strike is deliberately aimed at an American citizen overseas? Should the CIA director—or the president, for that matter—have a license to kill? It's been a controversial question ever since Anwar al-Awlaki, the militant American jihadist and voice of Al Qaeda, was killed by a U.S. drone in Yemen in 2011. Watchdog groups have vilified the practice. It turns out they have an unlikely ally—in ex-Director Gates. “I don't have a moral problem with it,” says Gates, “but I believe the precedent of an American president being able to kill an American citizen under any circumstances, on just his signature, is dangerous.”

Webster is equally critical. “This was an American citizen and he was ultimately taken out, but it's not something that should be left to one person, no matter who that person is,” says Webster. “We do harm to the country, damage to the president and others who are exercising legitimate authority by just leaving it up to unprocessed whim to use these instruments for destruction.” Gates argues that strikes on Americans should require approval by outside experts—perhaps a panel of judges: “I just think the idea of no external review beyond people appointed by the president, and who basically are his minions, being able to assess whether the president should kill an American citizen without a judicial process, needs to be looked at.”

Though drone strikes came well after his time as director (1976-1977), George H.W. Bush, says he can live with the practice: “If they're bad guys and they're doing us harm, I have no problem with that.” But some of his peers wonder if the otherworldly weapons have made the White House trigger happy. “When you can stare at a target unblinkingly for hours, if not days,” says Gen. Hayden, “and then use a weapon against that target that has a 14-pound warhead in it, with an accuracy measured in inches, this actually makes warfare more precise.

“That's all to the good. Now the dark side: It does make it easier for a policymaker to make a judgment to engage.” Indeed, the relative simplicity of drone warfare has proved irresistible to the current White House. Under Barack Obama, drone strikes have grown dramatically.

**“No, Mr. Deutch, assassination is *not* prohibited.”**

In a war against Al Qaeda and the Islamic State, what methods are acceptable? Is assassination fair game? Porter Goss, who resigned in frustration as George W. Bush's second director, is still waiting for an answer: “We do not know what the rules of engagement are. Are we dealing with enemy combatants? Are we dealing with criminals?”

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Are the rules shoot first? Do we only shoot when we get shot at? Can we ask questions? Do we have to Mirandize people?”

“I remember sitting in the Situation Room in the first Clinton term,” former CIA Director John Deutch reflects, “and discussing a particularly sensitive matter and saying, ‘But of course we can’t consider assassination because that is forbidden by executive order.’ And one of the Justice Department lawyers said, ‘No, Mr. Deutch, only *political* assassination is forbidden. Assassination for other purposes is not prohibited.’”

So what’s the answer? Is assassination, which was distinctly prohibited by President Gerald Ford’s Executive Order 12333, still off limits? Well, yes and no. In 2008, after a nearly three-decade manhunt, a legendary Hezbollah leader who had orchestrated countless assaults on the U.S. and Israel was killed in a daring covert operation in Damascus, Syria. A lethal “shape charge,” fired by remote control from a parked SUV, blew him to smithereens. The operation, reportedly a joint CIA-Mossad mission, is so sensitive that, to this day, none of the directors has said anything publicly about it. Except, when pressed, the current boss, John Brennan. “Is there anything *at all* that you can tell us about what happened to Imad Mughniyah?” I ask him. Brennan, who has the lugubrious air of an undertaker—even in his lighter moments—pauses. Then he replies, “He died quickly.”

What’s the CIA’s mission? Is it a spy agency? Or a secret army? “Sometimes I think we get ourselves into a frenzy—into believing that killing is the only answer to a problem,” says Tenet. “And the truth is, it’s not. That’s not what our reason for existence is.” When Petraeus became CIA director, his predecessor, Hayden took him aside. Never before, Hayden warned him, had the agency become so focused on covert military operations at the expense of intelligence gathering. “An awful lot of what we now call analysis in the American intelligence community is really targeting,” Hayden says. “Frankly, that has been at the expense of the broader, more global view. We’re safer because of it, but it has not been cost-free. Some of the things we do to keep us safe for the close fight—for instance, targeted killings—can make it more difficult to resolve the deep fight, the ideological fight. We feed the jihadi recruitment video that these Americans are heartless killers.”

Who’s winning? The CIA—or radical Islam? “The big picture,” says Morell, the two-time acting director, “is a great victory for us and a great victory for them. Our great victory has been the degradation, decimation, near-defeat of the Al Qaeda core that brought tragedy to our shores on 9/11. But *their* great victory has been the spread of their ideology across a huge geographic area. What we haven’t done a good job of is stopping new terrorists from being created. And until we get our arms around that, this war is not going away.”

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“You can't kill your way out of this,” says Tenet. “It's not sustainable. The message to Islam itself is they have to create vibrant civil societies that work, that create educational opportunities. But this is something they have to do for themselves.” Panetta agrees that the roots of terrorism must be dealt with: “You've got to address what it is that produces this frustration and this anger. It is almost *Mission Impossible* because, for God's sake, we're still trying to figure out how the hell the Baltimores of the world happen; how the hell the Detroits of the world happen; why there are people that are attracted to gangs in this country.” Until we do, Panetta concludes, “we may have to use these kinds of weapons, but in the end, let me tell you something: if we fail to do this and, God forbid, this country faces another 9/11, you know what the first question will be: ‘Why the hell did you let this happen? Why the hell did you let this happen?’”

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION,  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, UNITED STATES DEPARTMENT  
OF DEFENSE, DEPARTMENT OF STATE,  
CENTRAL INTELLIGENCE AGENCY,

Defendants.  
----- X

15 Civ. 1954 (CM)

**NOTICE OF APPEAL**

Notice is hereby given that the United States Department of Justice, United States Department of Defense, Department of State and Central Intelligence Agency, defendants in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on November 16, 2016, and from all interlocutory orders merged into that judgment.

Dated: New York, New York  
January 17, 2017

Respectfully submitted,

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