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Political, legal experts want release of Justice Dept. memo supporting killing of Anwar al-Awlaki

By **Peter Finn**, Published: October 7, 2011

A bipartisan chorus of political and legal voices is calling on the Obama administration to release a declassified version of the Justice Department memo that provided the legal analysis sanctioning the killing in Yemen last week of Anwar al-Awlaki, a U.S. citizen.

They said that the reasoning behind the extraordinary step of killing an American cannot be kept secret from scrutiny if the public is to continue to support counterterrorism operations. Awlaki was killed in a CIA drone strike.

“While U.S. counterterrorism operations are, by necessity, classified, I do believe the administration should make public its legal analysis on its counterterrorism authorities, whether in the form of a legal opinion or a white paper,” said Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Select Committee on Intelligence. “For both transparency and to maintain public support of secret operations, it is important to explain the general framework for counterterrorism actions.”

Sen. Carl Levin (D-Mich.), chairman of the Senate Armed Services Committee, also said this week, “I would urge them to release the memo. I don’t see any reason why they shouldn’t.”

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The White House did not respond to a request for comment. A Justice Department spokeswoman declined to comment.

Both Feinstein and Levin said they supported the lethal action.

Awlaki was born in New Mexico, and administration officials said he was the chief of "external operations" for al-Qaeda's affiliate in Yemen, which has attempted a number of terrorist attacks on the United States.

Several former George W. Bush administration officials also said that some version of the legal opinion, written in 2010 by the Justice Department's Office of Legal Counsel after consultations across the executive branch, should be released to make a public case that the killing of Awlaki was legal under U.S. and international law.

"I do think it would be important for domestic audiences and international audiences for the administration to explain how the targeting and killing of an American complies with applicable constitutional standards," said John B. Bellinger III, former legal adviser to the State Department in the Bush administration.

Senior Obama administration officials — including John O. Brennan, the president's counterterrorism adviser, and Harold Koh, the State Department legal adviser — have given speeches that offered a broad rationale for U.S. drone attacks on individuals in al-Qaeda and associated forces.

They argued that deadly force is legal under the 2001 congressional authorization of the use of military force and that the United States, acting in self-defense, is not limited to traditional battlefields in pursuit of terrorists who present an imminent threat.

But Jack Goldsmith, a Harvard law professor who headed the Office of Legal Counsel in the Bush administration, argued on the Lawfare blog that "there has been practically nothing said officially ... about the executive branch processes that lie behind a strike on a U.S. citizen, or about what constitutional rights the U.S. citizen target possesses, or about the limitations and conditions on the president's power to target and kill a U.S. citizen."

Bellinger said he believes that the legal analysis can be extracted from the opinion without revealing other classified information.

Some advocates said the government's position of not acknowledging the CIA's drone program because of its classified status has become a sham because administration officials trumpet it in news leaks and seek credit for its success in devastating al-Qaeda.

"I think there is growing unease across the political spectrum with the government boasting to the media in leaks about the drone program and then going into court and saying, sorry, that's classified," said Ben Wizner, a lawyer with the American Civil Liberties Union.

Since last year, the ACLU has been seeking, under the Freedom of Information Act, records from the Office of Legal Counsel "pertaining to the use of unmanned aerial vehicles by the CIA and the armed forces for the purpose of killing targeted individuals."

The government, in its July response, said the "OLC can neither confirm nor deny the existence of any responsive documents related to alleged CIA operations."

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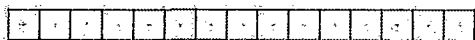
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EXHIBIT C

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U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

October 27, 2011

Scott Shane
The New York Times
1627 I Street NW, Suite 700
Washington, D.C. 20006

Dear Mr. Shane:

This responds to your Freedom of Information Act request dated June 11, 2010, in which you seek "all Office of Legal Counsel opinions or memoranda since 2001 that address the legal status of targeted killing, assassination, or killing of people suspected of ties to Al Qaeda or other terrorist groups by employees or contractors of the United States government. . . . [to] include legal advice on these topics to the military, the Central Intelligence Agency or other intelligence agencies."

Insofar as your request pertains to the Department of Defense, we have searched the files of the Office of Legal Counsel and have completed the processing of records responsive to your request. We are withholding all such records pursuant to FOIA Exemption One, 5 U.S.C. § 552(b)(1), which protects classified information; Exemption Three, *id.*, § 552(b)(3), which protects information specifically exempted from disclosure by statute; and Exemption Five, *id.*, § 552(b)(5), which protects information that is privileged.

Insofar as your request pertains to any other agencies of the United States Government, pursuant to FOIA Exemptions One, Three and Five, 5 U.S.C. § 552(b)(1), (3) and (5), the Office of Legal Counsel neither confirms nor denies the existence of the documents described in your request. We cannot do so because the very fact of the existence or nonexistence of such documents is itself classified, protected from disclosure by statute, and privileged.

I am required by statute and regulation to inform you that you have the right to file an administrative appeal. Any administrative appeal must be received within 60 days of the date of this letter by the Office of Information Policy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn
Special Counsel

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EXHIBIT D

JA479



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

October 27, 2011

Charlie Savage
N.Y. Times
1627 I Street, N.W.
Washington, D.C. 20006

Dear Mr. Savage:

This responds to your Freedom of Information Act request dated October 7, 2011, in which you seek, OLC "memorandums analyzing the circumstances under which it would be lawful for United States armed forces or intelligence community assets to target for killing a United States citizen who is deemed to be a terrorist."

Pursuant to FOIA Exemptions One, Three and Five, 5 U.S.C. § 552(b)(1), (3) and (5), the Office of Legal Counsel neither confirms nor denies the existence of the documents described in your request. We cannot do so because the very fact of the existence or nonexistence of such documents is itself classified, protected from disclosure by statute, and privileged.

I am required by statute and regulation to inform you that you have the right to file an administrative appeal. Any administrative appeal must be received within 60 days of the date of this letter by the Office of Information Policy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Paul P. Colborn".

Paul P. Colborn
Special Counsel

JA480

EXHIBIT E

JA481

The New York Times
Company



David McCraw
620 8th Avenue
New York, NY 10018
tel 212-556-4031
mccrad@nytimes.com

November 4, 2011

VIA FED-EX

Director
Office of Information Policy
United States Department of Justice
Flag Building, Suite 570
1425 New York Ave, NW
Washington, DC 20530-0001

Re: Freedom of Information Act ("FOIA") Appeal #FY10-64

To the Director:

I write on behalf of Scott Shane, a reporter with *The New York Times*. On June 11, 2010, Mr. Shane submitted the above-referenced request to your agency, pursuant to the Freedom of Information Act ("FOIA"), seeking "copies of all Office of Legal Counsel opinions or memoranda since 2001 that address the legal status of targeted killing, assassination, or killing of people suspected of ties to Al Qaeda or other terrorist groups by employees or contractors of the United States government." By a letter dated October 27, 2011, your agency denied the request, citing FOIA Exemptions One, Three, and Five. A copy of this letter is attached, for your convenience. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), I write to appeal that denial and ask that you review whether this document is properly withheld under these exemptions.

Exemption One and Exemption Three

It is our understanding that the requested memorandum consists largely of a legal interpretation of an executive order, a federal statute, the Fourth Amendment, the Fifth Amendment, and various strictures of international law. It is difficult to see how the government's official interpretations, which must necessarily be based on the language of public orders, statutes, sections of the Constitution, international treaties, and judicial decisions, could be classified.

Exemption Five

As you know, the deliberative document carve-out of Exemption Five extends only to those opinions that are both "predecisional" and "deliberative." *Grand Central Partnership, Inc. v. Cuomo*, 166 F.3d 473, 481 (2d Cir. 1999). While the privilege at times may protect certain "recommendations, draft documents, proposals, suggestions, and other subjective documents," *Grand Central*, 166 F.3d at 482, it is not enough for an agency to show simply that the document at issue contains opinionated matter. The Second Circuit in *Grand Central* carefully spelled out the further requirements that apply before the privilege is properly invoked. First, the document must "reflect the personal opinions of the writer rather than the policy of the agency." *Id.* (internal quotation and citation omitted). Second, it is the burden of the agency (i) to "pinpoint the specific agency decision to which the document correlates . . ." and (ii) "verify that the document precedes, in temporal sequence, the 'decision' to which it relates." *Id.* Further, if the recommendation contained in the document is ultimately adopted, it loses its protection as a deliberative process document under FOIA. *Afshar v. Dept. of State*, 702 F.2d 1125, 1143 n. 22 (D.C. Cir. 1983). Here, the substance of the recommendation appears to have been both adopted and applied – and as such, the legal interpretations within the recommendation should be made available to the American public.

Furthermore, any factual information in the memorandum must not be withheld pursuant to Exemption Five. *Petroleum Information v. United States Department of the Interior*, 976 F.2d 1429, 1434 (1992); (citing *EPA v. Mink*, 410 U.S. 73, 87-88 (1975) (holding that the deliberative process privilege does not apply to purely factual information). To the extent that the memorandum contains operational facts, these may be redacted before release of the document. See 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. . . .").

Considering the definite scope of the request and the inapplicability of these exemptions, we ask that you promptly produce the requested memoranda. As you know, pursuant to § 552(6)(A)(ii) all appeals must be decided within twenty business days.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

David McCraw

#52142v1

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EXHIBIT F

The New York Times
Company



David McCraw
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tel 212-556-4031
mccrad@nytimes.com

November 4, 2011

VIA FED-EX

Director
Office of Information Policy
United States Department of Justice
Flag Building, Suite 570
1425 New York Ave, NW
Washington, DC 20530-0001

Re: Freedom of Information Act ("FOIA") Appeal #FY12-3

To the Director:

I write on behalf of Charlie Savage, a reporter with *The New York Times*. On October 7, 2011, Mr. Savage submitted the above-referenced request to your agency, pursuant to the Freedom of Information Act ("FOIA"), seeking a "copy of all Office of Legal Counsel memorandums analyzing the circumstances under which it would be lawful for United States armed forces or intelligence community assets to target for killing a United States citizen who is deemed to be a terrorist." By a letter dated October 27, 2011, your agency denied the request, citing FOIA Exemptions One, Three, and Five. A copy of this letter is attached, for your convenience. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), I write to appeal that denial and ask that you review whether this document is properly withheld under these exemptions.

Exemption One and Exemption Three

It is our understanding that the requested memorandum consists largely of a legal interpretation of an executive order, a federal statute, the Fourth Amendment, the Fifth Amendment, and various strictures of international law. It is difficult to see how the government's official interpretations, which must necessarily be based on the language of public orders, statutes, sections of the Constitution, international treaties, and judicial decisions, could be classified.

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Exemption Five

As you know, the deliberative document carve-out of Exemption Five extends only to those opinions that are both "predecisional" and "deliberative." *Grand Central Partnership, Inc. v. Cuomo*, 166 F.3d 473, 481 (2d Cir. 1999). While the privilege at times may protect certain "recommendations, draft documents, proposals, suggestions, and other subjective documents," *Grand Central*, 166 F.3d at 482, it is not enough for an agency to show simply that the document at issue contains opinionated matter. The Second Circuit in *Grand Central* carefully spelled out the further requirements that apply before the privilege is properly invoked. First, the document must "reflect the personal opinions of the writer rather than the policy of the agency." *Id.* (internal quotation and citation omitted). Second, it is the burden of the agency (i) to "pinpoint the specific agency decision to which the document correlates . . ." and (ii) "verify that the document precedes, in temporal sequence, the 'decision' to which it relates." *Id.* Further, if the recommendation contained in the document is ultimately adopted, it loses its protection as a deliberative process document under FOIA. *Afshar v. Dept. of State*, 702 F.2d 1125, 1143 n. 22 (D.C. Cir. 1983). Here, the substance of the recommendation appears to have been both adopted and applied – and as such, the legal interpretations within the recommendation should be made available to the American public.

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Considering the definite scope of the request and the inapplicability of these exemptions, we ask that you promptly produce the requested memoranda. As you know, pursuant to § 552(6)(A)(ii) all appeals must be decided within twenty business days.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

David McCraw

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EXHIBIT G

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Secret U.S. memo sanctioned killing of Aulagi

By Peter Finn, Published: September 30, 2011

The Justice Department wrote a secret memorandum authorizing the lethal targeting of Anwar al-Aulagi, the American-born radical cleric who was killed by a U.S. drone strike Friday, according to administration officials.

The document was produced following a review of the legal issues raised by striking a U.S. citizen and involved senior lawyers from across the administration. There was no dissent about the legality of killing Aulagi, the officials said.

“What constitutes due process in this case is a due process in war,” said one of the officials, who spoke on the condition of anonymity to discuss closely held deliberations within the administration.

The administration has faced a legal challenge and public criticism for targeting Aulagi, who was born in New Mexico, because of constitutional protections afforded U.S. citizens. The memorandum may represent an attempt to resolve, at least internally, a legal debate over whether a president can order the killing of U.S. citizens overseas as a counterterrorism measure.

The operation to kill Aulagi involved CIA and military assets under CIA control. A former senior intelligence official said that the CIA would not have killed an American without such a written opinion.

A second American killed in Friday’s attack was Samir Khan, a driving force behind Inspire, the English-language magazine produced by al-Qaeda in the Arabian Peninsula. An administration official

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said the CIA did not know Khan was with Aulahi, but they also considered Khan a belligerent whose presence near the target would not have stopped the attack.

The circumstances of Khan's death were reminiscent of a 2002 U.S. drone strike in Yemen that targeted Abu Ali al-Harithi, a Yemeni al-Qaeda operative accused of planning the 2000 attack on the USS Cole. That strike also killed a U.S. citizen who the CIA knew was in Harithi's vehicle but who was not a target of the attack.

The Obama administration has spoken in broad terms about its authority to use military and paramilitary force against al-Qaeda and associated forces beyond "hot," or traditional, battlefields such as Iraq or Afghanistan. Officials said that certain belligerents aren't shielded because of their citizenship.

"As a general matter, it would be entirely lawful for the United States to target high-level leaders of enemy forces, regardless of their nationality, who are plotting to kill Americans both under the authority provided by Congress in its use of military force in the armed conflict with al-Qaeda, the Taliban, and associated forces as well as established international law that recognizes our right of self-defense," an administration official said in a statement Friday.

President Obama and various administration officials referred to Aulahi publicly for the first time Friday as the "external operations" chief for al-Qaeda in the Arabian Peninsula, a label that may be intended to underscore his status as an operational leader who posed an imminent threat.

A Justice Department spokeswoman declined to comment. The administration officials refused to disclose the exact legal analysis used to authorize targeting Aulahi, or how they considered any Fifth Amendment right to due process.

Robert Chesney, a law professor at the University of Texas at Austin who specializes in national security law, said the government likely reviewed Aulahi's constitutional rights, but concluded that he was an imminent threat and was deliberately hiding in a place where neither the United States nor Yemen could realistically capture him.

Last year, the Obama administration invoked the state secrets privilege to argue successfully for the dismissal of a lawsuit brought in U.S. District Court in Washington by Aulahi's father, Nasser, seeking to block the targeting of his son. Judge John Bates found that in Aulahi's case, targeting was a "political question" to be decided by the executive branch.

The decision to place Aulahi on a capture or kill list was made in early 2010, after intelligence officials concluded that he played a direct role in the plot to blow up a jet over Detroit and had become an operational figure within al-Qaeda's affiliate in Yemen.

"If you are a dual national high in the Japanese operational group responsible for Pearl Harbor, you're not exempt, and neither was" Aulahi, the administration official said.

The American Civil Liberties Union and the Center for Constitutional Rights argued on behalf of Aulahi's father last year that there is no "battlefield" in Yemen and that the administration should be forced to articulate publicly its legal standards for killing any citizen outside the United States who is suspected of terrorism.

Otherwise, the groups argued, such a killing would amount to an extrajudicial execution and would violate U.S. and international law.

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“International human rights law dictates that you can’t unilaterally target someone and kill someone without that person posing an imminent threat to security interests,” said Vince Warren, executive director of the Center for Constitutional Rights. “The information that we have, from the government’s own press releases, is that he is somehow loosely connected, but there is no specific evidence of things he actualized that would meet the legal threshold for making this killing justifiable as a matter of human rights law.”

ACLU lawyer Ben Wizner said that Aulagi had been targeted for nearly two years and that the government would appear to have a very elastic definition of imminent threat.

The former senior intelligence official said the CIA did reviews every six months to ensure that those targeted for possible killing remained threats as defined by law and presidential findings.

The administration describes al-Qaeda in the Arabian Peninsula as an associated force of the original terrorist group that was led by Osama bin Laden until he was killed, making AQAP subject to congressionally authorized military force. Officials said Aulagi was part of an enemy force and posed an ongoing, immediate danger.

Staff writer Mary Beth Sheridan and staff researcher Julie Tate contributed to this report.

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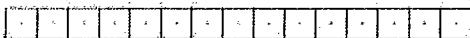
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Secret U.S. Memo Made Legal Case to Kill a Citizen

By CHARLIE SAVAGE
Published: October 8, 2011

WASHINGTON — The Obama administration's secret legal memorandum that opened the door to the killing of Anwar al-Awlaki, the American-born radical Muslim cleric hiding in Yemen, found that it would be lawful only if it were not feasible to take him alive, according to people who have read the document.



Site Intelligence, via European Pressphoto Agency
Anwar al-Awlaki, a militant cleric who was an American citizen, was killed in Yemen.

The memo, written last year, followed months of extensive interagency deliberations and offers a glimpse into the legal debate that led to one of the most significant decisions made by President Obama — to move ahead with the killing of an American citizen without a trial.

The secret document provided the justification for acting despite an executive order banning assassinations, a federal law against murder, protections in the Bill of Rights and various strictures of the international laws of war, according to people familiar with the analysis. The memo, however, was narrowly drawn to the specifics of Mr. Awlaki's case and did not establish a broad new legal doctrine to permit the targeted killing of any Americans believed to pose a terrorist threat.

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Killing of Awlaki Is Latest in Campaign Against Qaeda Leaders

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The Obama administration has refused to acknowledge or discuss its role in the drone strike that killed Mr. Awlaki last month and that technically remains a covert operation. The government has also resisted growing calls that it provide a detailed public explanation of why officials deemed it lawful to kill an American citizen, setting a precedent that scholars, rights activists and others say has raised concerns about the rule of law and civil liberties.

But the document that laid out the administration's justification — a roughly 50-page memorandum by the Justice Department's Office of Legal Counsel, completed around June 2010 — was described on the condition of anonymity by people who have read it.

The legal analysis, in essence, concluded that Mr. Awlaki could be legally killed, if it was not feasible to capture him, because intelligence agencies said he was taking part in the war between the United States and Al Qaeda and posed a significant threat to Americans, as well as because Yemeni authorities were unable or unwilling to stop him.

The memorandum, which was written more than a year before Mr. Awlaki was killed, does not independently analyze the quality of the evidence against him.

The administration did not respond to requests for comment on this article.

The deliberations to craft the memo included meetings in the White House Situation Room involving top lawyers for the Pentagon, State Department, National Security Council and intelligence agencies.

It was principally drafted by David Barron and Martin Lederman, who were both lawyers in the Office of Legal Counsel at the time, and was signed by Mr. Barron. The office may have given oral approval for an attack on Mr. Awlaki before completing its detailed memorandum. Several news reports before June 2010 quoted anonymous counterterrorism officials as saying that Mr. Awlaki had been placed on a kill-or-capture list around the time of the attempted bombing of a Detroit-bound airliner on Dec. 25, 2009. Mr. Awlaki was accused of helping to recruit the attacker for that operation.

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Mr. Awlaki, who was born in New Mexico, was also accused of playing a role in a failed plot to bomb two cargo planes last year, part of a pattern of activities that counterterrorism officials have said showed that he had evolved from merely being a propagandist — in sermons justifying violence by Muslims against the United States — to playing an operational role in Al Qaeda in the Arabian Peninsula's continuing efforts to carry out terrorist attacks.

Other assertions about Mr. Awlaki included that he was a leader of the group, which had become a “cobelligerent” with Al Qaeda, and he was pushing it to focus on trying to attack the United States again. The lawyers were also told that capturing him alive among hostile armed allies might not be feasible if and when he were located.

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

It then considered possible obstacles and rejected each in turn.

Among them was an executive order that bans assassinations. That order, the lawyers found, blocked unlawful killings of political leaders outside of war, but not the killing of a lawful target in an armed conflict.

A federal statute that prohibits Americans from murdering other Americans abroad, the lawyers wrote, did not apply either, because it is not “murder” to kill a wartime enemy in compliance with the laws of war.

But that raised another pressing question: would it comply with the laws of war if the drone operator who fired the missile was a Central Intelligence Agency official, who, unlike a soldier, wore no uniform? The memorandum concluded that such a case would not be a war crime, although the operator might be in theoretical jeopardy of being prosecuted in a Yemeni court for violating Yemen’s domestic laws against murder, a highly unlikely possibility.

Then there was the Bill of Rights: the Fourth Amendment's guarantee that a “person” cannot be seized by the government unreasonably, and the Fifth Amendment's guarantee that the government may not deprive a person of life “without due process of law.”

The memo concluded that what was reasonable, and the process that was due, was different for Mr. Awlaki than for an ordinary criminal. It cited court cases allowing American citizens who had joined an enemy’s forces to be detained or prosecuted in a military court just like noncitizen enemies.

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It also cited several other Supreme Court precedents, like a 2007 case involving a high-speed chase and a 1985 case involving the shooting of a fleeing suspect, finding that it was constitutional for the police to take actions that put a suspect in serious risk of death in order to curtail an imminent risk to innocent people.

The document's authors argued that "imminent" risks could include those by an enemy leader who is in the business of attacking the United States whenever possible, even if he is not in the midst of launching an attack at the precise moment he is located.

There remained, however, the question of whether — when the target is known to be a citizen — it was permissible to kill him if capturing him instead were a feasible way of suppressing the threat.

Killed in the strike alongside Mr. Awlaki was another American citizen, Samir Khan, who had produced a magazine for Al Qaeda in the Arabian Peninsula promoting terrorism. He was apparently not on the targeting list, making his death collateral damage. His family has issued a statement citing the Fifth Amendment and asking whether it was necessary for the government to have "assassinated two of its citizens."

"Was this style of execution the only solution?" the Khan family asked in its statement. "Why couldn't there have been a capture and trial?"

Last month, President Obama's top counterterrorism adviser, John O. Brennan, delivered a speech in which he strongly denied the accusation that the administration had sometimes chosen to kill militants when capturing them was possible, saying the policy preference is to interrogate them for intelligence.

The memorandum is said to declare that in the case of a citizen, it is legally required to capture the militant if feasible — raising a question: was capturing Mr. Awlaki in fact feasible?

It is possible that officials decided last month that it was not feasible to attempt to capture him because of factors like the risk it could pose to American commandos and the diplomatic problems that could arise from putting ground forces on Yemeni soil. Still, the raid on Osama bin Laden's compound in Pakistan demonstrates that officials have deemed such operations feasible at times.

Last year, Yemeni commandos surrounded a village in which Mr. Awlaki was believed to be hiding, but he managed to slip away.

The administration had already expressed in public some of the arguments about issues of international law addressed by the memo, in a speech delivered in March 2010 by Harold Hongju Koh, the top State Department lawyer.

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The memorandum examined whether it was relevant that Mr. Awlaki was in Yemen, far from Afghanistan. It concluded that Mr. Awlaki's geographical distance from the so-called hot battlefield did not preclude him from the armed conflict; given his presumed circumstances, the United States still had a right to use force to defend itself against him.

As to whether it would violate Yemen's sovereignty to fire a missile at someone on Yemeni soil, Yemen's president secretly granted the United States that permission, as secret diplomatic cables obtained by WikiLeaks have revealed.

The memorandum did assert that other limitations on the use of force under the laws of war — like avoiding the use of disproportionate force that would increase the possibility of civilian deaths — would constrain any operation against Mr. Awlaki.

That apparently constrained the attack when it finally came. Details about Mr. Awlaki's location surfaced about a month ago, American officials have said, but his hunters delayed the strike until he left a village and was on a road away from populated areas.

A version of this article appeared in print on October 9, 2011, on page A1 of the New York edition with the headline: Secret U.S. Memo Made Legal Case to Kill a Citizen.

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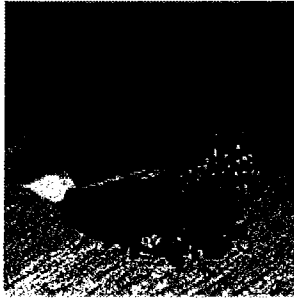
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And for His Next Trick ...

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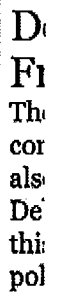
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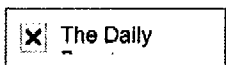
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EXHIBIT I

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Obama Team to Break Silence on al-Awlaki Killing

Inside the White House debate over how to talk about al Qaeda's Anwar al-Awlaki.

by [Daniel Klaidman \(/contributors/daniel-kloidman.html\)](/contributors/daniel-kloidman.html) | January 23, 2012 12:00 AM EST

After months of internal debate, the Obama administration is planning to reveal publicly the legal reasoning behind its decision to kill the American-born leader of [al Qaeda \(/articles/2011/08/28/al-rahman-s-death-is-serious-blow-to-al-qaeda-but-still-dangerous.html\)](/articles/2011/08/28/al-rahman-s-death-is-serious-blow-to-al-qaeda-but-still-dangerous.html) in the Arabian Peninsula, [Anwar al-Awlaki \(/articles/2011/09/30/al-awlaki-s-death-nothing-more-than-a-glancing-blow-al-qaeda-stronger-than-everest.html\)](/articles/2011/09/30/al-awlaki-s-death-nothing-more-than-a-glancing-blow-al-qaeda-stronger-than-everest.html).

Awlaki, whom American officials had identified as the chief of external operations for the al Qaeda affiliate, was killed in a [CIA \(/articles/2011/11/10/former-cia-general-counsel-is-in-the-crosshairs-in-leak-probe.html\)](/articles/2011/11/10/former-cia-general-counsel-is-in-the-crosshairs-in-leak-probe.html) drone strike last September in Northern Yemen. The targeted killing was one of the most controversial actions in Barack Obama's war on terror. Civil libertarians and human-rights activists have argued that it amounted to a summary execution on the basis of secret evidence and without due process. Defenders of the administration have maintained that the killing was a necessary and lawful act of war to prevent an imminent threat to the safety of the American people.

But the Obama administration itself has said next to nothing about it. At a farewell ceremony for retiring Joint Chiefs chairman Mike Mullen just hours after the strike became public, Obama hailed "the death of Awlaki," calling it a "major blow" in the fight against al Qaeda. But he made no mention of U.S. involvement in the operation. (The CIA's drone program is classified and therefore not publicly acknowledged by government officials.)

Now the administration is poised to take its case directly to the American people. In the coming weeks, according to four participants in the debate, Attorney General Eric Holder Jr. is planning to make a major address on the administration's national-security record. Embedded in the speech will be a carefully worded but firm defense of its right to target U.S. citizens. Holder's remarks will draw heavily on a secret Justice Department legal opinion that provided the justification for the Awlaki killing. The legal memorandum, portions of which were described to *The New York Times* last October, asserted that it would be lawful to kill Awlaki as long as it was not feasible to capture him alive—and if it could be demonstrated that he represented a real threat to the American people. Further, administration officials contend, Awlaki was covered under the congressional grant of authority to wage war against al Qaeda in the wake of 9/11.

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An early draft of Holder's speech identified Awlaki by name, but in a concession to concerns from the intelligence community, all references to the al Qaeda leader were removed. As currently written, the speech makes no overt mention of the Awlaki operation, and reveals none of the intelligence the administration relied on in carrying out his killing. (White House spokesman Tommy Vietor declined to comment).



Anwar al-Awlaki. (Site Intelligence Group--AFP-Newscom)

That circumspect approach contrasts dramatically with the administration's posture in the aftermath of Osama bin Laden's death, when the president personally addressed the nation to announce the al Qaeda leader's demise, and key members of his team provided on-the-record accounts of the operation in almost novelistic detail. But the circumstances of that operation differ in crucial respects from the Awlaki strike. The latter involved the CIA's still secret drone program, and Awlaki was American-born, adding an additional level of sensitivity.

In the aftermath of the Awlaki operation, civil libertarians and some prominent members of Congress called on the administration to make its legal analysis public. Some supporters of disclosure, including Sen. Dianne Feinstein of California, have made the case to Obama officials that speaking openly would be the best way to maintain public support for a program that they believe is necessary but remains controversial.

For Obama the question pitted two core principles that he has, at times, struggled to balance: rolling back the Bush administration's penchant for secrecy in counterterrorism, and adequately protecting the intelligence community's most sensitive sources and methods. Obama had guided U.S. counterterrorism policy in a difficult political environment and has often disappointed his liberal base, which believes he has sided with the policies of his predecessor, George W. Bush, a surprising amount of the time.

The calls for transparency in discussing the Awlaki strike were batted away at first. But behind the scenes, several prominent lawyers in the national-security bureaucracy began lobbying their colleagues and superiors for some degree of disclosure. Among them were Jeh C. Johnson, the

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Defense Department general counsel, and Harold Hongju Koh, the State Department legal adviser. The national-security "principals" quickly divided into camps. The CIA and other elements of the intelligence community were opposed to any disclosures that could lift the veil of secrecy from a covert program. Others, notably the Justice and State departments, argued that the killing of an American citizen without trial, while justified in rare cases, was so extraordinary it demanded a higher level of public explanation. Among the proposals discussed in the fall: releasing a "white paper" based on the Justice memo, publishing an op-ed article in *The New York Times* under Holder's byline, and making no public disclosures at all.

The issue came to a head at a Situation Room meeting in November. At lower-level interagency meetings, Obama officials had already begun moving toward a compromise. David Petraeus, the new CIA director whose agency had been wary of too much disclosure, came out in support of revealing the legal reasoning behind the Awlaki killing so long as the case was not explicitly discussed. Petraeus, according to administration officials, was backed up by James Clapper, the director of national intelligence. (The CIA declined to comment.) The State Department, meanwhile, continued to push for fuller disclosure. One senior Obama official who continued to raise questions about the wisdom of coming out publicly at all was Janet Napolitano, the Homeland Security director. She argued that the calls for transparency had quieted down, as one participant characterized her view, so why poke the hornet's nest? Another senior official expressing caution about the plan was Kathryn Ruemmler, the White House counsel. She cautioned that the disclosures could weaken the government's stance in pending litigation. *The New York Times* has filed a lawsuit against the Obama administration under the Freedom of Information Act seeking the release of the Justice Department legal opinion in the Awlaki case. (The department has declined to provide the documents requested.)

It came down to what Denis McDonough, the deputy national-security adviser, cheekily called the "half Monty" versus the "full Monty," after the British movie about a male striptease act. In the end, the principals settled on the half Monty. As the State Department's Koh continued to push for the maximum amount of disclosure, McDonough began referring to that position as "the full Harold."

A number of Obama officials supported the move in part because they considered it the right policy, but also because it represented an opportunity to separate themselves from the Bush administration. "We need to show we're different," said one senior official, who declined to be named. "If you let these things fester, they become part of the narrative."

In the end, there was a consensus that the best vehicle would be an upcoming speech on national-security policy that Holder wanted to give. The model was a low-key address that the State Department's Koh gave in March 2010 on the legal theories underpinning the Obama administration's counterterrorism policies. Buried deep in the speech, Koh defended the legality of targeted killing without explicitly confirming the CIA's secret drone program. The address, delivered at a meeting of international lawyers, was widely praised for its forthright, if narrowly drawn, approach to a controversial policy.

A recommendation to go public on Awlaki was made by the national-security "principals" in November and received a provisional signoff from the White House last week. Tom Donilon, the national-security adviser, then circulated a decision memorandum to be signed by key officials throughout the government. It included a five-page draft of Holder's proposed remarks on the legal rationale for the Awlaki strike.

No venue has been selected yet for the Holder speech. But as he prepares his address, the administration is resuming its drone strikes on al Qaeda. Late last week, U.S. officials confirmed to Reuters that Aslam Awan, a senior operations chief for al Qaeda, was killed in an attack in North

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Waziristan. The debate over the CIA's covert program will linger long after Holder has made his remarks.

Tags:

- [Yemen, \(/topics/yemen.html\)](/topics/yemen.html)
- [World News, \(/world.html\)](/world.html)
- [Al Qaeda, \(/topics/Al%20Qaeda.html\)](/topics/Al%20Qaeda.html)
- [Barack Obama, \(/topics/barack-obama.html\)](/topics/barack-obama.html)
- [Eric Holder \(/topics/eric-holder.html\)](/topics/eric-holder.html)

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EXHIBIT J

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March 8, 2012

A Not-Quite Confirmation of a Memo Approving Killing

By CHARLIE SAVAGE

WASHINGTON — For months, the Obama administration has refused to confirm or deny the existence of a Justice Department memorandum that approved the targeted killing of a United States citizen, Anwar al-Awlaki, who died in a drone strike in Yemen last September.

But in an exchange at a budget hearing on Thursday, Senator Patrick J. Leahy and Attorney General Eric H. Holder Jr. came close to implicitly conceding that there is indeed such a memo, which was written by the Justice Department's Office of Legal Counsel.

Mr. Leahy, a Vermont Democrat who is chairman of the Senate Judiciary Committee, brought up a conversation he said he and Mr. Holder had earlier this week about a speech on "drones and targeting of U.S. citizens" that the attorney general delivered on Monday.

"I still want to see the Office of Legal Counsel memorandum and I would urge you to keep working on that," Mr. Leahy said to Mr. Holder. "I realize that's a matter of some debate within the administration but ..."

The senator then paused, smiled and laughed. Mr. Holder responded by nodding and said, chuckling, "That would be true."

The New York Times published an account of the Office of Legal Counsel memorandum in October, citing people who had read it, and filed a Freedom of Information Act request seeking access to it. But the Justice Department rejected that request, refusing to confirm or deny whether the document existed. The newspaper has since filed a lawsuit seeking to make it public, and the department has maintained that position in the litigation.

Mr. Holder's affirmation of Mr. Leahy's remarks was ambiguous and fell short of explicit acknowledgment that there is a memo about the targeting of citizens whose proposed release led to internal administration debate. Tracy Schmalzer, a Justice Department spokeswoman, said the exchange did not amount to an inadvertent confirmation that there is any such document.

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“We do not confirm or deny that such a memorandum exists,” she said.

Mr. Holder’s speech sketched the outlines of the administration’s theory for why it is lawful under certain circumstances for the executive branch to kill citizens who are deemed to be terrorists, but contained no explicit legal citations.

As first reported in January by Newsweek, national security officials were split about how to respond to bipartisan calls to disclose the memo. They eventually agreed that Mr. Holder would deliver a more limited account of their legal reasoning in a speech instead.

The speech, however, was delayed for months. Its delivery has revived calls from some lawmakers and commentators to disclose the actual document, although others — notably Senator Dianne Feinstein, the California Democrat who leads the Senate’s intelligence oversight efforts — portrayed themselves as satisfied.

Although American drone strikes in Yemen have been widely reported, the Obama administration considers them “covert,” so officials may not discuss them. That awkward situation may be related to the reams of government documents made public by WikiLeaks that have not been technically declassified, so the government treats them as if they were still secret.

Specifically, diplomatic cables published in 2010 disclosed a secret deal under which the Yemeni government had granted permission for the United States to carry out strikes aimed at terrorists, but the Yemeni government would lie that it, not Americans, had carried out the bombings.

At a hearing in November, Mr. Leahy pressed Mr. Holder to show the Judiciary Committee the memo. Mr. Holder’s reply then had been much more cautious, saying he “cannot address whether or not there is an opinion on this area.”

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EXHIBIT K

Now, Mr. Attorney General, the department, your department administers many crucial grant programs that help victims and law enforcement including ones that I've been very heavily involved with, Violence Against Women Act programs and, you know, Senator Crapo and I have a reauthorization bill on the -- the cops grants, the (inaudible) partnership program.

The Government Accounting Office has said that there is (inaudible) and duplications and inefficiencies in some of the grant programs.

Will your department work to make sure there are -- if there are any duplications that they be removed and that we -- we go forward? Because these are good programs but there's only so much money to go around.

HOLDER:

No, I mean, that's exactly the problem that we have. We have to make sure that as the limited amounts of money to go around and we have to make sure that there's not duplication.

Managers from OJP, from cops to Office of Violence Against Women regularly meet to coordinate their -- their programs, their activities. And I think that one thing that you should -- people should not assume is that because you see the word victim in a number of things that we do in the department that necessarily means that the money is being -- is being -- that we're duplicated efforts there.

They have very distinct responsibilities. But we are working to make sure that the -- the money that we have is being used in an efficient and appropriate way.

LEAHY:

And one of the -- one of the things I'm very proud of from my time here in the Senate is a bill that I wrote with then Senator Ben Nighthorse Campbell on bulletproof vests.

So much so that I walked down the street in Denver, Colorado, a year or so ago, a police officer came up and asked if I was, you know, who I am and I said yes. He just tapped his chest and said thank you.

But we've been told by the GAO that there's some funds that have not been obligated on the bulletproof vests partnership grant program, law enforcement, especially in the smaller communities where they do not have the budget to buy the bulletproof vests, which require \$600.

Can you check to make sure these -- these funds are de-obligated or are -- are obligated as quickly as possible?

HOLDER:

Yeah. I mean to the extent that funds were not drawn down, we are taking steps to allow jurisdictions to use those -- that unused funding and have the time period with which they could draw down extended so that we can get these bulletproof vests out to these officers.

LEAHY:

And I would reiterate what I had told you when we chatted earlier this week when I was in Vermont about your -- your speech earlier this week regarding drones and targeting of U.S. citizens.

I still want to see the Office of Legal Counsel memorandum. And I would urge you to keep working on that. I realize -- I realize it's a matter of some debate within the administration but...

HOLDER:

That would be true.

LEAHY:

Please keep my staff and me updated on the progress of the review of the NYPD surveillance of Muslim Americans.

HOLDER:

We will.

LEAHY:

And lastly, I wrote to you and the secretary of homeland security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance and why the administration's decision no longer depends, the Constitution now -- the Defense Against Marriage Act, part of it may be granted individual cases.

I hope you will reconsider the administration's position. We have a case I've written to you about, Frances Herbert (ph) and (inaudible) who were married in Vermont who (inaudible) number of states where same-sex marriages are legal.

But then they run up against the immigration problem so please review that.

HOLDER:

I will look at that case and we'll get back to you, Senator.

LEAHY:

Thank you.

Thank you, Madame Chair.

MIKULSKI:

Those were excellent points, Senator Leahy. Thank you very much.

Senator Lautenberg?

LAUTENBERG:

Thanks very much, Madame Chairman.

Welcome, General, Attorney General Holder. The job doesn't seem to be getting easier and I'm not blaming you. I'm just sympathizing and...

HOLDER:

Good observation.

EXHIBIT L

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Thank you, Mr. Sensenbrenner.

The gentleman from New York, Mr. Nadler, is recognized.

NADLER:

Thank you, Mr. Chairman.

Mr. Attorney General, we have made several requests to you to allow us to review the Office of Legal Counsel memo that reportedly provides the legal justification for the lethal targeting of U.S. citizens who are terror suspects. The department has sought to (inaudible) cases seeking judicial review of lethal targeting by arguing, among other things, that the appropriate check on executive branch conduct here is the Congress and that information is being shared with Congress to make that check a meaningful one.

Yet we have yet to get any response to our requests. Will you commit to providing that memo to us and to providing a briefing?

HOLDER:

Well, we certainly want to provide information to the extent that we can with regard to the process that we use in selecting targets. I gave a speech at Northwestern University. Mr. Brennan gave a speech here. I believe...

NADLER:

Excuse me. Will you commit to providing a copy of the briefing -- a copy of the -- of the legal memo from OLC?

HOLDER:

We will certainly look at that request and try to determine whether...

NADLER:

And a briefing to the members of this committee?

HOLDER:

And we'll certainly consider the possibility of a briefing.

NADLER:

The possibility? You won't commit to giving a briefing to this committee?

HOLDER:

I think that we are probably going to be in a position to provide a briefing, but I would like to hear from the involved people in the intelligence community, as well as people at OLC, about how we might structure such...

NADLER:

And you'll you get back to us on that within, let's say, a month?

HOLDER:

We can do that.

NADLER:

Thank you.

When running for president and talking about medical marijuana being legally used around the country in certain jurisdictions, President Obama said the following, quote, "I'm not going to be using Justice Department resources to try to circumvent state laws on this issue," close quote.

Apparently, the department has not followed the president's admonition. Since 2009 DOJ has conducted around 200 raids on medical marijuana dispensaries and growers and brought more than 60 indictments. It's my understanding that the department has a more aggressive record on prosecuting these cases in this administration than under the previous administration.

The president clearly did not want to prioritize prosecutions involving medical marijuana, and while I understand selling and possessing marijuana remains against federal law, the citizens of 17 states and the District of Columbia believe its medical use should be legal.

Given these facts, why has DOJ focused so extensively on investigating and punishing those who legally grow and sell marijuana legally under local law, contrary to apparently what the -- contrary to the apparent intent of what the president said on the subject?

HOLDER:

This is inconsistent with these little things called the facts. The Justice Department indicated in a memo that went out by the deputy -- then deputy attorney general that we were not going to use the limited resources that we have to go after people who are acting in conformity with state law, people who had serious illnesses, people who were acting, as I said, consistent with state law.

But one has to deal with the reality that there are certain people who took advantage of these state laws and a different policy that this administration announced than the previous administration had, and have come up with ways in which they are taking advantage of these state laws and going beyond that which the states have authorized.

Those are the only cases that...

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Civil Action No. 12 CIV 0794-CM

American Civil Liberties Union and the American
Civil Liberties Union Foundation,

Plaintiffs,

v.

U.S. Department of Justice, including its component
the Office of Legal Counsel, U.S. Department of
Defense, including its component U.S. Special
Operations Command, and Central Intelligence
Agency,

Defendants.

DECLARATION OF COLIN WICKER

I, Colin Wicker, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney with the law firm of Dorsey & Whitney LLP, co-counsel for Plaintiffs American Civil Liberties Union and the American Civil Liberties Union Foundation.
2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Nathan Freed Wessler of the American Civil Liberties Union Foundation to the Office of Information Policy, U. S. Department of Justice and others, dated October 19, 2011.
3. Attached hereto as Exhibit 2 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated April 9, 2012.
4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated April 23, 2012.
5. Attached hereto as Exhibit 4 is a true and correct copy of a transcript of *Director's Remarks at the Pacific Council on International Policy* (May 18, 2009), as retrieved

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from the CIA website on March 27, 2012, <https://www.cia.gov/news-information/speeches-testimony/directors-remarks-at-pacific-council.html>.

6. Attached hereto as Exhibit 5 is a true and correct copy of a transcript of *Obama on "Tonight Show" with Jay Leno: Full Video and Transcript*, Oct. 25, 2011, as retrieved from The Washington Post website on July 16, 2012, http://www.washingtonpost.com/blogs/44/post/obama-on-tonight-show-with-jay-leno-full-video-and-transcript/2011/10/26/gIQAHXJIM_blog.html. The transcript contains a transcription error. The transcript indicates that President Obama said, "it was important that working with the enemies, we were able to remove him from the field." However, President Obama actually said, "working with the Yemenis, we were able to remove him from the field." The video is available at <http://www.nbc.com/the-tonight-show/video/president-obama-part2-102511/1371660>.

7. Attached hereto as Exhibit 6 is a true and correct copy of Luis Ramirez, *Panetta Praises Libya Campaign, Thanks Troops*, Voice of America, October 6, 2011, as retrieved from the Voice of America website on July 16, 2012, <http://www.voanews.com/content/panetta-praises-libya-campaign-thanks-troops-131370363/146328.html>.

8. Attached hereto as Exhibit 7 is a true and correct copy of the *Remarks of CIA General Counsel Stephen W. Preston at Harvard Law School* on April 10, 2012, as retrieved from the CIA website on July 16, 2012, <https://www.cia.gov/news-information/speeches-testimony/2012-speeches-testimony/cia-general-counsel-harvard.html>.

9. Attached hereto as Exhibit 8 is a true and correct copy of the text of *U.S.: Defense Secretary Refers to CIA Drone Use*, L.A. Times, October 7, 2011, as retrieved from the L.A. Times website on July 16, 2012, http://latimesblogs.latimes.com/world_now/2011/10/us-pakistan-yemen-cia-drones.html. Due to technical issues with printing the article from the L.A. Times website, the text of the article was copied into a separate document and printed.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Government's Sentencing Memorandum in *United States v. Umar Farouk Abdulmutallab*, No. 2:10-cr-20005 (E.D. Mich. Feb. 10, 2012).

11. Attached hereto as Exhibit 10 is a true and correct copy of Peter Finn & Joby Warrick, *CIA Director Says Secret Attacks in Pakistan Have Hobbled al-Qaeda*, Wash. Post, Mar. 18, 2010, as retrieved from The Washington Post website on July 16, 2012, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031702558.html?hpid=topnews>.

12. Attached hereto as Exhibit 11 is a true and correct copy of Siobhan Gorman & Jonathan Weisman, *Drone Kills Suspect in CIA Suicide Bombing*, Wall. St. J., Mar. 18, 2010, as retrieved from The Wall Street Journal website on July 16, 2012, <http://online.wsj.com/article/SB10001424052748704059004575128123449551524.html>.

13. Attached hereto as Exhibit 12 is a true and correct copy of a transcript of *Jake Tapper Interviews CIA Director Leon Panetta*, ABC News, June 27, 2010, as retrieved from ABC News website on July 16, 2012, <http://abcnews.go.com/ThisWeek/week-transcript-panetta/story?id=11025299&page=1>.

14. Attached hereto as Exhibit 13 is a true and correct copy of a transcript of the network broadcast portion of a 60 Minutes interview with Leon Panetta, *The Defense Secretary: Leon Panetta* (CBS Jan. 29, 2012), as retrieved from the CBS News website on July 18, 2012, http://www.cbsnews.com/8301-18560_162-57448437/the-defense-secretary-leon-panetta/?tag=contentMain;contentBody. As can be seen from the exhibit, the CBS News website refers to a "Web Extra" presentation of *The Killing of Anwar al-Awlaki*, an online-only video segment of the interview containing discussion of the government's targeted killing of Anwar al-Awlaki, which is not otherwise reflected in the transcript. The Web Extra video presentation is

available at <http://www.cbsnews.com/video/watch/?id=7396830n>. It is this Web Extra video which is quoted in the accompanying memorandum of law.

15. Attached hereto as Exhibit 14 is a true and correct copy of Lisa Daniel, *Panetta: Awlaki Airstrike Shows U.S.-Yemeni Cooperation*, American Forces Press Service, Sept. 30, 2011, as retrieved from the U.S. Department of Defense website on July 16, 2012, <http://www.defense.gov/news/newsarticle.aspx?id=65512>.

16. Attached hereto as Exhibit 15 is a true and correct copy of Charlie Savage, *A Not-Quite Confirmation of a Memo Approving Killing*, N.Y. Times, March 8, 2012, as retrieved from the New York Times website on July 16, 2012, <http://www.nytimes.com/2012/03/09/us/a-not-quite-confirmation-of-a-memo-approving-killing.html>.

17. Attached hereto as Exhibit 16 is a true and correct copy of Mark Landler, *Civilian Deaths Due to Drones Are Not Many, Obama Says*, N.Y. Times, Jan. 30, 2012, as retrieved from the N.Y. Times website on July 16, 2012, <http://www.nytimes.com/2012/01/31/world/middleeast/civilian-deaths-due-to-drones-are-few-obama-says.html>.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of Daniel Klaidman, *Kill or Capture* (Houghton Mifflin Harcourt, 1st ed. 2012).

19. Attached hereto as Exhibit 18 is a true and correct copy of *Senate Appropriations Subcommittee on Commerce, Justice and Science, and Related Agencies Holds Hearing on the Proposed Fiscal 2013 Appropriations for the Justice Department* (March 8, 2012), as retrieved from the Congressional Quarterly website on July 13, 2012, <http://www.cq.com/doc/congressionaltranscripts-4042882?print=true>.

20. Attached hereto as Exhibit 19 is a true and correct copy of *Senate Select Intelligence Committee Holds Hearing on Worldwide Threats* (January 31, 2012), as retrieved

from the Defense Intelligence Agency website on July 17, 2012, <http://www.dia.mil/public-affairs/testimonies/2012-01-31.html>.

21. Attached hereto as Exhibit 20 is a true and correct copy of *House Judiciary Committee Holds Hearing on Oversight of the Justice Department* (June 7, 2012), as retrieved from the Congressional Quarterly website on July 13, 2012, <http://www.cq.com/doc/congressionaltranscripts-4101328?print=true>.

22. Attached hereto as Exhibit 21 is a true and correct copy of Keith Johnson, *U.S. Seeks Cleric Backing Jihad*, Wall St. J., Mar. 26, 2010, as retrieved from the Wall Street Journal website on July 17, 2012, <http://online.wsj.com/article/SB10001424052748704094104575144122756537604.html>.

23. Attached hereto as Exhibit 22 is a true and correct copy of *Remarks by Secretary Panetta and Canadian Minister MacKay*, September 30, 2011, as retrieved from the U.S. Department of Defense website on July 17, 2012, <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=4890>.

24. Attached hereto as Exhibit 23 is a true and correct copy of a transcript of a speech by Harold Hongju Koh, *The Obama Administration and International Law*, March 25, 2010, as retrieved from the U.S. Department of State website on July 17, 2012, <http://www.state.gov/s/l/releases/remarks/139119.htm>.

25. Attached hereto as Exhibit 24 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated May 18, 2012.

26. A video recording of the Google+ interview with President Obama described in the ACLU's brief, *President Obama Hangs Out With America*, can be found on the official White House website at: <http://www.whitehouse.gov/blog/2012/01/30/president-obama-hangs-out-america>. The statements cited in the accompanying memorandum begin at minute 26:30.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 18th day of July 2012 in Minneapolis, Minnesota.

/s/ Colin Wicker
COLIN WICKER

Exhibit 1

to the Declaration of Colin Wicker

JA518

NATIONAL SECURITY
PROJECT



October 19, 2011

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Office of Freedom of Information and Security Review
Directorate for Executive Services and Communications
FOIA/Privacy Branch
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Re: REQUEST UNDER FREEDOM OF INFORMATION ACT/
Expedited Processing Requested

To Whom it May Concern:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, the Department of Defense implementing regulations, 32 C.F.R. § 286.1 *et seq.*, the Department of Justice implementing regulations, 28 C.F.R. § 16.1 *et seq.*, the Central Intelligence Agency implementing regulations, 32 C.F.R. § 1900.01 *et seq.*, the President’s Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009) and the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sept. 29, 2009). The Request is submitted by the American Civil Liberties Union Foundation and the American Civil Liberties Union (collectively, the “ACLU”).¹

This Request seeks records pertaining to the legal authority and factual basis for the targeted killing of Anwar al-Awlaki² (“al-Awlaki”) and two other U.S. citizens by the United States Government. According to news reports, al-Awlaki, a United States citizen, was killed in Yemen on or around September 30, 2011, by a missile or missiles fired from one or more unmanned aerial vehicles (UAVs)—commonly referred to as “drones”—operated by the Central Intelligence Agency (CIA) and/or Joint Special Operations Command (JSOC). *See, e.g.*, Mark Mazzetti, Eric Schmitt, & Robert F. Worth, *C.I.A. Strike Kills U.S.-Born Militant in a Car in Yemen*, N.Y. Times, Oct. 1, 2011, at A1, available at <http://nyti.ms/rsjp7J>; Greg Miller, *Strike on Aulagi Demonstrates Collaboration between CIA and Military*, Wash. Post, Sept. 30, 2011, <http://wapo.st/nU0Ia0>. Samir Khan

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

² Al-Awlaki’s name is sometimes spelled “al-Aulaqi.” This Request seeks records referring to al-Awlaki using any spelling or transliteration of his name.

("Khan"), also a U.S. citizen, was killed in the same attack. See Tim Mak, *U.S. Calls Kin of American Al Qaeda*, Politico, Oct. 12, 2011, <http://politi.co/pq0Nke>; Robbie Brown & Kim Severson, *Drone Victim Went From American Middle Class to Waging a Media War for Al Qaeda*, N.Y. Times, Oct. 1, 2011, at A8, available at <http://nyti.ms/pHZSGH>. Press reports indicate that on or around October 14, 2011, a third U.S. citizen, Abdulrahman al-Awlaki,³ was killed in a drone strike in southern Yemen. Abdulrahman al-Awlaki, the son of Anwar al-Awlaki, was 16 years old at the time of his death. See Peter Finn & Greg Miller, *Anwar al-Awlaki's Family Speaks Out Against His Son's Death in Airstrike*, Wash. Post, Oct. 17, 2011, <http://wapo.st/n9NuHP>; Laura Kasinoff, *Fatal Strikes Hit Yemen as Violence Escalates*, N.Y. Times, Oct. 16, 2011, at A12, available at <http://nyti.ms/pScBwi>.

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We seek information about the legal basis in domestic, foreign, and international law for authorizing the targeted killing of al-Awlaki. Specifically, we request any memoranda produced by the Department of Justice Office of Legal Counsel (OLC) analyzing the legal basis for killing al-Awlaki and authorizing the use of lethal force against him. We request information regarding the rules and standards used to determine when, where, and under what circumstances al-Awlaki could be killed, as well as what measures were required to avoid civilian casualties. We also request information about whether Samir Khan was specifically targeted for killing and what the legal basis was for killing him.

Beginning immediately after al-Awlaki was killed, the media began reporting the existence of a legal memorandum drafted by the OLC that provided legal justification for killing al-Awlaki (hereinafter "OLC memo"). The memorandum was reportedly completed around June 2010 and signed by David Barron. See Charlie Savage, *Secret U.S. Memo Made Legal Case to Kill a Citizen*, N.Y. Times, Oct. 9, 2011, at A1, available at <http://nyti.ms/pScBwi>; Peter Finn, *Secret U.S. Memo Sanctioned Killing of Aulqi*, Wash. Post, Sept. 30, 2011, <http://wapo.st/nKjZkJ>. According to the New York Times, the OLC memo "concluded that Mr. Awlaki could be legally killed, if it was not feasible to capture him, because intelligence agencies said he was taking part in the war between the United States and Al Qaeda and posed a significant threat to Americans, as well as because Yemeni authorities were unable or unwilling to stop him." Savage, *supra*. We seek release of this memorandum, as well as any other memoranda describing the legal basis for killing al-Awlaki or any other U.S. citizen.

³ Abdulrahman al-Awlaki's first name is sometimes spelled "Abdelrahman" or "Abdul-Rahman" and his family name is sometimes spelled "al-Aulaqi." This Request seeks records referring to Abdulrahman al-Awlaki using any spelling or transliteration of his name.

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Since al-Awlaki was killed, there have been numerous calls for the release of the OLC memo and any other documents explaining the government's asserted legal basis for killing al-Awlaki. See, e.g., Arthur S. Brisbane, *The Secrets of Government Killing*, N.Y. Times, Oct. 9, 2011, <http://nyti.ms/naggsE>; Editorial, *Administration Should Do More to Defend the Awlaki Strike*, Wash. Post, Oct. 7, 2011, <http://wapo.st/p1SEho>; Peter Finn, *Political, Legal Experts Want Release of Justice Dept. Memo Supporting Killing of Anwar al-Awlaki*, Wash. Post, Oct. 7, 2011, <http://wapo.st/n613vK> ("A bipartisan chorus of political and legal voices is calling on the Obama administration to release a declassified version of the Justice Department memo that provided the legal analysis sanctioning the killing in Yemen last week of Anwar al-Awlaki, a U.S. citizen."); Benjamin Wittes, *More on Releasing the Legal Rationale for the Al-Aulaqi Strike*, Lawfare (Oct. 4, 2011, 3:07 PM), <http://bit.ly/r42x0f>; Jack Goldsmith, *Release the al-Aulaqi OLC Opinion, or Its Reasoning*, Lawfare (Oct. 3, 2011, 7:45 AM), <http://bit.ly/mRUMg0>; Editorial, *Obama's Illegal Assassination?*, Wash. Times, Oct. 3, 2011, <http://bit.ly/q8y3a4> ("The Justice Department reportedly wrote an advisory memo on the legality of targeting an American citizen with lethal force absent a trial or other due process, but the administration has kept the memo classified. Keeping the legal rationale secret amplifies the voices that argue that Mr. Obama assassinated an American citizen."); Editorial, *Anwar Awlaki: Targeted for Death*, L.A. Times, Oct. 2, 2011, <http://lat.ms/oh0G0w>. The public has a vital interest in knowing the legal basis on which U.S. citizens may be designated for extrajudicial killing and then targeted with legal force.

Reports indicate that the OLC memo "does not independently analyze the quality of the evidence against [al-Awlaki]." Savage, *supra*. We therefore also seek information about the factual basis for authorizing the killing of al-Awlaki. Such information includes the basis for asserting that al-Awlaki was operationally involved in al Qaeda planning, and that he posed an imminent threat of harm to the United States, United States citizens, or others. We also seek information about the legal and factual bases for targeting Khan and Abdulrahman al-Awlaki.

Press reports have revealed that Executive Branch officials engage in a process of assessing the factual basis for determining whether an individual, including U.S. citizens, should be targeted for killing. See Mark Hosenball, *Secret Panel Can Put Americans on "Kill List"*, Reuters, Oct. 5, 2011, <http://reut.rs/odCH8s>; James Kitfield, *Wanted: Dead*, Nat'l J., Jan. 8, 2010, <http://bit.ly/qZ0Q4q> ("Hidden behind walls of top-secret classification, senior U.S. government officials meet in what is essentially a star chamber to decide which enemies of the state to target for assassination."). However, the government has not revealed the factual basis for targeting al-Awlaki for killing, and press reports suggest that the evidence against him is subject to significant dispute. See Hosenball, *supra*

("[O]fficials acknowledged that some of the intelligence purporting to show Awlaki's hands-on role in plotting attacks was patchy."). The public also lacks information about the killings of Khan and Abdulrahman al-Awlaki, including whether they were intentionally targeted.

Without information about the legal and factual basis for the targeted killing of al-Awlaki and others, the public is unable to make an informed judgment about the policy of authorizing targeted killings of United States citizens. We make the following requests for information in hopes of filling that void.

I. Requested Records

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1. All records created after September 11, 2001, pertaining to the legal basis in domestic, foreign and international law upon which U.S. citizens can be subjected to targeted killings, whether using unmanned aerial vehicles ("UAVs" or "drones") or by other means.
2. All records created after September 11, 2001, pertaining to the process by which U.S. citizens can be designated for targeted killing, including who is authorized to make such determinations and what evidence is needed to support them.
3. All memoranda, opinions, drafts, correspondence, and other records produced by the OLC after September 11, 2001, pertaining to the legal basis in domestic, foreign and international law upon which the targeted killing of Anwar al-Awlaki was authorized and upon which he was killed, including discussions of:
 - A. The reasons why domestic-law prohibitions on murder, assassination, and excessive use of force did not preclude the targeted killing of al-Awlaki;
 - B. The protections and requirements imposed by the Fifth Amendment Due Process Clause;
 - C. The reasons why international-law prohibitions on extrajudicial killing did not preclude the targeted killing of al-Awlaki;
 - D. The applicability (or non-applicability) of the Treason Clause to the decision whether to target al-Awlaki;
 - E. The legal basis authorizing the CIA, JSOC, or other U.S. Government entities to carry out the targeted killing of al-Awlaki;

- F. Any requirement for proving that al-Awlaki posed an imminent risk of harm to others, including an explanation of how to define imminence in this context; and
 - G. Any requirement that the U.S. government first attempt to capture al-Awlaki before killing him.
4. All documents and records pertaining to the factual basis for the targeted killing of al-Awlaki, including:
- A. Facts supporting a belief that al-Awlaki posed an imminent threat to the United States or United States interests;
 - B. Facts supporting a belief that al-Awlaki could not be captured or brought to justice using nonlethal means;
 - C. Facts indicating that there was a legal justification for killing persons other than al-Awlaki, including other U.S. citizens, while attempting to kill al-Awlaki himself;
 - D. Facts supporting the assertion that al-Awlaki was operationally involved in al Qaeda, rather than being involved merely in propaganda activities; and
 - E. Any other facts relevant to the decision to authorize and execute the targeted killing of al-Awlaki.
5. All documents and records pertaining to the factual basis for the killing of Samir Khan, including whether he was intentionally targeted, whether U.S. Government personnel were aware of his proximity to al-Awlaki at the time the missiles were launched at al-Awlaki's vehicle, whether the United States took measures to avoid Khan's death, and any other facts relevant to the decision to kill Khan or the failure to avoid causing his death.
6. All documents and records pertaining to the factual basis for the killing of Abdulrahman al-Awlaki, including whether he was intentionally targeted, whether U.S. Government personnel were aware of his presence when they launched a missile or missiles at his location, whether he was targeted on the basis of his kinship with Anwar al-Awlaki, whether the United States took measures to avoid his death, and any other factors relevant to the decision to kill him or the failure to avoid causing his death.

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II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 32 C.F.R. § 1900.34(c). There is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A); *see also* 28 C.F.R. § 16.5(d)(1)(iv) (providing for expedited processing in relation to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence”).

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The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation omitted)). Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly circulated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. The ACLU also disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused.

The ACLU website specifically includes features on information obtained through the FOIA. *See, e.g.*, www.aclu.org/torturefoia; <http://www.aclu.org/olcmemos/>; <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; www.aclu.org/patriotfoia; www.aclu.org/spyfiles; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>

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; www.aclu.org/exclusion. For example, the ACLU's "Torture FOIA" webpage, www.aclu.org/torturefoia, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA. The webpage also advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA. See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007). The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. Finally, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through the FOIA. The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.⁴

Furthermore, the records sought directly relate to a breaking news story of general public interest that concerns actual or alleged Federal Government activity; specifically, the records sought relate the U.S. Government's targeted killing of Anwar al-Awlaki, allegedly collateral killing of Samir Khan, and potential killing of other U.S. citizens in Yemen and elsewhere using unmanned aerial vehicles or other means. The records sought will help determine what the government's asserted legal basis for the targeted killing of al-Awlaki and others is, whether it complies with domestic and international law, whether the government seeks to avoid collateral killing of U.S. citizens not specifically targeted, and other matters that are essential in order for the public to make an informed judgment about the advisability of this tactic and the lawfulness of the government's conduct. For these reasons, the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

There have been numerous news reports about targeted killings using drones in Afghanistan, Pakistan, Yemen and elsewhere. More particularly, there has been extensive media coverage of the killing of al-Awlaki and Khan. See, e.g., Tim Mak, *U.S. Calls Kin of American Al Qaeda*, Politico, Oct. 12, 2011, <http://politi.co/pq0Nke>; Scott Shane & Thom Shanker, *Yemen*

⁴ In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the American Civil Liberties Union Archives at Princeton University Library.

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Strike Reflects U.S. Shift To Drones as Cheaper War Tool, N.Y. Times, Oct. 2, 2011, at A1, available at <http://nyti.ms/ogznLt>; Mark Mazzetti, Eric Schmitt, & Robert F. Worth, *C.I.A. Strike Kills U.S.-Born Militant In A Car In Yemen*, N.Y. Times, Oct. 1, 2011, at A1, available at <http://nyti.ms/rsjp7J>; Robbie Brown & Kim Severson, *Drone Victim Went From American Middle Class to Waging a Media War for Al Qaeda*, N.Y. Times, Oct. 1, 2011, at A8, available at <http://nyti.ms/pHZSGH>; Greg Miller, *Strike on Aulqi Demonstrates Collaboration Between CIA and Military*, Wash. Post, Sept. 30, 2011, <http://wapo.st/nU0Ia0>. There has also been widespread reporting of the killing of Abdulrahman al-Awlaki. See, e.g., Peter Finn & Greg Miller, *Anwar al-Awlaki's Family Speaks out Against His Son's Death in Airstrike*, Wash. Post, Oct. 17, 2011, <http://wapo.st/n9NuHP>; Laura Kasinoff, *Fatal Strikes Hit Yemen as Violence Escalates*, N.Y. Times, Oct. 16, 2011, at A12, available at <http://nyti.ms/pScBwi>; Brian Bennett, *U.S. Drone Strikes Kill Al Qaeda Operative in Yemen*, L.A. Times, Oct. 16, 2011, <http://lat.ms/mWffAn>; Hamza Hendawi, *Yemen: U.S. Strike Kills 9 al-Qaeda Militants*, Associated Press, Oct. 15, 2011, <http://abcn.ws/p3HqbA>.

The Obama Administration's refusal to release the OLC memo or other documents describing the legal basis for killing al-Awlaki has also been the subject of intense media coverage. See, e.g., Charlie Savage, *Secret U.S. Memo Made Legal Case to Kill a Citizen*, N.Y. Times, Oct. 9, 2011, at A1, available at <http://nyti.ms/pScBwi>; Arthur S. Brisbane, *The Secrets of Government Killing*, N.Y. Times, Oct. 9, 2011, <http://nyti.ms/naggsE>; Editorial, *Administration Should Do More to Defend the Awlaki Strike*, Wash. Post, Oct. 7, 2011, <http://wapo.st/p1SEho>; Peter Finn, *Political, Legal Experts Want Release of Justice Dept. Memo Supporting Killing of Anwar al-Awlaki*, Wash. Post, Oct. 7, 2007, <http://wapo.st/n6l3vK>; Editorial, *Obama's Illegal Assassination?*, Wash. Times, Oct. 3, 2011, <http://bit.ly/q8y3a4>; Editorial, *Anwar Awlaki: Targeted for Death*, L.A. Times, Oct. 2, 2011, <http://lat.ms/ohOG0w>; Peter Finn, *Secret U.S. Memo Sanctioned Killing of Aulqi*, Wash. Post, Sept. 30, 2011, <http://wapo.st/nKjZkJ>. There is also significant interest in the details of the process by which the government authorized the killing of al-Awlaki. See, e.g., Bruce Ackerman, *Obama's Death Panel*, Foreign Policy, Oct. 7, 2011, <http://bit.ly/qZ0Q4q>; Mark Hosenball, *Secret Panel Can Put Americans on "Kill List"*, Reuters, Oct. 5, 2011, <http://reut.rs/odCH8s>.

Significant and pressing questions about the basis for the targeted killing of al-Awlaki and other U.S. citizens remain unanswered. Therefore, the subject of this Request will remain a matter of widespread and exceptional media interest. The public has an urgent need for information about the subject of this Request.

III. Application for Waiver or Limitation of Fees

We request a waiver of search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because it "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2).

As discussed above, numerous news accounts reflect the considerable public interest in the records we seek. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will contribute significantly to public understanding of the operations and activities of the Departments of Defense, Justice, and the Central Intelligence Agency with regard to the targeted killings of Anwar al-Awlaki and other U.S. citizens. *See* 28 C.F.R. § 16.11(k)(1)(i); 32 C.F.R. § 286.28(d)(i); 32 C.F.R. § 1900.13(b)(2). Moreover, disclosure is not in the ACLU's commercial interest. Any information disclosed by the ACLU as a result of this Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act").

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We also request a waiver of search and review fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 32 C.F.R. § 286.28(e)(7); 32 C.F.R. § 1900.13(i)(2); 28 C.F.R. § 16.11(d) (search and review fees shall not be charged to "representatives of the news media").

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons it is

“primarily engaged in the dissemination of information.” *See Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of FOIA); *see supra*, section II.⁵

* * *

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 32 C.F.R. § 1900.21(d).

Please be advised that because we are requesting expedited processing under the Department of Justice implementing regulations section 16.5(d)(1)(ii) and section 16.5(d)(1)(iv), we are sending a copy of this letter to DOJ’s Office of Public Affairs. Notwithstanding Ms. Schmalzer’s determination, we look forward to your reply within 20 business days, as the statute requires under section 552(a)(6)(A)(I).

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If the Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

⁵ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in August 2011 the Department of Justice granted a fee waiver to the ACLU with respect to a request for information related to the proxy detention of detainees of U.S. naval vessels. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In January 2010, the State Department, Department of Defense, and Department of Justice all granted a fee waiver to the ACLU with regard to a FOIA request submitted in April 2009 for information relating to the Bagram Theater Internment Facility in Afghanistan. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

We also request that you provide an estimated date on which you will complete processing of this request. *See* 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Nathan Freed Wessler
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

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Sincerely,



Nathan Freed Wessler
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 519-7847
Fax: (212) 549-2654

Exhibit 2

to the Declaration of Colin Wicker

JA531

U.S. Department of Justice



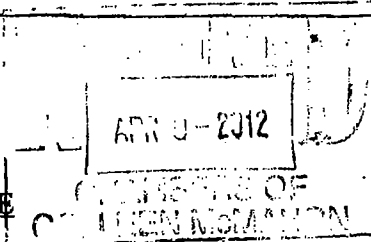
MEMO ENDORSED

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

April 9, 2012

BY FACSIMILE



Hon. Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street, Room 1350
New York, New York 10007

Re: New York Times v. Department of Justice
11 Civ. 9336 (CM)

ACLU v. Department of Justice
12 Civ. 794 (CM)

*4/9/12
OK, but don't ask
many more times
If government official
can give speaker about
this matter without creating
security problems, as
involved government
can*

Dear Judge McMahon:

We write respectfully on behalf of defendants the Department of Justice and its component, the Office of Legal Counsel; the Department of Defense and its component, the United States Special Operations Command; and the Central Intelligence Agency (collectively, the "Government") in the above-named related cases brought pursuant to the Freedom of Information Act ("FOIA") to request a ten-day extension of the Government's deadline to file a motion for summary judgment in these cases, and to seek leave to file a consolidated brief of up to forty pages in both cases in support of the Government's motion for summary judgment.

Pursuant to the schedule ordered by the Court at the conference in this matter on February 24, 2012, the Government's motion is presently due on April 13, 2012. The agencies have been working diligently to meet this deadline and have made significant progress. Nevertheless, in the unique circumstances presented by these cases, we are constrained to ask the Court for an additional ten days in which to complete processing of the FOIA requests and prepare and finalize the Government's motion papers.

As the Court is aware, these case involve FOIA requests for legal analysis and other records pertaining to the alleged use of targeted lethal force against U.S. citizens associated with al Qaeda and other terrorist groups. The agencies and their relevant components are reviewing and processing documents responsive to the requests for legal analysis, and in some cases are conducting additional searches. Many of the responsive documents are highly classified, and access to them is restricted to a relatively small number of personnel who possess the necessary clearances, who may review the documents only in appropriate secure facilities. Further, because

of the nature of the documents at issue, many of which involve inter-agency deliberations, the processing of documents and preparation of declarations to support the agencies' withholdings require substantial coordination between and among the relevant agencies and components. We anticipate that the Government's motion will be supported by multiple agency declarations, including *ex parte* classified declarations to the extent the Government's justifications are themselves classified. However, although the agencies are preparing these declarations, they cannot be finalized and approved (and the Government's brief in turn finalized and reviewed) until the processing of documents has been completed. The Government's efforts to meet the April 13 deadline have also been hampered by the fact that many agency personnel either have been or will be out of the office in connection with the Easter and Passover holidays.

We recognize and appreciate the Court's desire to resolve this case expeditiously, and we have been working closely with the agencies to meet the schedule set by the Court. However, in light of the additional complications and difficulties presented by the documents in this case, and the important national security interests at stake, we respectfully request an additional ten days to complete the work that needs to be done to fully and appropriately present the Government's position to the Court. Counsel for plaintiffs in both cases do not consent to a ten day extension, but take no position on a seven day extension. While we appreciate counsel's neutrality with respect to a shorter amount of time, we ask the Court's indulgence for a full ten days in order to accommodate the very difficult logistical issues inherent in a highly classified and complex filing.

The Government also requests leave to submit a consolidated brief of up to forty pages in support of its motion for summary judgment in both cases. A consolidated brief would avoid duplication, as the Court requested at the initial conference in this matter, and allow the Government to efficiently address issues that overlap between the cases. The Court recently granted the ACLU leave to submit a forty-page brief in opposition to the Government's motion and in support of its cross-motion. We anticipate that the Government's consolidated opening brief similarly can be limited to forty pages.

We thank the Court for its consideration of this request.

Respectfully,

STUART DELERY
Acting Assistant Attorney General

PREET BHARARA
United States Attorney

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Exhibit 3
to the Declaration of Colin Wicker

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USDS SDN
DOCUMENT
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DOC #:
DATE FILED: 4/23/12

U.S. Department of Justice
United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

April 23, 2012

MEMO ENDORSED

BY FACSIMILE

Hon. Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street, Room 1350
New York, New York 10007

4/23/2012
I have read Director Clapper's declaration
(civil must remain under seal - believe me, I
appreciate the irony) and I will grant
the extension requested by the
Government. The time
to file its motion
is extended to
May 21, 2012.
Colleen McMahon
USDT

Re: New York Times v. Department of Justice
11 Civ. 9336 (CM)

ACLU v. Department of Justice
12 Civ. 794 (CM)

Dear Judge McMahon:

We write respectfully on behalf of the Department of Justice, the Department of Defense and the Central Intelligence Agency (collectively, the "Government") to seek a further extension, until May 21, 2012, of the Government's deadline to file its consolidated motion for summary judgment in these related Freedom of Information Act cases seeking records pertaining to alleged targeted lethal operations directed at U.S. citizens and others affiliated with al Qaeda or other terrorist groups. Attorney General Eric H. Holder, Jr. has personally directed us to seek this additional time to allow the Government to finalize its position with regard to the sensitive national security matters presented in this case.

We are mindful of the Court's admonition in its April 9, 2012, order that the Government not seek any further extensions of its briefing deadline, and we do not make this request lightly. Given the significance of the matters presented in this case, the Government's position is being deliberated at the highest level of the Executive Branch. It has become clear that further consultation and discussion at that level of the Executive Branch is necessary before the Government can make its submission to the Court.

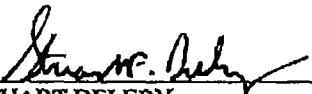
We understand from the Court's April 9 order that, at this stage of the proceedings, the Court has expressed doubt about the relative complexity associated with the Government's position. It is not possible to fully inform the Court of that complexity on the public record. Accordingly, in order that the Court be fully informed as to the basis for the Government's request, we respectfully seek leave to submit for the Court's *ex parte* and *in camera* review a classified declaration by the Director of National Intelligence, James R. Clapper, Jr. A

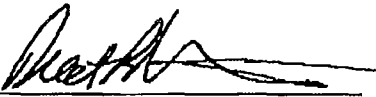
Classified Information Security Officer will contact chambers shortly to make arrangements to make the classified declaration available.

Plaintiffs previously had objected to an extension of more than one week of the Government's initial briefing deadline.

We thank the Court for its consideration of this submission.

Respectfully,


STUART DELERY
Acting Assistant Attorney General
Civil Division, U.S. Department of Justice


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Exhibit 4
to the Declaration of Colin Wicker

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Speeches & Testimony
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Director's Remarks at the Pacific Council on International Policy

Remarks of Director of Central Intelligence Agency, Leon E. Panetta,
at the Pacific Council on International Policy

May 18, 2009

DR. JERROLD GREEN, PRESIDENT OF THE PACIFIC COUNCIL ON INTERNATIONAL POLICY: Our speaker's going to be introduced by Congresswoman Jane Harman, a very, very good friend of the Pacific Council. We're lucky to have a congressman — person — in our district who knows more about international affairs than almost anybody in the room, and intelligence issues, and others. She's a good friend, and we're always happy to have her.

So I'm going to give the microphone to Congresswoman Harman. She will introduce Leon Panetta.

We're going to run on a machine here because I promised the CIA we will get the director out in a timely way. So I am nothing if not efficient, particularly for them. So — (applause).

REPRESENTATIVE JANE HARMAN (D-CA): Good afternoon, everyone. I'm back. You will remember that just a few months ago Amy Zegart — sitting over there — and I did a little riff on homeland security and intelligence issues. We were the warm-up act for Leon Panetta, but who knew then?

Six weeks ago Leon and I spoke about his coming out to the best congressional district on earth. That's a little west of here. Thank you, all. (Applause.) And he is here because this morning we did a tour of some of the amazing technology that is produced in Southern California. For anyone who's missed it, it is best in class worldwide, and it has a huge role in keeping us safe. And so we were at several places this morning and we're going to several more this afternoon before heading back to Washington.

It is wonderful that Leon would take the time to come down here. But it does give me an opportunity not just to show off but also to show off about him. Let me make just a few points.

In the world, as we know — and I said this a few months ago — there are people who work for our Intelligence Community whose identities are not known, who right at this moment it's probably dark in the places I'm thinking of, are doing things that are incredibly personally dangerous. They're doing those things so that we can learn about the plans and intentions of some who might try to harm us. And if anyone thinks this is a safe world, think again. It is not a safe world.

And I think no one has missed the lead story in the New York Times this morning about Pakistan adding to its nuclear arsenal. I think probably as bad a nightmare as what could happen with Iran might be a worse nightmare right now is what could happen in Pakistan if that state should fail. And I know that the Obama administration, most of us on the Hill, and surely our intelligence agencies are doing everything they can to make certain that Pakistan gets the right kinds of support in the nuclear arsenal, and those who would in other ways sell nuclear materials are kept from doing any of that. A bomb in the hands of the bad guys is a story we never want to read about.

So my thanks and my prayers go out to our Intelligence Community folks who are in harm's way now. And that is always on my mind.

Also on my mind is the kind of leadership we have in our Intelligence Community. Amy and I talked about that briefly a couple of months ago. It really matters who's in charge. And it really matters to me, and I hope to all of you, that Leon Panetta is now in charge of the Central Intelligence Agency.

Six months ago or so Sidney and I were in Monterey — beautiful Monterey, California — the other half, the less appealing half of the state, Leon. But we were at the Panetta Institute. It's a magnificent philanthropy that Leon and Sylvia have created. And I was there with Governor Schwarzenegger and several others receiving the annual bipartisan award. I really appreciated getting that.

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And Leon and I were chatting about the Obama administration to-be. I think he didn't know at that point that the CIA was in his future. No, I'm sure he didn't know at that point; he's shaking his head. But six months later he's in the thick of it, and he's doing several things that I really commend.

One of them is he's providing a strong hand to support the people who work there and a vision of the values of the Agency and the values of the United States, which I think we would all share. That's number one.

Number two, very personal to me, he understands the importance of the separation of powers. And he is bringing respect to the relationship that the executive branch has with the Congress. In Leon's tenure — over eight terms in Congress, ending when he chaired the Budget Committee — he got it that Congress is an independent branch of government, performs valuable oversight, and needs to do that role if we are to make certain that our policies and practices follow the laws of the United States. And Leon got that then and gets it now, and I applaud some of the tough decisions that he's making.

For anyone who doesn't know California, Leon, you need to know that he started his career with Tom Kuchel — maybe some of you did — as a Republican. He then eventually saw the light and came on over, served in Congress for the eight terms that I mentioned, was OMB director, Chief of Staff to President Clinton, and in the recent years has been living in paradise and promoting bipartisanship. He is the 19th director of the Central Intelligence Agency.

And I forgot one thing that he did before he assumed this role. That is, he co-chaired a commission formed by Governor Schwarzenegger to advise California on the round of BRAC closures — the Base Realignment and — Base Realignment and — Closure Commission. I didn't want to mention that word because I wouldn't accept it. The largest issue in California — the largest potential closure was the Los Angeles Air Force Base, which Mel Levine will remember; he first told me about it. He said, Jane, it doesn't look like an Air Force base.

But it is in El Segundo, California, in the heart of my Congressional district, and it is the home of the Space and Missile System Center, which does procurement for missiles and satellites for our defense agencies. It is an economic engine for Southern California and had it realigned to Colorado or some other place, we would have lost a huge — the huge and impressive synergy between our aerospace base and this Air Force base that doesn't look like a base.

Leon was instrumental in figuring out how to fight to keep it here. Governor Schwarzenegger was enormously helpful, as was Congressman Jerry Lewis. But by a thread we persuaded then Defense Secretary Rumsfeld to keep it off the base closure list. And the result is what Leon saw this morning and what many of you know to be: true California excellence.

So in that spirit let me introduce to many good friends true California excellence, the 19th CIA director, Leon Panetta.

(Applause.)

CIA DIRECTOR LEON E. PANETTA: Thank you very much, Jane. And ladies and gentlemen, thank you for the opportunity to be able to be here with the Pacific Council.

I really appreciate this opportunity. I've had the opportunity to be here before, and I appreciate Jane urging that I do this again. And thank both Jerry Green and Warren Christopher for their leadership and their willingness to have me.

I want to pay particular tribute to Jerry Green and the leadership that he's provided here for the Pacific Council. I think it's been outstanding. This has really been a center for discussion and for understanding of the tough foreign policy issues that face the country and that face all of us.

And Warren Christopher, of course, has exercised tremendous leadership in dealing with the issues in foreign policy. I had the honor of working with Chris when he was Secretary of State and I was Chief of Staff and there really — when you think about the dedication to public service that's involved in the jobs in Washington, Warren Christopher is the quintessential example of public service for the sake of public service. He didn't bring any other agenda to the job he was in. His sole agenda was to serve the interests of this country; and I pay tribute to you, Chris, for that service.

And Jane, the leadership that she's provided on homeland security, on intelligence issues, she's been an outstanding member of the Congress. And I enjoyed having her lead me around these various facilities that we saw. She did that before when I was head of the BRAC commission. She was a lot more uptight doing it at that time because she wasn't sure what was going to happen. None of us were.

I went through a BRAC closure. As many of you know, I represented Fort Ord. Monterey, California and Fort Ord installation was one of the largest closures that took place. It's nothing pleasant to have to go through. And so I had the opportunity, having gone through it, to try to exercise hopefully some leadership in the effort to try to maintain those military facilities that are important not only to California but more importantly to the country. And that's certainly true in this area.

The stuff I saw at Northrop Grumman, SpaceX, what I'm going to see at Boeing, this is really on the cutting edge of the future and the cutting edge of our ability to protect this nation. But more importantly, it introduces the kind of technological know-how that is going to be so important to our ability to continue to lead in the 21st century. So I'm really, really honored to do that.

I'm in California. I guess most importantly, thank you for getting back — me back — to my state. This is — it's a great state. As you know, I was born and raised in Monterey, son of immigrants from Italy. My dad was the 13th in his family and had a

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number of brothers who came here. Actually, I think one brother settled in Sheridan, Wyoming; another one settled here in California.

When my father came with my mother, supposed to visit your older brother first, and he did. And so they went to Sheridan, Wyoming to visit with his older brother. They spent one winter in Sheridan, Wyoming, and my mother suggested that it was time to visit the other brother in California, which I'm glad they did and finally wound up in Monterey. And that's where I was raised.

They had a restaurant in downtown Monterey during the war years and I — my earliest recollections were washing glasses in the back of that restaurant. They believed that child labor was a requirement in my family.

And they settled in Carmel Valley, which is where we live now with — our home is there. And had the honor of representing that area in the Congress. That's where we built our Institute for Public Policy.

And I have — I love this state. Worked with California Forward. The speaker here has now taken my job in helping to lead that effort and, man, do you have a hell of a lot of work to do here in California to try to get this state back on the right track.

And now I serve as Director of the CIA. It is one of the great challenges that I've faced throughout my career and it's — I've been in a lot of challenges, going back to being Director of the Office for Civil Rights during the days when we were pushing to desegregate the Southern school system. And then obviously as a member of Congress and as director of OMB, the challenge of facing at that time what kind of meager 2, 300 billion dollar deficit. We were able to deal with it and balance the budget.

Anyone remember balancing the federal budget? It was one of the great accomplishments, I thought, during that time, and I thought it would be something that would be with us into the future. That, unfortunately, did not happen. But it was a great challenge going through it. With the help of President Clinton and others in the Congress we were able to achieve that.

And then, obviously, as Chief of Staff to the president.

This job in particular represents some huge challenges, and it's really important to listen in this job. This is — generally throughout your political career you do a lot of talking. But in this job you've got to listen to a lot of people in order to really understand what's going on.

There's a great story I often tell of the Nobel Prize winner who was going throughout the state of California giving exactly the same lecture on this very intricate area of physics. And same lecture. Chauffeur just kind of was driving him around, finally leaned back when they were heading towards the San Joaquin Valley and said, "You know, professor, I've heard that same lecture so many times, I actually think I could give it by memory myself."

So the professor said, "Why don't we do that? Why don't you put on my suit, I'll put on your chauffeur's uniform and you give the lecture?" So they did.

Chauffeur got up before a standing room audience, gave the lecture word for word, and got a standing ovation at the end of the lecture. And the professor dressed as the chauffeur sat in the audience and couldn't believe what had happened.

Then somebody raised their hand and said, "Professor, that was an outstanding lecture in a very intricate area. But I have some questions." And so he went into a three-paragraph question with some mathematical formulas and equations and finally said, "Now, what do you think about that?"

There was a long pause. The chauffeur dressed as a professor looked at him and said, "You know, that's the stupidest question I've ever heard. And just to show you how stupid it is, I'm going to have my chauffeur answer it out in the audience."

(Laughter.)

I'm finding that there a hell of a lot of chauffeurs — (laughter) — in the job that I'm in that you have to listen to and that you have to pay attention to. And there are chauffeurs in this audience who deal with a lot of the issues that I'm involved with. And we have to listen to all of that because there are a series of challenges that we confront.

The Central Intelligence Agency and the Pacific Council in many ways share a common goal. Both aim to better the understanding of the world that we live in and to try to help policymakers make the very difficult decisions that have to be made with that understanding; and in particular, the decisions that have to be made if we're going to protect our national security and if we're going to achieve those vital foreign policy goals that will protect our future.

I'm going to take a few minutes to discuss several of our most pressing foreign intelligence areas and priorities. And then obviously I'm happy to have a discussion with all of you about these and other issues.

As you know, my Agency's mission is as wide as the world. I just returned from visiting several of our stations abroad. Went to the war zone, started with India, then went to Afghanistan, and then Pakistan. Just came back from a trip to Iraq and also had the chance to visit in Israel and Jordan, as well as other areas.

When you visit stations abroad and see the role that is played by the people that are out there, you understand that the CIA in many ways is on the front line of the defense of this country. We are literally the point of the spear because the reality is that we

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could not accomplish much militarily — or for that matter from a foreign policy point of view — without having good intelligence, without knowing and understanding what's out there and what's involved. So intelligence is crucial to our ability to understand those issues. And the people that work for the CIA are very much on that front line and are really dedicating themselves to the effort to develop the kind of information that is crucial to policymakers in this country.

I realize that there are many that focus on the past. And I understand the reasons for that. And I don't deny Congress — as a creature of the Congress, I don't deny them the opportunity to learn the lessons from that period. I think it's important to learn those lessons so that we can move into the future. But in doing that we have to be very careful that we don't forget our responsibility to the present and to the future. We are a nation at war. We have to confront that reality every day. And while it's important to learn the lessons of the past, we must not do it in a way that sacrifices our capability to stay focused on the present, stay focused on the future, and stay focused on those who would threaten the United States of America.

Let me talk about some of the issues that we are working on. Fighting terrorism is obviously at the top of our agenda. Counterterrorism is CIA's primary mission. Al-Qaeda remains the most serious security threat that we face, most serious security threat to America and to U.S. interests and our allies overseas. Its leaders in Pakistan continue to plot against us. Its affiliates and followers in Iraq, North and East Africa, the Arabian Peninsula, and other countries continue to work to develop plans that threaten this country and that threaten the potential for our ability to survive. The main threats we face from al-Qaeda are to our homeland and the threats we face to the troops that are in the war zones throughout the world.

The President has basically said very clearly what our mission is, and he repeated it when he announced the Afghanistan-Pakistan policy. He said that our nation's primary objective is that we have to disrupt, dismantle, and defeat al-Qaeda and its extremist allies. That is the mission — the fundamental mission — that the CIA has.

Serious pressures have been brought to bear on al-Qaeda's leadership in Pakistan, particularly Pakistan's tribal areas — where they're located — in Waziristan and in the FATA. There is ample evidence that the strategy set by the President and his national security team is in fact working, and we do not expect to let up on that strategy.

I'm convinced that our efforts in that part of the world are seriously disrupting every operation that al-Qaeda's trying to conduct and is interfering with their ability to establish plans to come at this country. And we will continue that effort.

Al-Qaeda is known for seeking shelter, however, elsewhere. And so one of the dangers we confront is the fact that as we disrupt their operations in Pakistan and in the FATA, that they will ultimately seek other safe havens. Today Somalia and Yemen represent that potential as potential safe havens for al-Qaeda in the future. They also present a very high risk for terrorist attacks in that part of the world.

The continuing plotting by al-Qaeda, these individuals who are working continue to develop an agile and a persistent kind of effort to threaten this country. Disrupting the senior leadership in Pakistan is crucial, but it alone will not eliminate the danger. The goal must be to pursue al-Qaeda to every hiding place, to continue to disrupt their operations, and continue ultimately to work towards their destruction so that they do not represent a threat to this country or to our troops in the future. That's why CIA continues to work with partners across the world in intelligence, in law enforcement, and in military to understand and counter the constantly evolving threat, both tactically and strategically.

The war zones. We are involved obviously in the war zone areas directly. The thousands of U.S. servicemen and women engaging the enemy in Iraq and Afghanistan. Intelligence support to the military remains a top priority for the CIA.

I recently visited both countries, as I mentioned, and got a first-hand look at the situation on the ground. In Iraq, as security improves and as the military draws down, there remains a continuing focus for intelligence, the kind of intelligence that will focus on what al-Qaeda is doing, that will focus on other efforts to disrupt that country. So as the U.S. draws down on its military side, you can expect that we will continue to maintain a robust intelligence presence in Iraq in order to provide the kind of intelligence that will be necessary for Iraq to establish stability.

The threat of sectarianism remains very real as well, as does the potential for further al-Qaeda attacks. Al-Qaeda has moved principally to the area of Mosul. We've been able to go after them in most other areas, but they have a presence in Mosul. We are continuing to focus on that. The government is still trying to figure out how to govern and how to secure Iraq on its own.

Helping policymakers and military commanders manage these continuing challenges requires the best possible intelligence. In Afghanistan, the Taliban insurgency is spreading in a country with weak political institutions and a failing economy. Stabilizing the situation there requires not only a military surge, it will require from the United States a strong intelligence surge as well to be able to protect our coalition forces and to build the kind of durable peace that will be needed for the future.

The President is taking a comprehensive approach here. CIA will inform that approach at all levels of influence. Hard and soft power are being applied in Afghanistan, and it needs to be if we are to have a chance at being able to establish stability there.

On the larger global mission, even as CIA leads the fight against al-Qaeda and directs tremendous resources to the war zones, our attention has to be focused on other priorities as well. We cannot and we will not diminish that effort.

The threat posed by Iran has our full attention. This country is a destabilizing force in the Middle East, a region that needs just the opposite. As you know, the administration is moving towards a diplomatic effort, diplomatic engagement with Iran. But no one is naïve about the challenges that we confront. Tehran aspires to be the pre-eminent power in the area. Its nuclear program, meddling in Iraq, ties to Syria, support for Hamas and Hezbollah, all are connected to that aspiration. And it is no coincidence

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that as Iran works to expand its influence, it also seeks to limit the influence of the United States and our allies, particularly in that part of the world.

On the nuclear front, the judgment of the Intelligence Community is that Iran at a minimum is keeping open the option to develop deliverable nuclear weapons. Iran halted weaponization in 2003, but it continues to develop uranium enrichment technology and nuclear-capable ballistic missiles. And that represents a danger for the future.

Assessing Iran's intentions is a top priority. This is not an easy target in terms of being able to gather intelligence. It's a tough target. But just as important, we have to focus in order to develop an accurate picture of what's going on. What are its capabilities? And we are focused on that threat.

And while the Iranian nuclear program in and of itself is cause for significant concern, there also is a very real risk that other countries in the region will be tempted to follow suit. The last thing we need in the Middle East is a nuclear arms race.

Of course, no discussion of the dangers of nuclear proliferation is complete without mention of North Korea. Our intelligence agencies are all working together to try to assess that country's nuclear weapons program and its long-range missile capabilities. The country's interest in selling technology and expertise to anyone willing to pay the price is a very serious concern. Like Iran, North Korea is a tough target to penetrate for intelligence purposes, but we're making good progress. The fact is, we had good notice about the fact that they were going to deploy the Taepodong missile and knew pretty well within an hour when that was going to happen.

There also are legitimate questions being raised about the internal stability of North Korea, given Kim Jong-Il's health problems, uncertainty about succession, the weak economy, and the persistent food shortages. The result is that North Korea remains one of the most difficult and unpredictable threats that we face in that part of the world.

Finally, let me talk a little bit about CIA's role in national security. Paying attention to the security risks posed by these challenges — and of course many, many others — is the fundamental mission of the CIA. I've only scratched the surface today in the threats I've discussed. There are enduring threats that we also face, such as China and Russia, and priorities tied to current conditions, the potential impact of the drug war in Mexico, the swine flu, the global economic crisis, new openings with Cuba, global warming; all of these are areas that represent important intelligence gathering material that we have to have and present to opinion makers and policymakers.

In addition to shedding light on the recent and most pressing problems that we face, we know and understand the strategic landscape across the globe. We've got to understand the additional threats, whether they come from Latin America, from Africa, or from the Far East.

The key, it seems to me as Director of the CIA, is the responsibility we have to make sure that we are never surprised. That really is our fundamental responsibility to this country and to the world. To accomplish this very broad mission, CIA officers are on the front lines, as I said, in the war zones and beyond. They are identifying and confronting the full range of threats and opportunities facing our nation.

CIA's duty is not only to provide intelligence but to minimize the risk, as I said, for surprise. That means we must anticipate issues in areas of the world that represent potential threats. We have to be ahead of them and stay ahead.

After only a short time on this job, I can tell you that we have some of the finest, most skilled and professional and dedicated men and women that are serving this country. My job is to ensure that they have the resources and the authorities to accomplish that mission and they do it in full accord with the nation's laws and our values. I'm personally committed to that, as is everyone at CIA.

I've also indicated that in the training process there are a couple areas that I hope to stress. One is to increase the diversity of the people that are part of the CIA. We have got to reflect the face of the world at the CIA. And while there's been some progress in diversity, not enough has taken place. If we're going to deploy, if we're going to have people abroad, they have to have the same face and have the same understanding of the areas that they are seeking intelligence on.

In addition, they have to have better language training. I'm a believer that, frankly, without language training it's very difficult to get the kind of intelligence that you need. You have to understand people. You have to understand their culture. And the key to doing that is language training. I hope we can reach a point, frankly, where every officer in the CIA is required to undergo language training of some kind. It is an essential key to being able to do their job.

I've had a good deal of exposure to the Agency's work in previous jobs, but not until I became Director did I finally appreciate the extent and the significance of what CIA does for our country. It is the most professional, as I said, the most effective organization that I've ever run — and I've had the honor of representing a lot of organizations throughout my career in government. It is full of people who are very silent in their work; they're called silent warriors. And they make real sacrifices for the country. There's a wall in the lobby of the Central Intelligence Agency in which there are stars representing those who have given their life for this country as members of the CIA. And many of their names are not known because they remain undercover. Now, that's the kind of sacrifice that's been involved. I'm honored to lead them and represent their work to the President, the Congress, and to groups like yours.

Let me make clear that although we are an intelligence agency, and although we have the obligation, obviously, to protect the nation through covert actions and covert operations, we are also an agency of the United States of America. And as such, we

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have to make clear that we will always uphold the Constitution and the values that are part of the United States of America. As the President has said — and I deeply believe — we do not have to make a choice between our values and our safety.

As I mentioned, I am the son of immigrants. And I used to ask my father, why would you travel thousands of miles to a strange country, no money, no skills, not knowing really what they were getting into? And my father said, the reason we did it is because my mother and I believed we could give our children a better life. And I think that's the American dream. That's what all of us want for our children and for their children is to ensure that they have a better life.

And I think the fundamental responsibility of the CIA — and for that matter, all of us — is to ensure that we do give our children that better life, that we protect the security of all Americans, and most importantly that we always protect a government of, by, and for all people.

Thank you very much.

(Applause.)

DR. GREEN: (Off mike) — has agreed to answer some questions. I promised he will be out of here at five minutes to 2:00, so I will be merciless in just cutting this off at the end.

First question, please, sir?

Q: (Off mike.) You mentioned — I don't think it's on. You mentioned — (inaudible, laughter.) My precious time is disappearing.

You mentioned that you believe the strategy in Pakistan is working — the President's strategy in Pakistan in the tribal regions, which is the drone — the remote drone strikes. You've seen the figures recently from David Kilcullen and others that the strikes have killed 14 midlevel operatives and 700 civilians in collateral damage. And his assessment as a counterinsurgency expert is it's creating more anti-Americanism than it is disrupting al-Qaeda networks.

And then secondly, President Musharraf told me when he was in office that the Pakistan nukes are safer than those in the former Soviet Union. Do you agree with that? Safely guarded — more safely guarded?

MR. PANETTA: On the — are you hearing me okay? On the first issue, obviously because these are covert and secret operations I can't go into particulars. I think it does suffice to say that these operations have been very effective because they have been very precise in terms of the targeting and it involved a minimum of collateral damage. I know that some of the — sometimes the criticisms kind of sweep into other areas from either plane attacks or attacks from F-16s and others that go into these areas, which do involve a tremendous amount of collateral damage. And sometimes I've found in discussing this that all of this is kind of mixed together. But I can assure you that in terms of that particular area, it is very precise and it is very limited in terms of collateral damage and, very frankly, it's the only game in town in terms of confronting and trying to disrupt the al-Qaeda leadership.

Secondly, with regards to Pakistan nuclear capability, obviously we do try to understand where all of these are located. We don't have, frankly, the intelligence to know where they all are located, but we do track the Pakistanis. And I think the President indicated this yesterday in an interview, that right now we are confident that the Pakistanis have a pretty secure approach to trying to protect these weapons. But it is something that we continue to watch because obviously the last thing we want is to have the Taliban have access to the nuclear weapons in Pakistan. We're fighting, obviously, that potential in Iran. We're fighting it elsewhere. The last thing we would want is to give al-Qaeda that potential. So we continue to watch that very closely.

DR. GREEN: Next question? Kimberly?

Q: Mr. Director, my name is Kimberly Marteau Emerson, and I am vice-chair of Human Rights Watch executive committee here in Southern California. I want to commend you on the closing of secret prisons and the change in interrogation rules on torture by the CIA. I think you're doing great work there, and I loved what you just said at the end about upholding American values and the Constitution.

I know you also said earlier that some people want to look back and not look forward. And I agree. We are in the middle of many crises, and it is really important to look forward and be present. However, if we don't draw a line in the sand now on past actions, what happens when the next CIA Director and President get in who actually carry the same policies and same ideals as the last eight years? We have not set any kind of precedent or laid down any kind — other than by example and by our current rules, to basically look at this issue and really have an open inquiry on it. And I'm not talking about accountability or prosecution; I'm talking about actually looking at whether it works or not so that we have a public accounting of that. What do you think?

MR. PANETTA: You know, I'm — as I said, I'm a creature of the Congress, and my view is that if Congress makes that decision to move forward on that kind of study then, as Director of the CIA, I'll do everything possible to cooperate with that effort. As you may know, the Intelligence Committee on the Senate side, under the chairmanship of Dianne Feinstein, is now conducting that kind of review. And they are going back over that material, and we have provided access to that material. We are working with their staff and working with her and her co-chair to make sure that whatever questions they have, whatever information they would like to have, we will provide it to them, and obviously then they'll draw their own conclusions.

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But my view is I'm not going to tell the Congress or anybody else what they should or shouldn't do with regards to this issue. I do believe it's important to learn the lessons from that period. I think that the study by the Intelligence Committee in the Senate will give us that opportunity. But I guess what I'm most concerned about is that this stuff doesn't become the kind of political issue that everything else becomes in Washington, D.C., where it becomes so divisive that it begins to interfere with the ability of these intelligence agencies to do our primary job, which is to focus on the threats that face us today and tomorrow.

DR. GREEN: Next question. Sir, if you could identify yourself, please.

Q: My name is Arash Faran, and my question has to do with your comment about dismantling and defeating al-Qaeda around the world. And if you look at the example of Israel, you may argue Israel is engaged in some of the same tactics and some of the same battles as the United States. And one of the things you often see is as they take out terrorists and other people who are plotting against the country, often times there's a deep bench behind them. And year after year you often have leaders who rise out of nowhere who take their place.

As we engage and spend a lot of time and resources to fight that same battle, how can we — what more can we do so as that bench disappears, as we take out high-level operatives, there is no one standing behind them?

MR. PANETTA: Well, obviously that's — that has to be a concern. As we go after them, as we try to disrupt and dismantle their operations, we have to be concerned about how do we block them from moving to other areas, to finding new safe havens. And that's why I mentioned both Somalia and Yemen, because what happens is that in these countries that are — in terms of governing are not doing a very good job, that's probably the kindest I could say about it — the reality is that those become grounds for al-Qaeda to develop future efforts.

And I think what we have to do is we have always got to be one step ahead of them, which means we've got to backstop them. If they're going to go to Somalia, if they're going to go to Yemen, if they're going to go to other countries in the Middle East, we've got to be there and be ready to confront them there as well. We can't let them escape. We can't let them find hiding places.

And I do have to tell you that Israel is — you know, we have a close working relationship with Israel and working with them has been very helpful in terms of being able to identify these threats.

DR. GREEN: Mark Nathanson.

Q: Thank you. Leon, I wanted to ask you, now that you're the head of the CIA. There've been problems in the past with the CIA working with local law enforcement, such as in Southern California. For example, after 9/11, they wanted local law enforcement to investigate student visas that were over here, and there was over 5,000. And when local law enforcement asked the government for a priority as to them, they said, we can't give it to you because you aren't cleared.

So the question I have is how are you going to improve relations with local law enforcement? And also, how can the local business community help the CIA?

MR. PANETTA: Well, you know, I — let me first of all say from my own background, both as a member of Congress and then serving in a number of capacities, I think it is very important to develop a partnership here. We can't do this alone. The CIA can't do this alone. We have to work with the FBI. We have to work with the Homeland Security operation. We have to work with state government. We have to work with local government to develop the kind of partnership we need in order to meet these threats. You can't just do this at one level.

And so I'm a believer that, frankly, we need to sit down and work with local government and not just simply task them to do things that they can't deliver on, but work with them to try to make sure that we can achieve these goals working together.

I've mentioned this to the Director of National Intelligence as a priority. I think we have to share more of the intelligence we gather both with state and local governments so that they're aware of the threats that we're confronting. I think we have to develop the kind of communication that allows us to not only share information but to work together to confront these threats. It doesn't work — I'm just — I'm not a big believer of the federal government kind of walking in and telling people what to do and then getting the hell out of town. I don't think that works.

Q: Good afternoon. My name is Salam Al-Marayati. I'm with the Muslim Public Affairs Council.

The President said in a major speech in Istanbul that we — the United States — are not at war with Islam and that we must engage the Muslim world beyond counterterrorism. However, based on your speech and based on a number of activities, it still remains that the relationship is very tense, confrontational — at least, defined by confrontation — and there's really not much that is said in terms of other areas such as nonmilitary means to fight terrorism.

So could you expand on that and how engaging the Muslim world beyond this issue of terrorism could serve our national interests?

MR. PANETTA: I appreciate that question. Obviously our focus is on going after those who obviously are planning and involved with threats not only to our homeland but obviously are developing — those forces that are actually going in and confronting our military, particularly in Afghanistan and Iraq. And so that does remain a focus.

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But clearly we can't — we cannot re-establish a relationship with the Muslim world on the basis of these kinds of operations alone. We have to look at a broader strategy of building that relationship. I mean, the place I see it most directly is obviously in these war areas, where in — whether it's Pakistan or whether it's Afghanistan, clearly we're going to confront the threats that are on the ground. Clearly we're going to obviously fight back when we're attacked and that needs to be done.

But if we're going to develop long-term stability, whether it's Pakistan or Afghanistan, we have got to be able to engage the tribal areas. We've got to work with them. It is about education. It is about food. It is about security. It is about trying to develop a relationship that gives them more responsibility to be able to care for them own and to be able to work to ensure that kind of stability.

On the broader picture, clearly what happens is people in al-Qaeda or other terrorist groups feed on the frustration of people who feel they have no opportunity to be able to succeed. And so we have got to build a broader message with the United States of America, a broader message that reaches out to them and says we understand those problems. And we've got to show that we're willing to work to deal with those kinds of problems.

I think the President, by virtue of not only what he said in Turkey but what he's going to say in Egypt, is trying to build that relationship with the Muslim world. We cannot just win this militarily. We can only win it when we ultimately capture their hearts and minds as well.

Q: My name's Asef Mahmood. I have like two questions. One is that intelligence supposed to be working with time ahead. And we have seen in this Pakistan/Afghanistan thing that we react only when things are already happening, just like the recent event in Swat. For last one year, Taliban, al-Qaeda has been moving to Swat. Everybody knew that people had been actually reporting this thing. And a few months ago the Sufi Muhammad — basically main person behind this — was in Pakistan in custody. Why could not remove at that time when the problem was not that bad and stop it there?

And second part is, is there a role of CIA to work not only to topple government or prevent national security but to change the view of the people? We are killing thousand or 2,000 but we are making millions of people our enemies. Right now the sympathy for Pakistan — for the Pakistanis for America is actually I think historically low, although America is trying to be a friend of Pakistan.

Thank you.

MR. PANETTA: Thank you very much. Let me deal with the second question first because in many ways it takes us back to the other problem. One of the challenges we face is that in confronting al-Qaeda and the Taliban and other terrorist groups that are within these tribal areas in Pakistan, that one of the things we have struggled to do is to make Pakistan recognize that they represent a threat to their stability.

Pakistan, as you know, their primary focus has always been on India and the threat from India, and that to a large extent these areas have been ignored. I mean, I remember talking to a — one of our people in Pakistan, and I said, can you give some sense of the history here and why that is? And he said whether it was the British Empire or whether it was the Pakistanis, that in many ways they treated these tribal areas like Indian reservations, that if — they kind of left them alone. If they raised hell, you send the cavalry in to basically deal with the problems. And then you go out and not pay much attention to them.

And so a consequence was that in many ways while we continue to say, look, there's a real threat here that we're confronting, that you have to view this as a common threat. It's not just the United States. It's not just Afghanistan. It's Pakistan. You know, when they blow up things in your streets, when they're — you know, when the Marriott is blown up, this is a threat to your stability.

If the Pakistanis recognize that as a real threat, then we can create the partnership we need in order to deal with it. Now, I think they're beginning to. There obviously are, as we speak, military operations going on in Swat and Buner and other areas. The key is not whether they simply go in and — you know, bring the tanks in and clear out the Taliban and then back out and allow the Taliban to go back in. They've got to clear these areas and hold them. That's very important if it's going to work. So it is extremely important for Pakistan to recognize the threat that it constitutes to their stability.

We had a trilateral meeting in Washington where the President engaged both President Zardari and President Karzai, and I engaged my intelligence counterparts at the same time. And I think as a result of that we began to develop some plans to confront this on a partnership basis, where they will provide that information, and we will share intelligence on these threats. And frankly, it's working. We're beginning to make that happen. And I do sense that President Zardari and the other leadership in Pakistan recognizes that they've got to do more to confront that issue.

Part of the reason for the Swat agreement, part of the reason for some of the deals that were made in those tribal areas really goes back to the history I talked about. They really thought they could cut a deal. If these areas could take care of themselves, they could get the hell out and not pay a lot of attention to them. I have to tell you, when I first came into office I sat down with the Pakistanis and I said, you have got to take a look at this because it is dangerous. And they said, no, we think we've — this is different. This isn't like the other agreements, and they won't fall apart. Well, they did. And I think they've learned a lesson from that, hopefully.

So I guess what I'm hoping for is that Pakistan recognizes the danger that is involved in dealing with these areas and the threat it constitutes to their stability. And I understand the concern about India. I understand the historical concern that's always been

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there. But I have to tell you that if they don't pay attention to these areas while they're worried about India, this threat could undermine the stability of the country, and that's why they have to face it.

Q: Thank you for your comments. I'm Nancy Aossey, head of International Medical Corps, an NGO based right here in Los Angeles. I just want to go back to your comment that you made earlier — that I really appreciated — about I guess the role of NGOs in civil society.

One of the concerns that we've had as an organization operating in Afghanistan and Pakistan and Somalia and Iraq all these years is that the interface for the local population, the people who form their opinions about our country certainly, is often the military because of these conflicts. Could you expand a little bit more about the role of civil society NGOs that they can play, especially during a time when people often just see people with guns and soldiers, et cetera, and get the wrong impression of what we're trying to do?

MR. PANETTA: Well, this is the great challenge in trying to deal with those areas and to try to bring stability to those areas. As I said, while I have tremendous respect for the military, while I have tremendous respect for our people in the work that we're doing, in the end none of this is going to work without the Afghanistan people themselves and the tribes — and I can apply that to Pakistan as well — but none of this is going to work unless they assume the responsibility they have to assume to try to deal with these issues as well. And that means that when it comes to providing food, when it comes to providing education, when it comes to providing infrastructure, we can provide the funds and the support systems, but it's the NGOs that are on the ground and that are working with them every day to try to advance that.

I do think that it's very important — for example, when the military goes out they ought to be able to, in Afghanistan, have an Afghan face with regards to their operations. That's really important. Same thing, frankly, is true in Pakistan, that there ought to be a face of the country that they're involved with.

Secondly, we have got to make the tribal leaders understand that — look, the reason the Taliban is successful in those areas is because the Taliban comes in when there's a lot of disruption and they basically say, we can provide order. And that's what hurts us the most is that in the search for order, in the search for security, the Taliban represents that.

We've got to be able to obviously achieve security. But if you're going to achieve it, you've got to back it up with a system that provides and meets the needs of the people.

I remember when I was in Iraq for the first time with the Iraq Study Group there was a general there who basically sat down and said, you know, we're not going to win this war militarily, and we're only going to win it if we provide human needs: we provide jobs, we provide education, we provide infrastructure, water, sanitation, the kind of basics that people need. When we recognize that, then we'll begin to win.

And I think part of the surge effort that went into Iraq would not have worked if it was not complimented by other efforts, by the State Department, by the NGOs to fulfill those other needs. We've got to learn those lessons and apply them in Afghanistan and Pakistan if we're going to win.

Q: (Off mike.)

MR. PANETTA: Can I refer this question to your wife?

Q: Mr. Director, I hope you do recognize me. I am your chauffeur. (Laughter.) Very expensive chauffeur. And I assume that you will treat this question with appropriate respect for my role.

One of the great ironies in history is that both al-Qaeda and the Taliban are devoted to the destruction of modernity but nonetheless made remarkably effective use of modern digital technology. And it is my impression that the old CIA — that CIA that preceded you — somehow failed to recognize the asynchronous character of that threat.

Without revealing any of the algorithms, which I know you personally do create — (laughter) — could you reassure us that there is a sensitivity and awareness of the CIA today that the use of old analog responses to new asynchronous digital threats isn't likely to work very well?

MR. PANETTA: I'm going to have my chauffeur answer that question. (Laughter.) Sydney, you've introduced something that I have really, you know, in the time that I've been director of the CIA have recognized, that as we in this country try to stay on the cutting edge of technology and communications and internet activities and computers, our enemy does the same thing. And they are making use of it all the time, and they're making effective use of it.

We have developed, obviously, approaches to try to confront that. I mean, the whole area of cyber security is a huge threat to this country and to the world in ways that we haven't even begun to understand. I mean, shutting down the power grids, shutting down — I mean, the kind of introduction of worms that go into some of these systems that disrupt our computers or disrupt our connectivity, suddenly that kind of thing is becoming a very real threat, as other countries develop the capacity to be able to use that kind of technological weapon.

We have to be ahead of that. And I do have to kind of pay tribute to the NSA, which spends an awful lot of its time basically focusing on these issues in this area and has developed some absolutely fantastic technology to try to confront some of these

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potential threats for the future. It's changing and being developed all the time; every day changes are taking place. We have got to make sure that we stay ahead of it. If we fall behind, any one of these areas could be extremely dangerous to us.

But what we're finding, for example, is that in the middle of the FATA, somebody using a computer. It happens. They're using cell phones. They're using other technology. Our ability to be able to have the intelligence to go after that capacity is what gives us our edge right now. We've got to continue to stay ahead of it because it is a rapidly changing threat.

DR. GREEN: We're on our last question. Quite appropriately, I'm going to turn to Professor Amy Zegart, who has written a book, which I wish I could give you a copy of, but I'm sure you've read. And Amy will have our final question.

AMY ZEGART: Nothing like being a "Z." Mr. Director, you've talked a lot today about external threats that the Agency confronts. I'd like to ask you to comment on a domestic challenge the Agency's been confronting very much in the headlines in the past of weeks, and that is its relationship with the Congress. You've played on both sides of that contact sport in your career. From where you sit now as CIA Director, what does good Congressional oversight look like to you? Do we have it? And if we don't, what kind of changes could Congress make that would enable you to do your job better?

MR. PANETTA: Thank you for that question because one of the things that I really want to do as Director of the CIA is to improve the relationship with the Congress and to make the Congress a partner in this effort. I mean, I realize that we've been through a rough period. And the problem with that is that when that relationship is not working, when the Congress and the CIA don't feel like they're partners in this effort, then frankly it hurts both. And more importantly, it hurts this country.

Congress does have a role to play. I am a believer — as I said, as a creature of the Congress — that Congress, under our checks and balances system, has a responsibility here. We're not the only ones that have the responsibility to protect the security of this country. The Congress has the responsibility to protect the security of this country.

When I first went back as a legislative assistant to Tom Kuchel, as Jane pointed out, you know, there are some people here that will remember, but it wasn't just Tom Kuchel. There were people like Jacob Javits and Clifford Case and Hugh Scott and George Aiken and Mark Hatfield and others on the Republican side who were working with people like Hubert Humphrey and Henry Jackson and others on the Democratic side. And yes, they were political. Yes, they had their politics. But, you know, when it came to the issues confronting this country, they did come together. And they worked together not only on national security issues; they worked together in domestic issues and laid the groundwork for a lot of what we continue to enjoy today. I'm a believer that that's the way our system works best.

There's been a lot of poison in the well in these last few years. And I think in 40 years that I've been in and out of Washington, I've never seen Washington as partisan as it is today. And I think we pay a price for that in terms of trying to deal with all the problems that face this country. And I feel it in particular when it comes to issues that we're involved with. My goal is to try to do everything I can to try to improve that relationship.

The Intelligence Community does have a responsibility to oversee our operations. And what I intend to do is to make sure that they are fully informed of what we're doing. I do not want to just do a Gang of Four briefing — in other words, just inform the leaders of the party. My view is — and I said this at my confirmation hearings — I think it's very important to inform all the members of the Intelligence Committee about what's going on when we have to provide notification.

I'm going up tomorrow morning to meet with the Congressional group and just have coffee and talk about some of the issues that are involved with it. I think we ought to have more of those opportunities. Not in a hearing setting where everybody can kind of do "gotcha." I think I would rather operate on the basis of let's talk about it, tell me what your concerns are, I'll tell you what my concerns are, and do it in a way in which we can be honest with one another.

But I do believe in the responsibility of the Congress not only to oversee our operations but to share in the responsibility of making sure that we have the resources and capability to help protect this country. The only way that's going to work is if both parties are working in the same direction. If they start to use these issues as political clubs to beat each other up with, then that's when we not only pay a price, but this country pays a price.

DR. GREEN: Thank you so much.

(Applause.)

I want to thank all of you for coming. I want to thank Director Panetta for his comments. We all wish you well in your new assignment. And thank you all for coming.

(END)

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Obama on 'Tonight Show' with Jay Leno: Full video and transcript

By **David Nakamura**

NBC has released the full video and transcript from President Obama's appearance with Jay Leno Tuesday night, during which he talked about subjects ranging from Libya policy to what he thinks of Sasha and Malia watching the Kardashians' reality show.

Watch the video and read the transcript after the jump.

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THE TONIGHT SHOW WITH JAY LENO

JAY LENO: It's an honor and a privilege to welcome my first

guest back to the show. Welcome the 44th President of the

United States, President Barack Obama.

(Applause.)

Welcome back.

THE PRESIDENT: Thank you. Thank you. It is good to be back.

JAY LENO: It's good to have you back, sir. Of course, the big

news this week, Gaddafi is dead. Rebel forces -- killed by rebel

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forces. Your reaction? Your take on this?

THE PRESIDENT: Well, this is somebody who, for 40 years, has

terrorized his country and supported terrorism. And he had an

opportunity during the Arab spring to finally let loose of his

grip on power and to peacefully transition into democracy. We

gave him ample opportunity, and he wouldn't do it. And,

obviously, you never like to see anybody come to the kind of end

that he did, but I think it obviously sends a strong message

around the world to dictators that --

JAY LENO: Yeah.

THE PRESIDENT: -- people long to be free, and they need to

respect the human rights and the universal aspirations of people.

JAY LENO: Now, the mob mentality -- and it was a rebellion, I

guess. It wasn't a government --

THE PRESIDENT: Right.

JAY LENO: -- they televised the death. Your thoughts on that?

THE PRESIDENT: You know, obviously, that's not something that I

think we should relish. And there was a reason after Bin Laden

was killed, for example, we didn't release the photograph. You

know, I think that there's a certain decorum with which you treat

the dead even if it's somebody who has done terrible things.

JAY LENO: Now, you took some heat for the whole

leading-from-behind tactic here with Libya. Explain that.

THE PRESIDENT: Well, the truth was, we -- this was a phrase that

the media picked up on.

JAY LENO: Okay.

THE PRESIDENT: But it's not one that I ever used.

JAY LENO: No.

THE PRESIDENT: We lead from the front. We introduced the

resolution in the United Nations that allowed us to protect

civilians in Libya when Gaddafi was threatening to slaughter

them. It was our extraordinary men and women in uniform, our

pilots who took out their air defense systems, set up a no-fly

zone. It was our folks in NATO who were helping to coordinate



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the NATO operation there. And the difference here is we were able to organize the international community. We were able to get the U.N. mandate for the operation. We were able to get Arab countries involved. And so there was never this sense that somehow we were unilaterally making a decision to take out somebody. Rather, it was the world community. And that's part of the reason why this whole thing only cost us a billion dollars --

JAY LENO: Right.

THE PRESIDENT: -- as opposed to a trillion dollars. Not a single U.S. troop was on the ground. Not a single U.S. troop was killed or injured, and that, I think, is a recipe for success in the future.

(Applause.)

JAY LENO: Let me ask you about that because, with

Osama Bin Laden, I remember the night before you were at the correspondence dinner and the whole deal.

THE PRESIDENT: Right.

JAY LENO: How hard was it to make that decision to send in those Navy SEALs? because that could have been --

THE PRESIDENT: It could have been a disaster, but the reason I was able to do it was -- when you meet these SEALs and you talk to them, they are the best of the best. They are professional.

They are precise. They practice. They train. They understand what exactly they intend to do. They are prepared for the worst in almost every circumstance. So even though it was 50/50 that Bin Laden would be there, I was a hundred percent confident in the men, and I could not have made that decision were it not for the fact that our men and women in uniform are the best there is. They are unbelievable.

JAY LENO: Now, you just announced the troops coming out of --

THE PRESIDENT: Right.

JAY LENO: -- Iraq. We have, like -- 4,000, I think, were killed.

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THE PRESIDENT: Yeah, 4-

JAY LENO: Billions of dollars spent, nine years. What was accomplished? What did we accomplish there?

THE PRESIDENT: Look, Saddam Hussein is gone, and that's a good thing.

JAY LENO: Right.

THE PRESIDENT: The Iraqis now have the opportunity to create their own democracy, their own country, determine their own destiny. And I'm cautiously optimistic that they realize that the way they should resolve conflict is not through killing each other but, rather, through dialogue and discussion and debate. And so that would not have been possible had it not been for the extraordinary sacrifices not just of our Armed Forces, but also their families. You know, when you think about the rotations that over a million of our troops went through --

JAY LENO: Right.

THE PRESIDENT: -- and reservists and National Guardsmen and -- women and the strain that that placed on those families during this long period, it's remarkable. So I think Americans can rightly be proud that we have given Iraqis an opportunity to determine their own destiny, but I also think that policy makers and future Presidents need to understand what it is that we are getting ourselves into when we make some of these decisions. And there might have been other ways for us to accomplish those same goals. But the main thing right now is to celebrate the extraordinary work that our men and women did. Having them home for the holidays for good is going to be a big deal.

(Applause.)

JAY LENO: Let me ask you now, many members of -- many members of the GOP opposed with drawing from Iraq.

THE PRESIDENT: It's shocking that they opposed something I proposed.

JAY LENO: But, I mean, wasn't it originally -- didn't they want to get out of Iraq?

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THE PRESIDENT: Well, look, I don't know exactly how they are thinking about it. You know, as you said, we've been in there for years, over 4,000 young men and women killed, tens of thousands injured, some of them for life, spent close to a trillion dollars on this operation. I think the vast majority of the American people feel as if it is time to bring this war to a close --

JAY LENO: Yeah.

THE PRESIDENT: -- particularly because we still have --

(Applause.)

You know, we still have work to do in Afghanistan. We are transitioning to Afghan lead there. Our guys are still -- and gals are still making sacrifices there. We would not have been able to do as good of a job in decimating al Qaeda's leadership over the last two years if we had still been focused solely on Iraq. And one of the arguments I made way back in 2007 was, if we were able to bring the war in Iraq to a close, then that would allow us to go after the folks who perpetrated 9/11, and obviously, we've been very successful in doing that. We are not done yet.

JAY LENO: Yeah.

THE PRESIDENT: But al Qaeda is weaker than anytime in recent memory. We have taken out their top leadership position. That's been a big accomplishment.

(Applause.)

JAY LENO: Can I ask you about taking out their top leadership, al-Awlaki, this guy, American-born terrorist? How important was he to al Qaeda?

THE PRESIDENT: Do you what happened was we put so much pressure on al Qaeda in the Afghan/Pakistan region --

JAY LENO: Right.

THE PRESIDENT: -- that their affiliates were actually becoming more of a threat to the United States. So Awlaki was their head of external operations. This is the guy that inspired and helped

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to facilitate the Christmas Day bomber. This is a guy who was actively planning a whole range of operations here in the homeland and was focused on the homeland. And so this was probably the most important al Qaeda threat that was out there after Bin Laden was taken out, and it was important that working with the enemies, we were able to remove him from the field.

(Applause.)

JAY LENO: I'll tell you, we are going to take a break. When we come back, I want to ask you about Hillary Clinton and her role with the President right after this.

(Commercial break.)

JAY LENO: Welcome back, talking to the President of the United States. So tell me about Hillary Clinton and the job she's doing.

THE PRESIDENT: She has been, I think, as good of a Secretary of State as we've seen in this country. She's been outstanding.

(Applause.)

JAY LENO: Very good.

THE PRESIDENT: I'm really proud of her.

JAY LENO: I mean, something I think is really great is the fact that you guys are both rivals. And I did a lot of jokes about you guys going after each other, but you come together for the sake of the country. And I thought that was pretty interesting.

Tell me about how that works.

THE PRESIDENT: You know, it really wasn't that difficult. The truth is Hillary and I agree on the vast majority of issues. We did during the campaign. In fact, one of the problems with all of those debates was you started running out of stuff to say because --

JAY LENO: Yeah.

THE PRESIDENT: -- we had a similar world view. She was, I think, understandably tired after the campaign and hesitant about whether or not this would be a good fit, and I told her that I had complete confidence in her, that the country needed her. She

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stepped up to the plate. She works as hard as anybody I've ever seen. She is tenacious, and we are really very proud of her.

The entire national security team that we've had has been outstanding, and it's not just rivals within the Democratic party. My Secretary of Defense, Bob Gates, is a Republican.

JAY LENO: Right.

THE PRESIDENT: He was a carryover from the Bush Administration.

He made an outstanding contribution. So I think one of the things that we have done is been able to restore a sense that whatever our politics, when it comes to our national security, when it comes to the national defense, everybody has to be on the same page. And so the question now is, as we end the war in Iraq, it is time for us to rebuild this country, and can we get that same kind of cooperation when it comes to fixing what's wrong here?

(Applause.)

JAY LENO: Now, let me ask you something. And this is a fun story. This is stuff I love, this rumor that Joe Biden and Hilary might swap, and she might run for Vice President and he might -- is there any --

THE PRESIDENT: You know, Joe Biden is not only a great Vice President, but he has been a great advisor and a great friend to me. So I think that they are doing great where they are, and both of them are racking up a lot of miles.

JAY LENO: Yeah.

THE PRESIDENT: Joe tends to go more to Pittsburgh.

JAY LENO: Right.

THE PRESIDENT: Hilary is going to Karachi.

JAY LENO: Right.

THE PRESIDENT: But they've both got important work to do. They are doing great.

JAY LENO: Yeah. But you don't want to say "big f'ing deal" in Karachi. That could have some problems. Now, I want to -- now, the approval rating -- the bad news is your approval rating is

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41 percent.

THE PRESIDENT: Right.

JAY LENO: The good news is you are still three times better than Congress. They are at 13 percent. So explain. I mean -- so if you are grading on a curve -- if you are grading on a curve, you are killing. You are just killing.

THE PRESIDENT: You know, look, we have gone through the worst financial crisis, the worst economic crisis since the Great Depression. People are hurting out there, and they've been hurting out there for a while. And people were having a tough time even before the crisis. You know, incomes, wages, we are all flat. Costs of everything from college to health care to gas to food, all of it was going up, and so people were feeling a lot of pressure even before this crisis. And so I -- every day I wake up saying to myself, "Look, you can't expect folks to feel satisfied right now." I'm very proud of the work that we've done over the last two or three years, but they are exactly right. We've got more work to do, and that's why, right now, for example, our biggest challenge is to make sure that we are putting people back to work. We stabilize the economy, but there are not enough people working. And so we put forward this jobs bill that has proposals that traditionally have been supported by Democrats and Republicans. I mean, we've got -- we are putting construction workers back to work rebuilding our roads and our bridges. I suspect folks here this L.A. would say that there are some roads that could be fixed. You know, that's just my guess.

(Applause.)

JAY LENO: See, here's the problem. And the thing that angers me and I think a lot of Americans is I didn't like what they did to President Bush. I don't like when they do it to you. When Mitch McConnell says, "Our goal is to make this guy a one-time president." I mean, why -- does that anger you? How is that a goal? That doesn't help the --

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THE PRESIDENT: Look, I think the things that folks across the country are most fed up with, whether you are a Democrat, Republican, Independent, is putting party ahead of country or putting the next election ahead of the next generation.

(Applause.)

And so what we need -- there are some real differences between the party in terms of where we want to take the country. I believe we've got to invest in education and research and infrastructure in order for us to succeed in the long-term, and I think that there's nothing wrong with us closing the deficit and making our investments by making sure that folks like you and me who have been incredibly blessed by this country are doing a little more of a fair share. They have a different philosophy. We can argue about that, but on things that, traditionally, we have agreed to like infrastructure, like tax cuts for small businesses to give them incentives to hire veterans, on things that traditionally haven't been partisan, we should be able to get together. The election is 13 months away. We've got a lot of time, and the last thing we need to be doing is saying to the American people that there's nothing we can do until the next election. We've got to do some work right, putting people back to work.

(Applause.)

JAY LENO: Well, you are by passing congress now and giving these executive orders.

THE PRESIDENT: Yeah.

JAY LENO: Explain that. Explain that.

THE PRESIDENT: Well, look, if Congress is gridlocked, if the Republicans in Congress refuse to act, then there is going to be a limit to some of the things we'd like to do, but there's still some actions that we can take without waiting for Congress. So yesterday, for example, we announced working with some of the federal housing agencies. Let's make it easier for people to refinance. A lot of these folks, because their homes are

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underwater now, their mortgages are higher than what their homes are worth, a lot of them are having trouble getting refinanced by their banks. And so they are locked in at high rates when rates should be a lot lower for them. We've said, "Let's figure out a way to waive some of the fees, waive some of the provisions that are preventing them from being able to refinance." And that could mean an extra couple thousand bucks in people's pockets right now. They then have that money to buy a computer for their kid for school or what have you, and that will get the economy going again. So we are going to look for opportunities to do things without Congress. We can't afford to keep waiting for them if they are not going to do anything. On the other hand, my hope is that, at some point, they start listening to the American people, and we can work with Congress as well.

(Applause.)

JAY LENO: Well, you are talking about listening to the American people. As President, you look out your window. Do you see this occupy Wall Street movement? What do you make of it from your —

THE PRESIDENT: Look, people are frustrated, and that frustration has expressed itself in a lot of different ways. It expressed itself in the Tea Party, it's expressing itself in occupy Wall Street. I do think that what this -- what this signals is that people in leadership, whether it's corporate leadership, leaders in the banks, leaders in Washington, everybody needs to understand that the American people feel like nobody is looking out for them right now. And, traditionally, what held this country together was this notion that if you work hard, if you are playing by the rules, if you are responsible, if you are looking out for your family, you are showing up to work every day and doing a good job, you've got a chance to get ahead. You've got a chance to succeed. And, right now, it feels to people like the deck is stacked against them, and the folks in power don't seem to be paying attention to that.

So if everybody is tuned in to that message and we are working

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every single day to figure out how do we give people a fair shake
and how do we make sure that everybody is doing their fair share,
then people won't be occupying the streets because they will have
a job and they will feel like they are able to get a head. But,
right now, they are frustrated. And part of my job over the next
year is to make sure that if they are not seeing it out of
Congress at a minimum, they are seeing it out of their President,
somebody who is going to be fighting for them.

JAY LENO: We'll take a break. When we come back, we'll talk
more with the President, ask him some personal issues. We'll get
to an issue, of course, that's very big here in Hollywood, this
issue on the Kardashians. We'll find out more about that.

Okay. Right back with President Obama right after this.

(Commercial break.)

JAY LENO: Welcome back to our President, President Obama. We're
going to talk about some lighter stuff, about dealing with the
pressure of being President. Now, I know you quit smoking.

THE PRESIDENT: I did. I did, definitely.

JAY LENO: It's out.

THE PRESIDENT: It's out.

JAY LENO: All right. Remember you are under oath.

THE PRESIDENT: I am.

JAY LENO: So tell me how you cope with the daily pressures. How
does --

THE PRESIDENT: Big on exercise.

JAY LENO: Yeah.

THE PRESIDENT: Work out in the morning with Michelle. We've got
a little gym in the White House. She's in better shape than me,
though. So --

JAY LENO: And she's very competitive.

THE PRESIDENT: She is.

JAY LENO: Yeah.

THE PRESIDENT: And so it's embarrassing sometimes.

JAY LENO: Yeah.

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THE PRESIDENT: Yeah. She'll get up there a half an hour earlier than me. She will have already run 10 miles or something.

JAY LENO: You know --

THE PRESIDENT: And I'm, you know --

JAY LENO: Speaking of that --

THE PRESIDENT: -- staggering up to the gym.

JAY LENO: As President, everything is public. And I turned on the news last night, and I see my President at a very famous restaurant here in Los Angeles called "Roscoes Chicken and Waffles." Now, I think you ordered the Country Boy Special. What is that?

THE PRESIDENT: Wings and waffles.

JAY LENO: Wings.

THE PRESIDENT: With hot sauce.

JAY LENO: So the fried chicken wings, waffles with syrup, and wings with hot sauce. Now, is Michelle -- I mean, she's sitting back, watching the news. Here you are scarfing down the waffles.

THE PRESIDENT: Originally, it was just a way to be out there and say hi to everybody, but --

JAY LENO: Yeah.

THE PRESIDENT: -- once we got in the car, it smelled pretty good.

JAY LENO: Yeah.

THE PRESIDENT: So, I mean, I'm eating the wings. You've got the hot sauce on there.

JAY LENO: Yeah.

THE PRESIDENT: The fancy presidential limousine --

JAY LENO: Yeah.

THE PRESIDENT: -- smelling like chicken.

JAY LENO: Yeah.

(Applause.)

THE PRESIDENT: And we were actually going to a fund-raiser --

JAY LENO: Yeah.

THE PRESIDENT: -- with Will Smith and Jada.

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JAY LENO: Yeah.

THE PRESIDENT: And I didn't realize it was so close. So, suddenly, we pull up, and my sleeves were rolled up, and I got a spot on my tie. And my fingers are -- I'm looking for one of those Wet Ones, you know, to see if I have chicken on my teeth.

Anyway, it was not elegant --

JAY LENO: No.

THE PRESIDENT: -- but outstanding chicken.

JAY LENO: Outstanding chicken.

THE PRESIDENT: Outstanding chicken and --

JAY LENO: Now --

THE PRESIDENT: Now, here's the secret, though. Here's the secret. Michelle, she's done a great job with this healthy eating --

JAY LENO: Right.

THE PRESIDENT: - and let's move and get exercise. But Michelle, as quiet as this is kept, she loves french fries. She loves pizza. She loves chicken. Her point is just in moderation.

JAY LENO: Right.

THE PRESIDENT: So she does not get upset as long as, you know, it's not every day.

JAY LENO: Right, right. Okay.

THE PRESIDENT: And that's the theory. She doesn't mind the girls having a -- having a snack, although Halloween is coming up.

JAY LENO: Yeah.

THE PRESIDENT: And she's been giving, for the last few years, kids fruit and raisins in a bag.

JAY LENO: Ooh.

THE PRESIDENT: And I said, "The White House is going to get egged" --

JAY LENO: Right.

THE PRESIDENT: -- "if this keeps up. We are going to" --

JAY LENO: Yeah. You've got to go -- yeah.

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THE PRESIDENT: "You need to throw some candy in there."

JAY LENO: Yeah, moderation. Come on. Exactly. Exactly.

THE PRESIDENT: A couple Rees e's Pieces or something.

JAY LENO: Yeah.

THE PRESIDENT: Yeah.

JAY LENO: Okay. You turned 50 recently.

THE PRESIDENT: I did.

JAY LENO: Okay. Biggest gripe?

THE PRESIDENT: My hair is getting a little gray.

JAY LENO: Yeah, it is getting a little gray, a touch in there, I see.

THE PRESIDENT: But, you know, overall, I feel great. You know,

Michelle thinks I look old, but that's okay. She still thinks --

she still thinks I'm cute. That's what she tells me.

JAY LENO: How are the girls doing, Malia and Sasha?

THE PRESIDENT: The girls are doing wonderfully. You know, they

are growing -- they just grow up so fast. They are thriving.

They -- it's amazing how steady, well-mannered, kind they are.

You know, they are just good people.

JAY LENO: Yeah.

THE PRESIDENT: And part of this, I think, is a testimony to

Michelle, also having my mother-in-law in the house --

JAY LENO: Oh, yeah.

THE PRESIDENT: -- because she doesn't take any mess. So --

JAY LENO: Do they have cell phones?

THE PRESIDENT: We have -- Malia got a cell phone, but they're not

allowed to use it during the week just like they are not allowed

to watch TV during the week.

JAY LENO: Really? Boo. Boo. Really? Wow.

THE PRESIDENT: During the weekends, they get their TV time,

but --

JAY LENO: Oh. Speaking of TV time --

THE PRESIDENT: Yes.

JAY LENO: -- now, you recently said that you didn't like the

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girls watching the Kardashians.

THE PRESIDENT: That's --

JAY LENO: Have you seen the show?

THE PRESIDENT: No, I have not seen the show .

JAY LENO: Ah-hah. So you are making a judgment without ever seeing the show.

THE PRESIDENT: I am probably a little biased against reality TV partly because, you know, there's this program on C-SPAN called "Congress" --

JAY LENO: Right.

THE PRESIDENT: -- that is -- that I -- that I -- that --

(Laughter and applause.)

No, I have not seen the show. And do you recommend it, Jay? Do you think that --

JAY LENO: I just think it's a wonderful show. I don't know if it's something -- I don't know. Has Michelle seen it? Have the girls ever seen it?

THE PRESIDENT: I think the girls have seen it, yeah.

JAY LENO: Now, have you been watching the GOP debates?

THE PRESIDENT: I'm going to wait until everybody is voted off the island before --

(Applause.)

Once they narrow it down to one or two, I'll start paying attention.

JAY LENO: Well, I know you are a huge basketball fan. This lockout, this is really depressing.

THE PRESIDENT: It's heartbreaking.

JAY LENO: What needs to be done here? Who is wrong?

(Laughter.)

THE PRESIDENT: Well, look, if you look at the NFL, they were able to settle theirs.

JAY LENO: Yeah.

THE PRESIDENT: And I think they understood. Players were making millions of dollars. Owners, some of us are worth billions of

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dollars. We should be able to figure out how to split a nine-billion-dollar pot so that our fans, who are allowing us to make all of this money, can actually have a good season. And I think the owners and the basketball players need to think the same way.

(Applause.)

JAY LENO: Do you think the whole season is going to go? I mean, it's two weeks, and it's another -- it's a month.

THE PRESIDENT: I'm concerned about it. I think they need to just remind themselves that the reason they are so successful --

JAY LENO: Yeah.

THE PRESIDENT: -- is because a whole bunch of folks out there love basketball. And, you know, basketball has actually done well, but these kinds of lockouts a lot of times take a long time to recover from them.

JAY LENO: Exactly. Now, who have you got in the World Series?

THE PRESIDENT: You know, my White Sox are not in there. So I just want to see a good game.

JAY LENO: I'm with you.

THE PRESIDENT: I do not take sides unless it's my side.

JAY LENO: Wow. Wow.

(Laughter.)

THE PRESIDENT: Do not take sides unless it's your side.

JAY LENO: Well, Mr. President, it has been an honor and a privilege to have you here.

THE PRESIDENT: Always a pleasure.

JAY LENO: Say hello to Michelle and the family. Thank you so much.

THE PRESIDENT: Thank you.

JAY LENO: We'll be right back with music from Yo-Yo Ma.

(Applause.)

By David Nakamura | 08:52 AM ET, 10/26/2011

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Exhibit 6

to the Declaration of Colin Wicker

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October 06, 2011

Panetta Praises Libya Campaign, Thanks Troops

by Luis Ramirez

U.S. Secretary of Defense Leon Panetta is praising the NATO mission in Libya and has thanked troops for their campaign in the north African country. Panetta stopped at military bases in Naples and Sicily to assess the operation after attending a conference of NATO defense ministers in Brussels, where alliance officials said the mission is in its final stages.

The United States and NATO are weighing when to end the operation in Libya, and that question is what brought Panetta to military facilities in southern Italy involved in the Libya operation.

The defense secretary met behind closed doors with senior commanders in charge of the campaign. A senior defense official said much of the decision on when to end the mission depends on the outcome of fighting in Sirte. The official said Panetta and the commanders also discussed the importance of ensuring that the new Libyan leadership is able to provide security for civilians.

During his visit Friday to Allied Joint Force Command Headquarters in Naples, Panetta praised the mission that has helped Libyan revolutionary fighters drive the forces of former leader Moammar Gadhafi out of most of Libya. He said critics of the operation have been proven wrong.

In a session with U.S. troops, Panetta - who recently took over as Defense Secretary after serving as director of the Central Intelligence Agency - thanked the troops, and in the process made reference to the CIA's possession of Predator drones.

"Having moved from the CIA to the Pentagon, obviously I have a hell of a lot more weapons available to me in this job than I had in the CIA, although the Predators aren't bad," Panetta said.

He said the U.S. military's greatest asset are its soldiers.

"I need to tell you that for all the planes, for all the ships, for all the submarines, for all of the sophisticated technology that we have, the most important weapon I have are the men and women who are willing to put on the uniform and fight for this country," he said.

At a question-and-answer session, and in the frank style for which Panetta has become known, he joked with a soldier who raised his concerns about being stretched and overworked.

"You're telling me you're working your ass off?"

Panetta also addressed soldiers' concerns on whether Iraq's government will grant immunity to any U.S. troops who might remain in the country beyond December, when the U.S. is due to complete its pullout.

"I want to make damned sure that you're protected. So, we have to make that clear to the people we deal with that if they want the benefits of what we can provide, if they want the assistance, they want the training, if they want the operational skills that we can provide, then I think they have to understand that they've got to give us some protections in that process," said Panetta.

Panetta then flew to the Sigonella Naval Air Base in Sicily - from where air missions to Libya are launched - to thank troops of the multi-national force. It was his last stop on a tour that also included visits to Israel, the Palestinian territories, and Egypt.

<http://www.voanews.com/content/panetta-praises-libya-campaign-thanks-troops-131370363/146328.html>

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Exhibit 7

to the Declaration of Colin Wicker

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Remarks of CIA General Counsel Stephen W. Preston at Harvard Law School

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Thank you, Professor [Jack] Goldsmith, etc.

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For those working at the confluence of law and national security, the President has made clear that ours is a nation of laws and that an abiding respect for the rule of law is one of our country's greatest strengths, even against an enemy with only contempt for the law. This is so for the Central Intelligence Agency no less than any other instrument of national power engaged in the fight against al-Qa'ida and its militant allies or otherwise seeking to protect the United States from foreign adversaries. And that is the central point of my remarks this afternoon: Just as ours is a nation of laws, the CIA is an institution of laws and the rule of law is integral to Agency operations.

i.

Before we get to the rule of law, I want to spend a moment on the business of the CIA.

I will start off with two observations that I think are telling:

First, the number of significant national security issues facing our country may be as great today as it has ever been. Just think of what the President and his national security team confront every day: the ongoing threat of terrorist attack against the homeland and U.S. interests abroad; war in Afghanistan and, until recently, Iraq; complex relations with countries like Pakistan and India; the challenges presented by Iran and North Korea; the emergence of China and its growing economic and military power; the growing number of computer network attacks originating outside the United States; profound change in the most volatile area of the world, the greater Middle East, with new regimes in Tunisia, Egypt, and Libya, and continuing violence in Syria; the financial challenges faced by countries in the Euro zone; and the violence associated with drug trafficking in this hemisphere. And the list could go on.

Second, the national security issues facing our country today tend to be intelligence-intensive. Intelligence is fundamental to the efforts of policy-makers to come to grips with nearly all of the issues I have just listed – whether international terrorism, the proliferation of Weapons of Mass Destruction, the conduct of non-state actors and rogue states outside the community of nations, cyber security, or the rise of new powers. The nation's leaders cannot fully understand these issues or make informed policy on these issues without first-rate intelligence.

Putting these two dynamics together – the multitude of different national security issues and the fact that intelligence is critical to almost all of them – it may be that intelligence has never been more important than it is today. At the very least, the intel business is booming.

So what does the CIA do? Our work boils down to three jobs. To quote from the National Security Act of 1947:

- Agency operators, *quote*, “collect intelligence through human sources and by other appropriate means.” This is also referred to as foreign intelligence collection or, at times, espionage.
- Agency analysts, *quote*, “correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence.” This is also referred to as all-source analysis and national intelligence reporting, and it requires that the products of all intelligence disciplines be integrated.

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- And the Agency performs such other functions and duties as the President may direct, which may include activities to influence conditions abroad, *quote*, “where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly.” In other words, covert action.

ii.

If that is, in essence, the business of the CIA, what about the rule of law? And, in particular, why do I say that the rule of law is integral to Agency operations? The answer is that all intelligence activities of the Agency must be properly authorized pursuant to, and must be conducted in accordance with, the full body of national security law that has been put in place over the six-plus decades since the creation of the CIA. And all such activities are subject to strict internal and external scrutiny. This breaks down into three propositions:

First, all intelligence activities of the Agency must be properly authorized pursuant to the law. In this respect, the constraints on the Agency exceed those on virtually any organization in the private sector. A business enterprise is free to do whatever it wants in pursuit of profit, shareholder value, or what-have-you, provided it does not violate the proscriptions of positive law. By contrast, the CIA cannot do anything without an affirmative grant of legal authority to engage in that activity. In some cases, such as foreign intelligence collection, the grant may be broad; in others, such as covert action, the grant of authority might be quite narrow and specific, and subject to numerous conditions. In any event, before any step is taken, the threshold question asked when considering a contemplated activity is, do we have the legal authority to act?

Second, all intelligence activities of the Agency must be conducted in accordance with the law. Assuming there is legal authority to act in the first place, all steps taken must comply with applicable prohibitions and limitations embodied in the United States Constitution, federal statutes, Executive Orders and other Presidential directives, and Agency regulations. To single out some of them:

The first, fourth, and fifth amendments to the Constitution, which protect the rights of American citizens and certain others.

- The National Security Act of 1947 and the Central Intelligence Agency Act of 1949, which establish the CIA, define its missions, and delineate its role within the Intelligence Community – including the so-called “law enforcement proviso,” which bars the Agency from exercising law enforcement powers or performing internal security functions.
- Executive Order 12333, Attorney General-approved guidelines and internal Agency regulations, which contain a host of restrictions on intelligence activities in general and those of the CIA in particular, including the assassination ban in Executive Order Twelve-Triple-Three. These directives include numerous provisions intended to protect privacy and civil liberties, including a prohibition against collection in the United States for the purpose of acquiring information on the domestic activities of U.S. Persons; limitations on acquisition, retention and use of information about U.S. Persons; conditions on arrangements with U.S. institutions of higher learning; and conditions on unwitting use of U.S. Persons in intelligence activities and undisclosed participation in organizations in the United States.
- And, finally, the Foreign Intelligence Surveillance Act and the FISA Amendments Act, which govern certain activities in the nature of electronic surveillance and physical searches.

Beyond all these, international law principles may be applicable, as well, and I will come back to this later.

Third, all intelligence activities of the Agency are subject to strict internal and external scrutiny.

It is true that a lot of what the CIA does is shielded from public view, and for good reason: much of what the CIA does is a secret! Secrecy is absolutely essential to a functioning intelligence service, and a functioning intelligence service is absolutely essential to national security, today no less than in the past. This is not lost on the federal judiciary. The courts have long recognized the state secrets privilege and have consistently upheld its proper invocation to protect intelligence sources and methods from disclosure. Moreover, federal judges have dismissed cases on justiciability or political question grounds, acknowledging that the courts are, at times, institutionally ill-equipped and constitutionally incapable of reviewing national security decisions committed to the President and the political branches.

While public and judicial scrutiny may be limited in some respects, it simply does not follow that Agency activities are immune from meaningful oversight. First, there is direct supervision by the National Security Council and the President, who, after all, not only is constitutionally responsible for keeping the American people safe, but also, *quote*, “shall take Care that the Laws be faithfully executed.” Beyond that, consider this catalog of Agency overseers:

- The intelligence oversight committees of the Senate and House of Representatives. We are bound by statute to ensure that these two committees are kept, *quote*, “fully and currently informed” with respect to the entire range of intelligence activities, including covert action. They are afforded visibility into Agency operations that far exceeds the usual scope of congressional oversight of federal agencies. Think about this: during the last Congress, the Agency made, on average, more than two written submissions and two live appearances per day, 365 days a year.
- The Foreign Intelligence Surveillance Court, comprised of Article III judges, provides judicial supervision with respect to certain activities in the nature of electronic surveillance and physical searches.

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- The President's Intelligence Advisory Board, an independent component of the Executive Office of the President, reviews and assesses the performance of the CIA and other elements of the Intelligence Community.
- The Intelligence Oversight Board is a committee of the President's Intelligence Advisory Board to which the CIA reports apparent legal violations and other significant or highly sensitive matters that could impugn the integrity of the Intelligence Community.
- The Office of the Director of National Intelligence and, new within the past year, the Inspector General for the Intelligence Community.
- And the Agency's own statutorily independent Inspector General – the only other Agency official, after the Director and the General Counsel, nominated by the President and confirmed by the Senate.
- Last, but by no means least, there is the U.S. Department of Justice, to which the CIA is required to report all possible violations of federal criminal laws by employees, agents, liaison, or anyone else.

iii.

Okay, I have described the legal regime in which CIA operates. Now I would like to illustrate how the law is applied in practice, by reference to a hypothetical case.

Suppose that the CIA is directed to engage in activities to influence conditions abroad, in which the hand of the U.S. Government is to remain hidden, – in other words covert action – and suppose that those activities may include the use of force, including lethal force. How would such a program be structured so as to ensure that it is entirely lawful? Approaches will, of course, vary depending on the circumstances – there is no single, cookie-cutter approach – but I conceive of the task in terms of a very simple matrix. First is the issue of whether there is legal authority to act in the first place. Second, there is the issue of compliance with the law in carrying out the action. For each of these issues, we would look first, and foremost, to U.S. law. But we would also look to international law principles. So envision a four-box matrix with “U.S. Law” and “International Law” across the top, and “Authority to Act” and “Compliance in Execution” down the side. With a thorough legal review directed at each of the four boxes, we would make certain that all potentially relevant law is properly considered in a systematic and comprehensive fashion.

Now, when I say “we,” I don't mean to suggest that these judgments are confined to the Agency. To the contrary, as the authority for covert action is ultimately the President's, and covert action programs are carried out by the Director and the Agency at and subject to the President's direction, Agency counsel share their responsibilities with respect to any covert action with their counterparts at the National Security Council. When warranted by circumstances, we – CIA and NSC – may refer a legal issue to the Department of Justice. Or we may solicit input from our colleagues at the Office of the Director of National Intelligence, the Department of State, or the Department of Defense, as appropriate.

Getting back to my simple matrix ...

(1) Let's start with the first box: Authority to Act under U.S. Law.

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

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

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

(2) Next we look at Authority to Act with reference to International Law Principles.

Here we need look no further than the inherent right of national self-defense, which is recognized by customary international law and, specifically, in Article 51 of the United Nations Charter. Where, for example, the United States has already been attacked, and its adversary has repeatedly sought to attack since then and is actively plotting to attack again, then the United States is entitled as a matter of national self-defense to use force to disrupt and prevent future attacks.

The existence of an armed conflict might also provide an additional justification for the use of force under international law.

(3) Let's move on to Compliance in Execution under U.S. Law.

First, we would make sure all actions taken comply with the terms dictated by the President in the applicable Finding, which would likely contain specific limitations and conditions governing the use of force. We would also make sure all actions taken

comply with any applicable Executive Order provisions, such as the prohibition against assassination in Twelve-Triple-Three. Beyond Presidential directives, the National Security Act of 1947 provides, *quote*, “[a] Finding may not authorize any action that would violate the Constitution or any statute of the United States.” This crucial provision would be strictly applied in carrying out our hypothetical program.

In addition, the Agency would have to discharge its obligation under the congressional notification provisions of the National Security Act to keep the intelligence oversight committees of Congress “fully and currently informed” of its activities. Picture a system of notifications and briefings – some verbal, others written; some periodic, others event-specific; some at a staff level, others for members.

(4) That leaves Compliance in Execution with reference to International Law Principles.

Here, the Agency would implement its authorities in a manner consistent with the four basic principles in the law of armed conflict governing the use of force: Necessity, Distinction, Proportionality, and Humanity. Great care would be taken in the planning and execution of actions to satisfy these four principles and, in the process, to minimize civilian casualties.

So there you have it: four boxes, each carefully considered with reference to the contemplated activity. That is how an Agency program involving the use of lethal force would be structured so as to ensure that it satisfies applicable U.S. and international law.

iv.

Switching gears, let us consider a real world case in point: the operation against Usama bin Laden in Abbottabad, Pakistan, on May 2nd [local time]. My purpose is not to illustrate our hypothetical program, but to show that the rule of law reaches the most sensitive activities in which the Agency is engaged.

The bin Laden operation was, of course, a critically important event in the fight against al-Qa’ida. Much has been said and written about the operation in this regard, and I won’t dwell on it now. Rather, I want to focus on the legal aspect of the operation. But if you will indulge me, there are a few other aspects of this historic event that warrant mention up front.

First, finding bin Laden was truly a triumph of intelligence. It’s a long story – too long to tell here – but it begins nine years earlier, with the *nom de guerre* of an al-Qa’ida courier. Through painstaking collection and analysis over several years, the Agency and its partners in the Intelligence Community determined his true name. Finding the courier and then his residence in Abbottabad took another year of hard work. Instead of a small house from which the Agency hoped to follow him to bin Laden, the Abbottabad compound suggested immediately the possibility that bin Laden was living there. Extraordinarily high walls, barbed wire, no telephone or internet service, trash burned instead of put out for collection like everybody else’s, children not going to school. Then we learned that an additional family matching the expected profile of bin Laden’s family in flight was living at the compound, never left it, and was unknown to the neighbors. And we learned that the courier was, nine years later, still working for al-Qa’ida. It all added up – the only conclusion that made sense of it all was that bin Laden was there. But there was no positive ID.

Which leads to the next point: This was also an example of difficult and momentous Presidential decision-making. There was strong circumstantial evidence that bin Laden was there, but not one iota of direct evidence. No eyes-on identification. And the risks and potential consequences of conducting an operation deep inside Pakistan were enormous, particularly if the operation failed. The President made a sound decision and, in my mind, a gutsy decision.

And, finally, the operation itself was a great triumph for our military. More dramatic than any work of fiction: the tension at the outset, the sickening feeling when one of the helos went down, the seeming eternity waiting to find out if the objective was achieved, and the relief when the last helo lifted off with the force unharmed. My hat’s off to these Special Unit operators – incredibly professional. When the helo went down, they didn’t skip a beat. They had trained for all contingencies and slipped right into Plan B. Then there’s the guy first in the room with bin Laden. Charged by two young women. Trained to expect suicide bombers in these circumstances. He grabbed them, shoved them into a corner and threw himself on top of them, shielding them from the shooting and shielding the guys behind him from the blast if they detonated. His quick thinking, and raw bravery, saved two lives that did not have to end that night.

I am sure the role of the lawyers is not the first thought to come to mind when you think of the bin Laden operation. Admittedly, it may not be the most fascinating aspect, but it is illustrative of the careful attention to the law brought to bear on our country’s most sensitive counterterrorism operations.

Because of the paramount importance of keeping the possibility that bin Laden had been located a secret and then of maintaining operational security as the Abbottabad raid was being planned, there were initially very few people in under the tent. So I cannot say the operation was heavily lawyered, but I can tell you it was thoroughly lawyered. From a legal perspective, this was like other counterterrorism operations in some respects. In other respects, of course, it was extraordinary. What counsel concentrated on were the law-related issues that the decision-makers would have to decide, legal issues of which the decision-makers needed to be aware, and lesser issues that needed to be resolved. By the time the force was launched, the U.S. Government had determined with confidence that there was clear and ample authority for the use of force, including lethal force, under U.S. and international law and that the operation would be conducted in complete accordance with applicable U.S. and international legal restrictions and principles.

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As a result, the operation against bin Laden was not only militarily successful and strategically important, but also fully consistent with all applicable law.

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When I talk about CIA and the rule of law, I speak of the business of the Agency and sometimes draw an analogy between the Agency and a regulated business – a rule-bound and closely watched business at that. But I have to admit that the analogy is seriously flawed in at least one respect: the CIA is not a business enterprise. It is, of course, a secret intelligence service charged with protecting the United States against foreign adversaries. It operates at the very tip of the spear in the fight against al-Qa'ida and its affiliates and adherents. The work of the CIA is not measured in dollars. Too often the measure is taken in lives lost – like the seven officers killed a little more than two years ago at a forward operating base in eastern Afghanistan and others whose stars consecrate our Memorial Wall. But the measure is also taken in lives saved, which are countless. As I stand before you, I am deeply grateful for what the good men and women who are the CIA do every day – literally, the sacrifices they make – to keep you and me, and our families, safe and secure. All of us should be.

Thank you very much.

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