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Obama drones kill two citizens: Where's the law?

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The New York Times' incisive public editor, Arthur Brisbane, asks a question that has not been raised by any Republican battlers for the presidency. Congressional Democrats loyal to the incumbent are also silent:

"There remains," says Brisbane, "no clear accounting of the legal principles or the process the executive branch is applying to support secret killings by the CIA, which carries out strikes far from the battlefield — in this case against a native-born American. The CIA will not even acknowledge that the program exists" (The New York Times, Oct. 8).

Two U.S. citizens were killed when the Hellfire missiles struck. Alongside Anwar al-Awlaki was Samir Khan, editor of a magazine in the Arabian Peninsula that was part of the al-Qaida operation. As the Times reported, "he was apparently not on the targeting list, making his death collateral damage."

The term, "collateral damage," is used when innocent civilian victims of our drones are wiped out in Pakistan and Afghanistan. Since we are forbidden to know what crimes this al-Qaida promoter was charged with, it may well be that he was in the wrong place at the wrong time.

His family has raised the specter of the Fifth Amendment, which says: none of us can be "deprived of life, liberty or property without due process of law." Samir Khan's family asks (The New York Times, Oct. 8) "whether it was necessary for the government to have 'assassinated two of its citizens. Was this style of execution the only solution? Why couldn't there have been a capture and trial?'"

I add: Is this still America?

But we now know a shadow of the process by which these two Americans were exiled from our rule of law. Anonymous administration leakers have told Reuters (and other media) that "American militants" (no further definition of that word) "are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions."

Of course, in the reign of Obama, "there is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council, several current and former officials said" (Reuters.com, Oct. 5). In a whisper?

Also, and this will not surprise you, “Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate.”

I hear an echo of our Declaration of Independence addressing King George III: “He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws.”

Now dig this serpentine turn of criticism of the Obama administration’s killing of its citizens, from the Reuters story of the secret hit list from on high: “Conservatives criticized Obama for refusing to release a Justice Department legal opinion that reportedly justified killing al-Awlaki.” (Don’t forget Samir Khan.) “They accuse Obama of hypocrisy, noting his administration insisted on publishing Bush-era administration legal memos justifying the use of interrogation techniques many equate with torture, but (Obama) refused to make public its rationale for killing a citizen without due process.”

Behold, look who is entering this debate! John Yoo, the main author — when he was with the Bush Justice Department’s Office of Legal Counsel — of the legal memos that became known globally as “the torture memos.”

In the Oct. 11 New York Post (“Still Confusing Terror & Crime”), the proudly notorious John Yoo writes in praise of Obama’s killing of Anwar al-Awlaki:

“We should be thankful that Obama officials have quietly put aside the arguments they made during the Bush years that any terrorist outside the Afghani battlefield was” (contrary to Bush-Cheney) “a criminal suspect who deserved his day in federal court (under the Fifth Amendment).” The tortures Yoo justified did not have judicial approval. He said they weren’t necessary in the war on terror.

Yoo lessens his praise of this Obama assassination because “according to the reports, the Obama administration believed that force could only be used against al-Awlaki because arrest was impractical and he posed an imminent threat to the United States. This is plainly wrong.”

Why, Yoo? His lethal answer: “There is no legal reason why a nation at war must try to apprehend an enemy instead of shooting at him first.”

Years ago, I had a chance to debate Yoo during a panel discussion at Princeton University (The Woodrow Wilson School). His only response to me, with a smile: “I do enjoy reading Nat Hentoff on jazz.”

But jazz, professor, is the very essence of free, open expression.

To return to public editor Arthur Brisbane of The New York Times: “The public has a right to know, and assess, the legal rationale for these extraordinary and highly visible state killings. The public should have documented details concerning civilian casualties

of the drone strikes. And The Times should do all it can to force this information out into the open."

Not only the Times. All media, blogs, congressional committees, et al — and those citizens aware that, as David Cole warns ("A Secret License to Kill" New York Review of Books Sept. 19), if "we continue to justify such practices in only the vaguest of terms, we should expect other countries to take them up, and almost certainly in ways we will not find to our liking."

Killer drones are being built and perfected in many countries in the world, and not only by our friends.