

ACLU Sues CIA Over Drone Killings

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Theme: [Law and Justice](#), [Militarization and WMD](#)

Unmanned aerial vehicles (UAVs) have been around since the Vietnam era. They were used as reconnaissance platforms. In the 1980s, Harpy air defense suppression system radar killer drones were employed. In the Gulf War, unmanned combat air systems (UCAS) and X-45 air vehicles were used. Others were deployed in Bosnia in 1995 and against Serbia in 1999. America's new weapon of choice is now commonplace in Iraq, Pakistan, Afghanistan, Libya, Somalia, Yemen, elsewhere abroad, and domestically for law enforcement and surveillance. Escalated domestic and foreign use is planned.

A previous article called drone warfare remote control killing like sport. From distant or nearby command centers, operators wage virtual war.

They dismissively ignore human carnage. It shows up as computer screen blips. They look no different from video game images. The difference, of course, is people die.

They're mostly noncombatants. Studies show militants are successfully hit about 2% of the time. Others are wrongly targeted or happen to be in the wrong place at the wrong time.

On January 13, 2010, the ACLU petitioned Washington under the Freedom of Information ACT (FOIA). It requested legal justification claimed for conducting predator drone targeted killings abroad.

In March 2010, the [ACLU](#) filed a Freedom of Information Act (FOIA) lawsuit. As part of its challenge, it collected about 200 on-and-off the record public statements. Former and current US officials made them.

It "demand(ed) that the government disclose the legal basis for its use of unmanned drones to conduct targeted killings overseas."

"In particular, the lawsuit asks for information on when, where and against whom drone strikes can be authorized, the number and rate of civilian casualties and the other basis information essential for assessing the wisdom and legality of using armed drones to conduct targeted killings."

In court briefs, Justice Department lawyers claimed revealing sensitive documents would compromise national security. How many times before have we heard that? It doesn't wash.

The same excuse is given in political prosecution cases. Secret evidence is used to convict. Defense attorneys and defendants can't contest it. Who knows if it exists?

On September 13, [ProPublica.org](#) headlined "How the Gov't Talks About a Drone Program it Won't Acknowledge Exists," saying:

Drones are Washington's weapon of choice. They're used for targeted assassinations. No

one anyway is safe. Eye in the sky predator drones spot victims, aim, fire and kill.

Administration officials claim drone warfare works. It does so sans details, often staying anonymous, yet claiming “tacit credit” at the same time.

“A White House spokesman declined to comment to ProPublica on the FOIA suit or on the CIA’s drone program.” Silence is official policy on what’s widely acknowledged.

Vagueness substitutes for specifics. For example, in October 2011, former CIA director/current Defense Secretary Leon Panetta said:

“I have a hell of a lot more weapons available to me in this job than I had at the CIA, although the Predators aren’t bad.” Did he acknowledge predator drone killings or their use to surveil and gather intelligence?

Months earlier he said Pakistan-based Al Qaeda elements were beaten back in part from “the most aggressive operation the CIA had been involved in in our history.” Did he mean by drones or other means?

At the same time, The New York Times reported in [May](#) that the CIA considers all military-aged males killed combatants. Targeting them is fair game. Rule of law principles don’t apply. Killers and higher-up superiors aren’t prosecuted.

In his book titled [“The ‘Good Soldier’ On Trial: A Sociological Study of Misconduct by the US Military Pertaining to Operation Iron Triangle, Iraq,”](#) Professor Stjepan Mestrovic discussed violations of US and international law.

He documented “hundreds of instances” of lawless and other “dubious behavior on the part the government.”

US brigade commander Col. Michael Steele was one of many examples. He ordered every military-aged Iraqi killed on sight. Doing so also violates the US Army Field Manual (FM) 27-10.

Paragraph 498 says any person, military or civilian, who commits a crime under international law is responsible for it and may be punished.

Paragraph 499 defines a war crime. Paragraph 500 refers to a conspiracy, attempts to commit it, and complicity with respect to international crimes.

Paragraph 509 denies the defense of superior orders in the commission of a crime, and paragraph 510 denies the defense of an “act of state” to absolve them.

These provisions apply to all US military and civilian personnel. They include top commanders, the Secretary of Defense, his subordinates, CIA and other intelligence officials, as well as the president and vice president of the United States.

In other words, no one is exempt on this or other fundamental rule of law principles. Target killings are lawless. Habeas and due process still apply. Exemptions are prohibited.

The ACLU sued the Defense, State, and Justice Departments. They stonewalled information requests. “(N)or have they given any reason for withholding documents. The CIA answered

the ACLU's request by refusing to confirm or deny the existence of any relevant documents."

At the time, the CIA wasn't sued. At first, the ACLU appealed its non-response to the Agency Release Panel. In June 2010, it filed suit. It argued that CIA's response wasn't lawful "because the CIA Director and other officials....publicly acknowledged the existence of" the Agency's drone program.

After the lower court ruled for CIA, the ACLU [appealed](#) to the District of Columbia Circuit Court of Appeals. Oral arguments were scheduled for September 20, 2012. The DC Circuit is notoriously conservative.

Expect ACLU lawyers to face stiff headwinds. Supreme Court justices are no better. Like political Washington, federal courts represent absolute power corrupting absolutely. Don't bet on ACLU prevailing against odds that long.

On September 18, a [press release](#) headlined "ACLU in Appeals Court Thursday Arguing Against CIA's Secrecy Claim on Targeted Killing Documents."

The Agency refused to respond to FOIA requests. Its killer drones operate daily in numerous countries. It makes public statements about its program.

Former Director of National Intelligence Dennis Blair told the House Intelligence Committee that US drones kill Americans. He added that targeted killing "is the only game in town." It reminded him of body counts in Vietnam.

At the same time, few details about the drone program are discussed. Comments are made in broad terms. Necessity and legality are claimed. "Military operations" outside "hot" battlefields are acknowledged.

Government and CIA officials don't formally admit the Agency's involvement, let alone details.

Obama prioritizes drone killing. They're the "one tool we use," he said. He usurped the power of life and death, including over US citizens. He's got final "kill list" authority. He can order drone or other attacks to kill anyone, anyway, based on his say alone.

ACLU wants information on "when, where and against whom drone strikes can be authorized, and how the US ensures compliance with international laws relating to extrajudicial killings."

According to ACLU Deputy Legal Director Jameel Jaffer:

"The notion that the CIA's targeted killing program is a secret is nothing short of absurd." Everyone paying attention knows it exists."

"For more than two years, senior officials have been making claims about the program both on the record and off. They've claimed that the program is effective, lawful and closely supervised."

"If they can make these claims, there is no reason why they should not be required to respond to requests under the Freedom of Information Act."

On June 13, 2012, [ACLU v. CIA](#) requested a DC Circuit expedited hearing. “This case concerns (CIA’s) refusal....to confirm or deny the existence of records responsive Plaintiff’s (FOIA) request (concerning) the CIA’s use of drones to conduct targeted killings.”

“Plaintiffs filed their FOIA request on January 13, 2010 and commenced this suit on March 16, 2010. After the district court (Collyer, J.) granted summary judgment to the CIA on September 9, 2011, Plaintiffs filed a timely appeal.”

“The only issue on appeal is whether the CIA’s refusal to confirm or deny the existence of the drone program....is lawful given that senior government officials have repeatedly discussed (it publicly).”

“Plaintiffs have argued that government officials have officially acknowledged the program in those contexts and that the CIA’s refusal to confirm or deny the existence of the program here is unlawful.”

Expedited resolution was requested because of “immense public interest – namely, the lawfulness, effectiveness, strategic wisdom, and morality of the CIA’s use of drones” to kill.

The entire ACLU document can be read through the above link.

A Final Comment

Last July, America’s “[newspaper of record](#)” moralized drone use. Its article headlined “The Moral Case for Drones,” saying:

“....moral philosophers, political scientists and weapons specialists believe armed, unmanned aircraft offer marked moral advantages over almost any other tool f warfare.”

The article stands in stark contrast to a [May](#) one titled “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” saying:

Obama “placed himself at the helm of a top secret ‘nominations’ process to designate terrorists for kill or capture, of which the capture part has become largely theoretical.”

In other words, he appointed himself judge, jury and executioner. Despot authority is official administration policy. Diktats decide who lives or dies.

Anyone called Al Qaeda or accused of terrorist connections gets marked for death.

What “moral and legal conundrum” could he face, asked The Times? None whatever. On day one in office, he spurned rule of law principles. It’s been downhill ever since.

The New York Times and other media scoundrels march in lockstep. They’re comfortable with imperial lawlessness.

Killing by any means has no moral basis whatever. Claiming it makes supporters complicit. Because of its global reach and influence, NYT bosses, editors, and contributors have the greatest cross to bear. Expect no mea culpas or apologies.

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