

# From Pulling the Trigger to Pushing the Button: Historical Precedents for Targeted Killings and Signature Strikes

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Boston College  
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*Department of History*

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**FROM PULLING THE TRIGGER TO PUSHING THE BUTTON**

**HISTORICAL PRECEDENTS FOR TARGETED KILLINGS AND  
SIGNATURE STRIKES**

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A Scholar of the College Project  
April 2014

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Prof. Peter Krause

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## **ACRONYMS**

AUMF	Authorization for the Use of Military Force
CIA	Central Intelligence Agency
CORDS	Civilian Operations and Revolutionary Development Support
CTC	Counterterrorism Center
DOD	Department of Defense
JSOC	Joint Special Operations Command
MACV	Military Assistance Command Vietnam
NATO	North Atlantic Treaty Organization
NSA	National Security Organization
NSC	National Security Council
NSDD	National Security Decision Directive
OSS	Office of Strategic Services
PAD	Pakistan-Afghanistan Department
PLO	Palestinian Liberation Organization
PRUs	Provincial Reconnaissance Units
TADS	Terrorist Attack Disruption Strikes
TTP	Tactics Techniques and Procedures
UAV	Unmanned Aerial Vehicle
UN	United Nations
VCI	Viet Cong Infrastructure

# CHAPTER ONE

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# INTRODUCTION

Drone strikes are sensational events. The United States government uses remotely piloted aircraft (or drones) equipped with precision weapons systems to unilaterally hunt and kill its enemies across the globe. The pervasiveness of American lethal force startles many Americans. In many ways, drone strikes are unprecedented. The technology, the frequency of use, and the geographic scope are all by-products of the twenty-first century. The executive branch, the military, and the Central Intelligence Agency (CIA), however, have a deep history of debating whether to kill individual enemies *and* have a history of authorizing operations to do so.

Top personnel in the Obama administration have publicly addressed the administration's policy regarding drone strikes for years. From 2010 to 2013, President Barack Obama, Attorney General Eric Holder, the top lawyers from the Central Intelligence Agency, State Department, and Department of Defense, and John Brennan—the former Counterterrorism Advisor for the President and current CIA Director—have all taken to public forums to convey the Obama Administration's counterterrorism strategy.<sup>1</sup> In particular, these speeches address the

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<sup>1</sup> Barack Obama, "Remarks by the President at the National Defense University," (Speech, Washington, D.C., May 23, 2013), The White House, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>;

Eric Holder, "Attorney General Eric Holder Speaks at Northwestern University School of Law," (Speech, Chicago, IL, March 5, 2012), The Department of Justice, <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>;

Stephen Preston, "CIA and the Rule of Law," (Speech, Cambridge, MA, April 10, 2012), The Central Intelligence Agency, <https://www.cia.gov/news-information/speeches-testimony/2012-speeches-testimony/cia-general-counsel-harvard.html>;

Harold Koh, "The Obama Administration and International Law," (Speech, Washington, D.C., March 25, 2010), The State Department, <http://www.state.gov/s/l/releases/remarks/139119.htm>;



administration's views and justifications for the use of remotely piloted aircraft to kill terrorists and insurgents. These speeches all share common frameworks, arguments, and language, albeit with slightly different agendas. The speeches by the nation's top lawyers unsurprisingly focus on the legality. They argue that drone strikes are legal under domestic and international law. John Brennan, the Director of the CIA, not only reiterates the legality of the drone strikes, but also defends their ethical necessity under the laws of war.<sup>2</sup> Brennan also provides information, in the abstract, on how the White House's National Security Council decides whom to target.<sup>3</sup> While all of the speeches speak to the legality or ethics underpinning drone strikes, the nation's top policymakers frequently call on history.

The Obama administration's top national security authorities use history as a justification for current actions and as a future standard. Attorney General Eric Holder argued that lethally targeting terrorists must be rooted in a legal framework because "history has shown that it is also the most effective approach we can take in combating those who seek to do us harm."<sup>4</sup> In addition, these men invoke history to judge the actions of today and tomorrow. Jeh Johnson, the top lawyer at the Pentagon and current Secretary of Homeland Security, eulogized, "As a student of history, I believe that those who govern today, must ask ourselves how we will be judged 10, 20, or 50 years from now."<sup>5</sup> President Obama also called on history when he stated in a speech

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Jeh Johnson, "National Security Law, Lawyers and Lawyering in the Obama Administration," (Speech, New Haven, CT, February 22, 2012), Council on Foreign Relations, <http://www.cfr.org/defense-and-security/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>;

John Brennan, "'Strengthening our Security by Adhering to our Values and Laws" (Speech, Cambridge, MA, September 16, 2011), The White House, <http://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-brennan-strengthening-our-security-adhering-our-values-an>;

John Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy" (Speech, Washington, D.C., April 30, 2012) Council on Foreign Relations, <http://www.cfr.org/counterterrorism/brennans-speech-counterterrorism-april-2012/p28100>.

<sup>2</sup> Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy."

<sup>3</sup> Ibid.

<sup>4</sup> Holder, "Attorney General Eric Holder Speaks at Northwestern University School of Law."

<sup>5</sup> Johnson "National Security Law, Lawyers and Lawyering in the Obama Administration."

in 2013, “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises.”<sup>6</sup>

Beneath the rhetoric, the arguments, and the opinions that dominate drone policy today there is something missing: the history. Scholars, pundits, and government officials have exhausted reams of paper and hours of airtime arguing whether drone strikes are legal, ethical, or effective. Few, however, have sought to expand the spectrum of study to the decades prior to September 11. In a similar manner to others, John Yoo, a top attorney in the Bush administration, called on history when he defended targeted killings arguing, “precise attacks against individuals have long been a feature of warfare.”<sup>7</sup> Very few scholars or public officials, however, have extended their arguments about history beyond implicit references. This thesis’s purpose is to fill that lacuna and aims to substantiate the rhetoric about “history” with systematic empirical research. This thesis will address the identified void by answering the question: What are the historical precedents for drone strikes and how do they inform policy?

Policymakers, scholars, and commentators often mention historical episodes for targeted lethal operations, but few rigorously analyze them. Attorney General Eric Holder, the Director of the CIA, John Brennan, and the top attorneys at the State Department and Pentagon, all argued that targeting individual enemies was a hallmark of war. All of these officials also cited an American military strike that downed the aircraft of a Japanese Admiral in World War II.<sup>8</sup> Similarly, *The Economist* published an article on the CIA’s role in drone warfare and drew on historic examples. *The Economist* Special Report states, “Most of these attacks [drone strikes] were carried out by the CIA, which is not new to killing people it has identified as enemies; its

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<sup>6</sup> Obama, “Remarks by the President at the National Defense University.”

<sup>7</sup> John Yoo, “Assassinations or Targeted Killings After 9/11,” *New York Law School Law Review* 56, (2011/12): 63.

<sup>8</sup> This strike will be a case in this thesis. Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law;” Koh, “The Obama Administration and International Law;” Johnson “National Security Law, Lawyers and Lawyering in the Obama Administration;” Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy.”

Operation Phoenix was responsible for the death of tens of thousands in South Vietnam in the 1970s.”<sup>9</sup> This thesis will go beyond passive reference and will rigorously analyze the aforementioned air strike on Japanese Admiral Isoroku Yamamoto, the Phoenix Program in the Vietnam War, as well as several other cases to show a history of targeted lethal operations.

In order to study the history of targeted strikes, the first task is to remove the technology from the scope of study. There are two elements of a drone strike. The first modifying element is the technology. The use of remotely piloted aircraft in conflict has a history that dates back to the Vietnam War.<sup>10</sup> The drones used for counterterrorism purposes in the twenty-first century were first armed with precision missile systems by the United States military and the CIA in early 2001.<sup>11</sup> Thus, to only study targeted lethal operations through the lens of an armed drone, limits the scope of study solely to the twenty-first century. Therefore, the second task is to analyze the types of operations that target and kill individuals to uncover their history.

There are two types of operations employed in drone strikes: targeted killings and signature strikes. Both targeted killings and signature strikes have historical precedents. Targeted killings are when leading decision-makers intentionally identify, then track, and kill individuals. Signature strikes are targeted operations based on an individual’s patterns of behavior, or “signature,” not on their individual identity.

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<sup>9</sup> “Special Report: Robots,” *The Economist*, March 29, 2014, <http://www.economist.com/news/special-report/21599524-drones-will-change-warand-more-up-air>.

<sup>10</sup> The Air Force and CIA used small jet-propelled unmanned aerial vehicles during the Vietnam War called Lightning Bugs to carry out high-altitude reconnaissance missions. The precursor to the MQ-1 Predator drone—the most prolifically used remotely piloted aircraft in the twenty-first century—dates back to late 1980s when an American contractor created the Gnat and the Amber, which were larger stand-off platforms. The MQ-1 Predator drone was first deployed in the Balkan conflicts in the 1990s, and then later armed in the twenty-first century. For more on the history of remotely piloted aircraft see: Brian Glyn Williams, *Predators: The CIA’s Drone War on Al Qaeda* (Washington D.C.: Potomac Books, 2013), 20-25.

<sup>11</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report on Terrorist Attacks upon the United States* (Washington, D.C.: United States Government Printing Office, 2004), 210-214.

This thesis will argue that historical precedents for targeted killings and signature strikes can inform modern policy. In order to argue that precedents can shape policy, this thesis must first fill the dearth of scholarship on the American history of targeted strikes by systematically establishing precedents. Then, this thesis will dissect those precedents in order to analyze and extract the vectors of history that can shape modern policy.

There are several historical cases of targeted killings and signature strikes that this thesis will examine. The chapter on targeted killings will examine the airstrike on Admiral Isoroku Yamamoto's aircraft in World War II by Army aviators, the 1986 air strike on Libya, the Clinton administration's attempts at killing Osama bin Laden in 1998 and 1999, and the Obama administration's drone strike that killed Anwar al-Awlaki. The signature strikes chapter will examine the Phoenix Program in the Vietnam War and the Reagan Administration's counterterrorism policy in 1984. Both of these chapters will simultaneously identify and test whether these often cited cases are precedents by preselecting operation-specific criteria. In each chapter, I will select criteria that define targeted killings and signature strikes and are identifiable throughout the history of these operations. If these cases are precedents, this thesis will examine how they can shape policy by using the preselected criteria and case studies to identify historical trends. These trends span the history of the operations and include the convergence between the military and intelligence communities and the shift towards greater executive transparency. This thesis will conclude by analyzing those trends comprehensively and using them to make policy recommendations to show how historical precedents for targeted killings and signature strikes can inform modern policy.

The remainder of this first chapter will have five sections. First, I will discuss the historiography of targeted lethal force in American history and the scholars that argue history can

inform policy. Second, I will define the scope of my thesis, summarily address the use of primary sources, and define key terms. Third, I will discuss my methodology for determining precedents and extracting trends for policy recommendations. Fourth, I will briefly examine the legal justifications by the Bush and Obama administrations for targeted strikes because understanding the legal framework is a necessary primer before analyzing operations. Finally, this chapter will conclude with a brief roadmap for the entire thesis.

## **HISTORIOGRAPHY**

### ***Targeted Lethal Action***

The argument that there are historical precedents for targeted killings and signature strikes intersects with several subfields in History and Political Science. There are few scholars who have addressed the issue directly, but there are vital works in the fields of intelligence, military history, terrorism, and presidential politics, which are fundamental to this thesis. Before examining the wider body of scholarship, it is first important to address the studies that have examined the history of targeted killings and signature strikes most directly. Mark Mazzetti, a Pulitzer-Prize winning *New York Times* national security reporter, has written the most relevant work on modern targeted killings and signature strikes and their connection to the past. In *The Way of the Knife*, Mazzetti traces how the CIA and the elite military unit, Joint Special Operations Command (JSOC), have waged a covert war against al Qaeda through drone strikes and Special Forces night raids.<sup>12</sup> While Mazzetti aims to reveal these new lethal policies for the wider audience, his primary argument is that there has been an increasingly blurred line of responsibility between the military and the CIA where soldiers are becoming spies and vice

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<sup>12</sup> Mark Mazzetti, *The Way of the Knife: The CIA, A Secret Army, and a War at the Ends of the Earth* (New York: Penguin Press, 2013).

versa. Mazzetti argues, “Prior to the attacks of September 11, the Pentagon did very little human spying, and the CIA was not officially permitted to kill. In the years since, each has done a great deal of both, and a military-intelligence complex has emerged to carry out the new American way of war.”<sup>13</sup> In order to address this convergence between military and intelligence, Mazzetti examines key moments in the CIA’s history when Congress and Americans have skewered the CIA for contemplating lethal operations—namely when Congressional Committees revealed the Agency was plotting to kill foreign leaders—which Mazzetti uses as a mechanism to show how much the CIA has changed over time. This thesis, like *The Way of the Knife*, aims to counterbalance studying modern lethal policies with history, but aims to offer a deeper historical context than Mazzetti.

Micah Zenko’s work, *Between Threats and War*, examines analogous military operations to case studies in this thesis and analyzes them for similar purposes. Zenko, a fellow at the Council on Foreign Relations, analyzes discrete military operations, which are “a single or serial physical use of kinetic military force to achieve a defined military and political goal by inflicting casualties or causing destruction, without seeking to conquer an opposing army or to capture or control territory.”<sup>14</sup> The primary purpose of Zenko’s book—to compile cases of historic targeted military operations and use them for policy recommendations—is similar to this thesis. Moreover, Zenko’s work and this thesis, both examine the 1998 cruise missile strike aimed at Osama bin Laden as a case study. *Between Threats and War*, however, deviates from this thesis in three distinct ways. First, Zenko examines different types of military operations. Zenko examines other operations besides targeted killings and signature strikes, such as when the U.S.

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<sup>13</sup> Ibid., 4.

<sup>14</sup> Micah Zenko, *Between Threats and War: U.S. Discrete Military Operations in the Post-Cold War World* (Palo Alto, CA: Stanford University Press, 2010), 2.

military imposed no fly zones in Iraq from 1991-2003.<sup>15</sup> Second, Zenko sets the scope of his research from the end of the Cold War to modern day; whereas, this thesis examines operations prior to and during the Cold War. Third, while Zenko's work does examine cases of armed drone targeted killings and their political ramifications, *Between Threats and War* focuses more on the military consequences for limited lethal force. In contrast, this thesis examines political ramifications in the executive branch, but focuses more on the consequences for the intelligence community than on the military. While *Between Threats and War* and this thesis examine different types and perspectives of lethal operations, both share a common purpose: examining historical operations to inform modern policy.

Kenneth Anderson and Benjamin Wittes directly counter this thesis's primary argument about the historical precedents for targeted lethal action. Anderson and Wittes are Senior Fellows at the Brookings Institution and are leading commentators on targeted killings and signature strikes. Anderson and Wittes argue, "drone technology enables a genuinely new means of counterterrorism: targeted killing."<sup>16</sup> They reiterate their argument by stating, "drones enabling targeted killing is a genuinely new capability in global counterterrorism."<sup>17</sup> Anderson and Wittes's argument directly counters this thesis's primary argument about historical precedents and does so by making drone technology and targeted killings mutually exclusive, which is ahistorical. Targeted killing is a type of operation, not a technology. Moreover, Daniel Byman, one of the ranking authorities on targeted killings, documents how Israel's military and intelligence communities pioneered the lethal tactic and have employed it for decades in their

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<sup>15</sup> Ibid., 29-48.

<sup>16</sup> Kenneth Anderson and Benjamin Wittes, "What, If Anything Is Strategically New About Weaponized Drones?," *Strategika* 10, (2014): 15.

<sup>17</sup> Ibid., 16.

practice of counterterrorism.<sup>18</sup> Kenneth Anderson and Benjamin Wittes's commentary is unsubstantiated by research or citation. Nevertheless, their argument does serve as a counterweight to this thesis. Anderson and Wittes reach their conclusion that targeted killings are unprecedented because they tie their existence to armed unmanned aircraft. Using armed drones, however, is only a tool for lethal force, by removing the technological modifier from targeted killings research, this thesis will be able to expand on the history of the operations. These scholars share a proclivity for either presentism or ahistoricism.

Before examining the historical work on lethal policy, there are several other notable works that address the issues of targeted killings and signature strikes in the modern day. Brian Glyn Williams, a terrorism scholar at the University of Massachusetts Dartmouth, wrote the most comprehensive history to date of America's use drone strikes against al Qaeda. In *Predators*, Williams traces the inception of drone policy under the Bush administration to the escalation of strikes in the Obama administration.<sup>19</sup> Williams examines dozens of strikes on a case-by-case basis and is one of the few scholars to do so. *Predators* serves a model for this thesis by compiling a history of an issue. William's work, however, was primarily limited to the twenty-first century because, like Anderson and Wittes, Williams narrows the scope of his research by only examining targeted strikes through the lens of armed drones.<sup>20</sup> Williams traces drone strikes from an overarching policy perspective, through the camera of a UAV, and by specific cases that occurred in Pakistan. This thesis, on the other hand, will trace targeted operations from a policy perspective, through specific case studies, and within the national security bureaucracy.

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<sup>18</sup> For more on Israel's use of targeted killings see: Daniel Byman, *A High Price: The Triumphs and Failures of Israeli Counterterrorism* (New York: Oxford University Press, 2011).

<sup>19</sup> Brian Glyn Williams, *Predators: The CIA's Drone War on Al Qaeda* (Washington D.C.: Potomac Books, 2013).

<sup>20</sup> Williams does make references to past American history, but does not delve into the references. For example, he mentions the origins of the Predator drone program has roots in the Vietnam War. Williams, however, is primarily looking at the history of the drone technology, not the operations. *Ibid.*, 19.



Daniel Klaidman, a former editor at *Newsweek*, also examines targeted operations from within the national security community. Klaidman examined the Obama administration's policy of targeted killings and signature strikes from reporting done inside the White House, Pentagon, and CIA.<sup>21</sup> Klaidman's work, *Kill or Capture*, focuses less on advancing an argument and more on revealing an inside-policy narrative surrounding targeted lethal action. While *Kill or Capture* lacks argumentation, its narrative is still useful for this thesis because it proves to be a unique source on the policy divisions within the Obama administration surrounding targeted killings and signature strikes.

The most substantial scholarly work on targeted killings comes from political scientists who study their effectiveness and legal authorities who study their legality. There is a major debate within terrorism studies about whether targeted killings, drone strikes, and leadership decapitations work. These journal articles primarily use datasets of strikes and determine how often they led collapse of an organization.<sup>22</sup> These articles are excellent for questioning whether drone strikes and targeted killings are effective at dismantling terrorist organizations. The

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<sup>21</sup> Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of Obama's Presidency* (Boston, MA: Houghton Mifflin Harcourt, 2012).

<sup>22</sup> The bedrock empirical scholarship on the effectiveness of targeted strikes comes from three notable scholars. Brian Price argues for the effectiveness of leadership decapitations. Jenna Jordan opposes Price and uses a substantial dataset on the effectiveness of decapitations to support her argument. Patrick Johnson contributes to the debate, but takes a different angle by examining leadership in counterinsurgency, instead of counterterrorism. See: Brian C. Price, "Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism," *International Security* 36, no. 4 (2012): 9-46.; Jenna Jordan, "When Heads Roll: Assessing the Effectiveness of Leadership Decapitation," *Security Studies* 18, no. 4 (2009): 719-755; Patrick B. Johnston, "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," *International Security* 36, no. 4 (2012): 47-79.

Recently, Johnston and Jordan have reignited the debate by rehashing the question, but now use drone strikes for their empirics. Both have forthcoming articles on the issue. Jenna Jordan, "Killing the Snake? Explaining Terrorist Group Resilience to Leadership Targeting," *International Security* (Spring 2014), forthcoming. Patrick Johnson, "The Impact of US Drone Strikes on Terrorism in Pakistan and Afghanistan," Working Paper, (July 2013), accessed via Empirical Studies of Conflict at Princeton, <http://esoc.princeton.edu/files/impact-us-drone-strikes-terrorism-pakistan-and-afghanistan>. Also, Javier Jordan recently published a similar study analyzing drone strikes' effect on al Qaeda Central. See: Javier Jordan, "The Effectiveness of the Drone Campaign against al Qaeda Central: A Case Study," *Journal of Strategic Studies* 37, no. 1 (2014): 4-29.

Finally, a well-rounded debate on the issue of effectiveness without the empirics can be seen in: Daniel Byman, "Why Drones Work: The Case for Washington's Weapon of Choice," *Foreign Affairs* 92, no. 4 (2013): 32-43; Audrey Kurth Cronin, "Why Drones Fail: When Tactics Drive Fail," *Foreign Affairs* 92, no. 4 (2013): 44-54.

primary objective of this thesis is not to examine the operations effectiveness, but to analyze how the operations history can shape policy.

The other primary body of work to consider, especially when making policy recommendations, is the legal scholarship. There are hundreds of articles on the legality of targeted killings and drone strikes in academic law reviews. Many look at specific frameworks, for example, whether targeted lethal action violates specific facets of domestic or international law. This section will not discuss the myriad of legal articles that address the issue; however, there is one seminal volume that thoroughly discusses a range of legal and moral issues surrounding targeted lethal action. *Targeted Killings: Law and Morality in an Asymmetrical World*, an edited volume, addresses the significant legal issues of drone strikes in domestic and international law as well as several other notable principles such as: targeting noncombatants, the theories of just war, belligerency, imminence, and decision-making.<sup>23</sup>

Moving backward in time, there is a plethora of substantial scholarship on intelligence, covert action, military operations, and presidential policies before September 11. Christopher Andrew's preeminent work on presidents and their use of intelligence, *For the President Eyes Only*, provides a historical framework in understanding events between the White House and the intelligence community.<sup>24</sup> In addition, scholars such as Gregory Treverton narrow their history of intelligence by discussing specific facets of the field—such as the CIA's use of covert action.<sup>25</sup> Treverton, a former member of the Senate Select Committee on Intelligence, provides unique insights on the CIA's covert action programs during the Cold War. Most notably, he

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<sup>23</sup> *Targeted Killings: Law and Morality in an Asymmetrical World*, ed. Claire Finkelstein, Jens David Ohlin, and Andrew Altman (Oxford: Oxford University Press, 2012).

<sup>24</sup> Christopher Andrew, *For the President's Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush* (New York: HarperCollins, 1996).

<sup>25</sup> Covert action is when the United States government influences political conditions abroad through activities ranging from economic manipulation to paramilitary operations, where the United States government intends to maintain a secret role. For more see: Mark Lowenthal, *Intelligence: From Secrets to Policy*, 5th ed. (Thousand Oaks, CA: CQ Press, 2011), 181-198.

studies the concept of plausible deniability—when presidents use mechanisms to isolate themselves from negative fallout from botched CIA operations—in excellent detail.<sup>26</sup> While Treverton’s and Andrew’s scholarship are essential to contextualize the wider history of intelligence, this thesis relies on them more as fundamental guides than overarching history. Most of the literature that aids in determining historical precedents is related to specific cases. Therefore, the works used, addressed, or dismissed vary from case to case.

This thesis has the challenge of bridging the substantial, but broad, historical scholarship with the rapidly developing contemporary literature. When examining historical cases of targeted killings and signature strikes, this analysis employs specific secondary sources for each case study. Thus, this thesis engages with the existing scholarship in a unique way. On the historical side, the overarching histories—such as Andrew or Treverton—provide a framework filled in with case-specific propositions. Treverton, for example, analyzes the theme of plausible deniability by examining the concept and then showing how it has occurred in history. This thesis, however, will examine cases that then reveal the concepts. On the contemporary side, while recognizing the value in the legal and effectiveness scholarly works, more comprehensive histories—such as those by Williams and Mazzetti—will guide this thesis. Williams and Mazzetti compile their works in a case-based and often chronological pattern, instead of thematically based. This thesis, first will make the thematic breakdown between targeted killings and signature strikes; but in each chapter, will examine cases chronologically. In sum, while few have addressed the topic of historical precedents for targeted killings and signature strikes directly, many have addressed the issue indirectly, which when combined, provide a substantial foundation for this thesis.

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<sup>26</sup> Gregory Treverton, *Covert Action: The Limits of Intervention in the Postwar World* (London: I.B. Tauris, 1988).

### *Using History to Inform Policy*

This thesis extracts its primary argument—that historical precedents can inform modern policy—from a certain type of historical analysis. Thucydides, the ancient Greek historian is often considered the father of using history to inform the present. He believed, “Those who want to understand clearly the events which happen in the past and which will at some time or other and in much the same ways be repeated in the future.”<sup>27</sup> Thucydides approach has been modified to the study of war. *Strategika*, a journal focused on national security issues and published through Stanford University’s Hoover Institution, noted that their scholars share the approach that “the study of past wars can offer us tragic guidance about present conflicts...New technologies, methodologies, and protocols come and go; the larger tactical and strategic assumptions that guide them remain mostly the same—a fact discernible only through the study of history.”<sup>28</sup>

Ernest May, an international historian, rigorously promulgated and studied this practice. May argued in “*Lessons*” of the Past that framers of foreign policy are influenced about what history teaches and if policymakers can use history discriminatingly they can dissect the forces that create history in order to determine whether the same vectors will continue.<sup>29</sup> May examines cases of how policymakers drew on historical examples from World War II, the Cold War, and the Korean War to frame and inform their decisions. After examining the history, May applied historical lessons to address a then-contemporary question: the effectiveness of aerial bombing to persuade foreign governments, which was a pertinent question during the Vietnam War.<sup>30</sup> May

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<sup>27</sup> Thucydides, *History of Peloponnesian Wars*, trans/ Rex Warner (London: Penguin Books, 1954), 24; Found in Richard Neustadt and Ernest May, *Thinking in Time: The Uses of History for Decision-Makers* (New York: The Free Press, 1986), 232.

<sup>28</sup> Victor Hanson, Bruce Thornton, and David Berkey, *Strategika*, issue 10 (2014).

<sup>29</sup> Ernest May, “*Lessons*” of the Past: *The Use and Misuse of History in American Foreign Policy* (New York: Oxford University Press, 1973), ix-xiv.

<sup>30</sup> *Ibid.*, 125-142.

concludes, with notable bias, “the most important function for the historian as historian is analysis of those instances which men in government are most likely to see as parallels, analogies, or precedents.”<sup>31</sup> Moreover, May reasons that in order to use historical lessons to inform policy, a unique blend of History, Political Science, and other social sciences is necessary.<sup>32</sup> In a different work, May and Richard Neustadt conclude that in order to use history to inform policy, one must recognize that the future has no place to come from but the past; that recognition—through continuous comparison and oscillation between past, present, and future—is required to extract informative historical lessons.<sup>33</sup> By systematically analyzing historical case studies this thesis will oscillate between past and present in order to extract lessons for the future.

Robert Jervis, a preeminent political scientist, also studies the influence of the past on policymakers, but does so through a different lens. Jervis, in his work *Perception and Misperception in International Politics*, studies the causal links between historical events and the decisions of future policymakers. He argues that events that are seen firsthand by young policy personnel have a great impact on their later perceptions as policymakers.<sup>34</sup> Jervis’s findings are predicated on causal links. He strongly argues that in linking history, “causality must be shown to flow from the interpretations for the past to the perceptions of the present.”<sup>35</sup>

This thesis will use May’s model more than Jervis’s. Jervis focuses on how historical events can and have affected policymakers’ perceptions, where causality is needed for evidence. May’s model also argues that history influences policymakers, but in addition attempts to dissect the forces of history in order to inform policy. This thesis will employ the requisite provided by Neustadt and May—continuous comparison and historical oscillation—to extract informative

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<sup>31</sup> Ibid., 178.

<sup>32</sup> Ibid., 142-143.

<sup>33</sup> Neustadt and May, *Thinking in Time*, 251.

<sup>34</sup> Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976): 281.

<sup>35</sup> Ibid., 225.

policy prescriptions. Jervis's argument is important to this thesis, however, because there are searing events in the history of lethal American history—the assassination plots of the 1970s—that heavily influenced modern policymakers. Juan Zarate, the Deputy National Security Advisor for Counterterrorism in the George W. Bush administration, supported Jervis's thesis when he stated in an author interview, “The history of past operations are undoubtedly embedded in the minds of the IC [intelligence community] and the military based on their past experience.”<sup>36</sup> Thus, this thesis subscribes to May's prescriptive model but clearly recognizes the value of Jervis's causal model.

While preeminent scholars such as Ernest May, Robert Jervis, and others have studied the effect of history, their conclusions are not without strong dissent.<sup>37</sup> Many critics argue that analogies and precedents for policymaking purposes are used more for advocacy and justifying policy positions than systematic analysis.<sup>38</sup> Arthur Schlesinger, a widely respected historian of twentieth century U.S. politics, countered Ernest May and argued, “The past is an enormous grab bag for everybody. The issue of history as rationalization somewhat diminishes the force of the argument that history is per se a powerful formal determination of policy.”<sup>39</sup> While many in decision-making positions certainly can, and do, use history to advocate or justify policy positions, it does not make the practice mutually exclusive. Historian Christopher Jespersen also criticizes using historical precedents to inform the present. Jespersen argues, “Politicians and pundits latch onto analogies for understanding the present, but in so doing, they obscure more

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<sup>36</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

<sup>37</sup> Yuen Foong Khong is another preeminent scholar in this field of historical precedents. For Khong's work on the subject see: Yuen Foong Khong, *Analogies at War: Korea, Munich, Dien Bien Phu, and the Vietnam Decisions of 1965* (Princeton, NJ: Princeton University Press, 1992).

<sup>38</sup> *Ibid.*, 8.

<sup>39</sup> Arthur Schlesinger, “Review of ‘Lessons’ of the Past,” *The Journal of American History* 61, (1974): 444. Originally found and cited in Khong, *Analogies at War*, 8.

complicated situations.”<sup>40</sup> This thesis will directly counter Jepsen’s argument and will argue that history—especially in the context of targeted lethal action—can clarify, not convolute, the immensely tangled and mired debates that surround modern drone policy. Policymakers can use history to inform and/or advocate a policy position, but that decision ultimately rests with the arbiter. In an author interview with Juan Zarate, a member of George W. Bush’s National Security Council, the former policymaker argued that precedents and history are used in constructing policy. Zarate stated, “No question history was used when constructing the legal framework and during the formative years of counterterrorism policy.”<sup>41</sup> Therefore, while policymakers may use historical precedents or analogies differently, it is definite that decision-makers consider precedent when crafting policy.

## **BACKGROUND AND DEFINITIONS**

In determining historical precedents for targeted killings and signature strikes, this thesis will not set a specific chronological or geographic scope. Instead, the thesis will employ several case studies. The United States government conducted all of the cases in this thesis. Instead of examining historical precedents for targeted lethal action from other nations, such as Israel, this thesis tailors recommendations specifically for U.S. targeted strikes policy by only analyzing American operations. While there was no initial requirement for setting the chronological scope of study, after selecting the case studies, the timeline of analyzed cases fall between 1943 and 2014.

A major issue for this thesis, like many other works in national security studies, is finding primary sources. As noted in the former section, there are a plethora of secondary sources on the

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<sup>40</sup> Christopher Jepsen, “Analogies at War: Vietnam, the Bush Administration’s War in Iraq, and the Search for a Usable Past,” *Pacific Historical Review* 74, no. 3 (August 2005): 411.

<sup>41</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

issues, but primary sources, specifically government documents, are more difficult to find. This thesis uses declassified documents when available, but also relies on speeches, contemporary news articles, and interviews to fill any voids left in the absence of government documents.

There were two types of subjects this author interviewed: experts and practitioners. The experts are those who have contributed significant scholarship on targeted lethal action, intelligence, or military histories and ranged from academics to reporters. Some of these experts include: Mark Mazzetti—a *New York Times* national security reporter and author of *The Way of the Knife*, Daniel Byman—a Professor at Georgetown University’s Security Studies Program, and Seth Jones—the Associate Director for International Security and Defense Policy at the RAND Corporation. The practitioners interviewed were those who were involved in decision-making or operations, and ranged from leading national security policymakers in the Bush administration, to retired, recently retired, or active CIA and FBI personnel. These policymakers and practitioners include: Juan Zarate—the Deputy National Security Advisor for Counterterrorism from 2005-2009, Hank Crumpton—Secretary of State Condoleezza Rice’s Ambassador for Counterterrorism, and Michael Sulick—the Director of the CIA’s National Clandestine Service from 2007-2010.

Combining these primary sources with the aforementioned secondary sources and case-specific works, made it possible to argue historical precedents. In order to argue historical precedents for targeted killings and signature strikes, this thesis uses a certain framework in order to determine if a case constitutes a precedent. Before examining the methodology, however, it is first important to define precedent and other key terms used throughout this thesis.



## *Precedent*

What is a historical precedent? Precedent is by many definitions, a legal term; as such, there are two variations: a black and white version, and another with shades of gray. History is construed in the eyes of the beholder, and therefore, this thesis will use the gray version. The black and white version makes a strong distinction between precedent and analogy. Grant Lamond, a legal philosopher at the University of Oxford, promulgates the black and white version. He argues, “Precedent involves an earlier decision being followed in a later case because both cases are the same. Analogy involves an earlier decision being followed in a later case because the later case is similar to the earlier one.”<sup>42</sup> The issue with the black and white version lies in its strict polarity. Very few, if any, events in history are black-and-white. There is always a counterargument or counter-interpretation, making this definition unusable for the purposes of this thesis.

The definition this thesis will use for precedent removes the strict polarity in favor of relevance. Frederick Schauer, a Professor of Law at the University of Virginia, argues that precedent is forward-looking and cannot be black and white. Even though precedents are rooted in the past and are found by looking backwards in history, Schauer argues that by nature, precedents also look forward. He writes, “an argument from precedent looks forward as well, asking us to view today’s decisions as a precedent for tomorrow’s decision-makers.”<sup>43</sup> Schauer’s definition of precedent overlaps with May’s model of using the past to inform the future.

Schauer avers:

No two events are exactly alike. For a decision to be precedent for another decision does not require the facts of the earlier and the later cases be absolutely identical. Were that required, nothing would be a precedent for anything else.

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<sup>42</sup> Grant Lamond, “Precedent and Analogy in Legal Reasoning,” *The Stanford Encyclopedia of Philosophy* (forthcoming, Spring 2014), <http://plato.stanford.edu/entries/legal-reas-prec/>.

<sup>43</sup> Frederick Schauer, “Precedent,” *Stanford Law Review* 39, no. 3 (1987): 572.

We must therefore leave the realm of absolute identity. Once we do so, however, it is clear that the relevance of an earlier precedent depends upon how we characterize the facts arising in the earlier case. It is a commonplace that these characterizations are inevitably theory-laden. In order to assess what is a precedent for what, we must engage in some determination of the relevant similarities between the two events.<sup>44</sup>

Juan Zarate, the former Bush administration policymaker and current Harvard Law lecturer, noted that there are two definitions of precedents—a policy version and a legal version. Zarate defined the legal version as “binding legal judgments that aid decision-makers in similar or equivalent cases.”<sup>45</sup> Zarate also notes, however, that there is a policy version, which he defines as, “instances from the past that help inform policy making decisions in the future.”<sup>46</sup> Yuen Foong Khong, an International Relations scholar at the University of Oxford and author of *Analogies at War*, also favors a loose interpretation of precedent that mirrors Zarate’s policy version of precedent. Khong outlined his rationale for using precedent in an author interview, “I probably used ‘historical precedent’ synonymously with ‘lessons of the past’ or ‘lessons of history’ to mean previous historical episodes with similar characteristics to the issue/event under consideration.”<sup>47</sup> Therefore, this thesis will graft Schauer, Zarate, and Khong’s definitions together and define precedent as: instances from the past, judged on the basis of relevance, not on exact similarity, that inform decision-makers in the future. By working with the policy version of precedent, it is possible to better understand the development of targeted killings and signature strikes on a historical continuum.

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<sup>44</sup> Ibid., 577.

<sup>45</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

<sup>46</sup> Ibid.

<sup>47</sup> Yuen Foong Khong, interview with author, (March 2014).

### *Targeted Killings, Assassinations, and Signature Strikes*

The two types of drone strikes that this thesis will examine are targeted killings and signature strikes. There is no accepted definition of a targeted killing that the United States government uses, therefore, this thesis will use a definition provided to the United Nations. In 2010, Philip Alston, a scholar from New York University was designated Special Rapporteur to the United Nations Human Rights Council. In his report, Alston defines targeted killings as, “the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”<sup>48</sup> The key characteristics of this definition that will be a cornerstone of establishing historical precedents are: intentional, premeditated, deliberate, lethal force, legal, against a specific individual, and not in physical custody. Exchanging or removing these core characteristics from the definition, drastically alters the term targeted killing. For example, by removing the word “legal” changes the term from a targeted killing to an assassination.

Assassination is the most difficult term to define in this thesis. The problem is derived from the United States government. Multiple executive administrations have outlawed assassination, but all failed to provide a definition. While many legal scholars often opine on why no administration provided a definition, it is likely that the executive branch did not want to constrain the military or intelligence community’s activity with legal red tape. William Banks and Peter Raven-Hansen, legal scholars, note the difficulty in defining assassination in their work “Targeted Killing and Assassination: The U.S. Legal Framework.” They write, “The

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<sup>48</sup> Philip Alston, “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,” United Nations General Assembly, (Human Rights Council: Fourteenth session, May 28 2010): 3.

difficulty is that there are no consensus definitions in the literature, laws or cases.”<sup>49</sup> Banks and Raven-Hansen note that many scholars try to distinguish assassination by who it is aimed against and whether it is for “political” purposes.<sup>50</sup> The difficulty is compounded when scholars or pundits who write on targeted killing use “assassinate” as a verb for political, stylistic, or pejorative purposes. Eric Holder, the Obama administration’s Attorney General, commented on using the term assassination and provided a short definition. Holder starkly stated, “Some have called operations ‘assassinations.’ They are not, and the use of the loaded term is misplaced. Assassinations are unlawful killings.”<sup>51</sup> This thesis will follow the only lead the executive branch provided: whether the killing of the individual target is legal or illegal. Therefore, this thesis will define assassination as the *illegal* use of lethal force that is intentional, premeditated, and deliberate, by a State, their agents, or by an organized armed group, against a specific individual who is not in the physical custody of the perpetrator.

The definition for signature strikes is much less contested in scholarship because the operations were only recently revealed to the public through a variety of media outlets. Signature strikes are operations where target selection is not based on an individual’s identification, but instead on a pattern of behavior or unique characteristics that are associated with other individuals or wider militant organizations. For example, if a group of individuals is seen handling weapons in a known al Qaeda facility, the targets may be considered for lethal action. Signature strikes are also preemptive. When operators base their decisions to kill suspected militants based on activities they are performing—such as handling weapons at an al Qaeda facility—they expect that militants will eventually attack and would prefer to strike first.

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<sup>49</sup> William Banks and Peter Raven-Hansen, “Targeted Killing and Assassination: The U.S. Legal Framework,” *University of Richmond Law Review* 37 (2003): 2.

<sup>50</sup> *Ibid.*, 3.

<sup>51</sup> Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law.”

Therefore, to retain continuity with the definitions for targeted killings and assassinations, this thesis will define signature strikes as: the use of lethal force that is intentional, preemptive, and deliberate by a state, their agents, or by an organized armed group, against an individual or group of individuals based on patters of behavior often associated with militant organizations. The common elements in all three definitions are presented in **Table A**. The major differences in the definitions are that assassinations are illegal, and signature strikes are preemptive and against individuals based on patterns of behavior, not identity.<sup>52</sup>

**Table A: Definitional Elements of Targeted Operations**

<b>Targeted Killing</b>	<b>Assassination</b>	<b>Signature Strikes</b>
Intentional	Intentional	Intentional
Premeditated	Premeditated	<i>Preemptive</i>
Deliberate	Deliberate	Deliberate
Legal	<i>Illegal</i>	Legal
Use of lethal force	Use of lethal force	Use of Lethal force
Against a specific individual	Against a specific individual	<i>Against an individual or group of individuals based on patterns of behaviors often associated with militant organizations</i>
By a State, its agents, or an armed group	By a State, its agents, or an armed group	By a State, its agents, or an armed group
Not in the physical custody of the perpetrator	Not in the physical custody of the perpetrator	Not in the physical custody of the perpetrator

## **METHODOLOGY**

In order to determine what constitutes a precedent, this thesis uses a framework for each chapter on targeted killings and signature strikes. To argue historical precedents, at the beginning of each chapter, this thesis will identify defining criteria for each type of operation.

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<sup>52</sup> Targeted killings, like signature strikes, can also be preemptive. Signature strikes, however, are solely preemptive because the rationale for striking is authorized on the assumption that the adversary will strike because of their unique patterns of behavior. Targeted killings, on the other hand, may be preemptive but may also be preventative because the State may already be engaged in conflict with the specific individual. For more on preemption, prevention and signature strikes see: page 79 of this thesis.

These criteria create a framework for evaluating historical precedents. As noted in the definition section, precedents are not defined by whether they are the same but on the degrees of similarity. Therefore, some cases have more of the specified criteria than others, but there will never be a perfect match. Each chapter will present a series of cases that will be evaluated by the selected criteria and framework identified at the beginning of each chapter. Then, at the conclusion of each chapter, this thesis will identify unique trends that were extracted from the historical cases. I did not preselect these trends, but rather, the facts spoke for themselves during the research and each chapter's evaluation of historical precedents. The trends often are interrelated with the criteria outlined for determining historical precedents, but also are recurring patterns that arise from the cases. These trends then form the foundation for the final chapter, which outlines a theory regarding targeted killings and signature strikes, as well as specific policy recommendations extracted from the history.

## **LEGAL JUSTIFICATIONS**

Targeted killings and signature strikes are not authorized in a vacuum. The Bush and Obama administrations have made diligent efforts to justify targeted lethal action under domestic and international law. It is important to understand the basic legal framework and justifications outlined by both administrations. Nevertheless, the legal debates that accompany targeted lethal action and the legal precedents involved with them are not the center of this thesis. Therefore, this section will be substantiated by the speeches, documents, and articles of officials from the Bush and Obama administrations, not by the plethora of legal articles that debate minute details

in these justifications.<sup>53</sup> This section provides a brief framework for the legal justifications for targeted lethal action, as provided by the Bush and Obama administrations. These legal justifications are found throughout the historical case studies because many presidents justify lethal force using the same legal rationale. This section also anticipates a counterargument that there are no historic precedents for targeted strikes because the legal authority for lethal action was only given to the White House after the Authorization for the Use of Military Force in 2001. Before addressing this potential counterargument, this section will aggregate the legal justifications for targeted strikes into domestic law and international law.

### *Domestic Law*

Officials from both administrations—Juan Zarate and John Brennan—have noted that the Constitution provides sufficient authority for the executive branch to authorize targeted lethal action. John Brennan, the current Director of the CIA, noted in a speech that “The Constitution empowers the President to protect the nation from any imminent threat of attack.”<sup>54</sup> Under Article 1 Section 10 of the U.S. Constitution the President, as Commander-in-Chief, may not engage in war without Congressional consent, “unless actually invaded, or in such imminent danger as will not admit of delay.”<sup>55</sup> In a leaked White Paper, the Department of Justice outlined a set of legal criteria under which the Attorney General deems it lawful for the United States to conduct a lethal operation against a U.S. Citizen who is a senior and operational leader of al Qaeda. The first criterion is whether “an informed, high-level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the

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<sup>53</sup> For an excellent primer on more detailed debates about the legality of targeted strikes see: *Targeted Killings: Law and Morality in an Asymmetrical World*, ed. Claire Finkelstein, Jens David Ohlin, and Andrew Altman (Oxford UK: Oxford University Press, 2012).

<sup>54</sup> Brennan, “The Ethics and Efficacy of the President's Counterterrorism Strategy.”

<sup>55</sup> The Constitution of the United States, Article 1 Section 10, accessed via, [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html).

United States.”<sup>56</sup> In an author interview with Juan Zarate, the former Deputy National Security Advisor for Counterterrorism, noted that the George W. Bush administration primarily justified targeted strikes on this authority bestowed to the Commander-in-Chief.<sup>57</sup> In comparison, the Obama administration also uses the imminent clause in the Constitution, but has shifted to use the 2001 Authorization for the Use of Military Force as the primary backbone for their lethal legal framework.<sup>58</sup>

Congress passed The Authorization for the Use of Military Force (AUMF) within a week after September 11. The AUMF authorized the President to:

Use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.<sup>59</sup>

Jeh Johnson, the former General Counsel for the Department of Defense and current Secretary of Homeland Security, called the AUMF “the bedrock of the military’s domestic legal authority.”<sup>60</sup> The AUMF is one of the most debated legal justifications for lethal action because many have questioned whether it provides the authority to target individuals outside of Afghanistan and associated al Qaeda organizations.<sup>61</sup> John Brennan, the Director of the CIA, said in a speech that, “There is nothing in the AUMF that restricts the use of military force against al-Qa’ida to Afghanistan.”<sup>62</sup> Noting a potential change to this justification, President Obama said in a speech

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<sup>56</sup> “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qaeda or an Associated Force,” Department of Justice (White Paper: 2013).

<sup>57</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

<sup>58</sup> Ibid.

<sup>59</sup> Authorization for the Use of Military Force, Section 2, 107th Congress 2001-2002 (September 18, 2001).

<sup>60</sup> Johnson, “National Security Law, Lawyers and Lawyering in the Obama Administration.”

<sup>61</sup> Since 2001, al Qaeda has many associated movements or adherents. The original branch, led by Osama bin Laden and responsible for the 9/11 attacks, resides on the Afghanistan-Pakistan border. There are additional affiliated organizations that have sworn allegiance to al Qaeda Central (the original branch). These affiliated movements exist in Yemen, Syria, Libya, and Somalia.

<sup>62</sup> Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy.”



in 2013, that he aims to “refine, and ultimately repeal, the AUMF’s mandate.”<sup>63</sup> Nevertheless, the Obama administration has made no significant strides in reforming the AUMF. Taken together, the Constitutional authority provided to the Commander-in-Chief to wage war in the face of imminent danger and the AUMF’s authority to use all “necessary and appropriate force” to pursue al Qaeda and associated movements, comprise the twin legal pillars for targeted lethal action in U.S. domestic law.

### *International Law*

The Bush and Obama administrations have justified their use of targeted lethal force under international law because the United States is involved in an armed conflict and has an inherent right to national self-defense. The legal basis for this stems from the United Nations Charter. Article 51 of the Charter, stipulates, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.”<sup>64</sup> John Yoo, a legal advisor for the Bush administration, argued that self-defense under international law is a “right [that] applies not only after a nation has suffered an attack, but also in anticipation of an ‘imminent’ attack.”<sup>65</sup> In addition, the Obama administration officials have vehemently defended the use of unmanned technology, arguing that there is no stipulation under international law that “bans the use of remotely piloted aircraft for this purpose [national self defense] or that prohibits us [the United States] from using lethal force against our enemies outside of an active battlefield.”<sup>66</sup> While counterterrorism can easily be justified as national self-defense, Yoo notes that the UN Charter adds a stipulation that member states must

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<sup>63</sup> Obama, “Remarks by the President at the National Defense University.”

<sup>64</sup> United Nations Charter, Article 51.

<sup>65</sup> Yoo, “Assassinations or Targeted Killings After 9/11,” 72.

<sup>66</sup> Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy.”

refrain “from the threat to use of force against the territorial integrity or political interdependence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>67</sup>

Therefore, the Obama administration in particular has made a particular effort to justify targeted lethal action under the laws of war.

John Brennan has given the most thorough account of why the war against al Qaeda adheres to the laws of war. The laws of war are long standing justifications that govern how a State can conduct itself in armed conflict and use lethal force.<sup>68</sup> According to Brennan, targeted strikes conform to the principles of necessity, distinction, and proportionality. They are necessary because al Qaeda militants are legitimate military targets, and the principle of necessity requires that the targets have definite military value.<sup>69</sup> Lethal force also adheres to the principle of distinction, which ensures the ability to intentionally identify and attack military targets while civilian targets can remain protected. Brennan argues targeted strikes adhere to the distinction principle because remotely piloted aircraft provide the unique ability to “precisely target a military objective while minimizing collateral damage.”<sup>70</sup> The Obama administration argues targeted strikes are proportionate—the stipulation that collateral damage cannot exceed military advantage—because the UAV technology allows the United States to target terrorists with “ordnance that can be adapted to avoid harming others in the vicinity.”<sup>71</sup> Lastly, Brennan notes that targeted strikes conform to the principle of humanity, which stipulates the use of weapons will not inflict unnecessary suffering, because the weapons systems are very precise.<sup>72</sup>

President Obama reiterated that targeted strikes adhere to the internationally accepted laws of

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<sup>67</sup> United Nations Charter, Article 2; cited in Yoo, “Assassinations or Targeted Killings After 9/11,” 72.

<sup>68</sup> Craig Martin, “Going Medieval: Targeted Killing, Self-Defense and the *Jus ad Bellum* Regime,” in *Targeted Killings: Law and Morality in an Asymmetrical World*, ed. Claire Finkelstein, Jens David Ohlin, and Andrew Altman (Oxford UK; Oxford University Press, 2012), 223-252.

<sup>69</sup> Brennan, “The Ethics and Efficacy of the President's Counterterrorism Strategy.”

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

war when he stated, “We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war—a war waged proportionally, in last resort, and in self-defense.”<sup>73</sup>

Understanding the legal justifications for lethal targeted strikes is imperative to this thesis for it anticipates a counterargument and lays a foundation for later precedents. A critic could argue that there are no historic precedents for targeted strikes before September 11 because the Authorization for the Use of Military Force—a document that granted the President full authorization to use force to pursue al Qaeda—was signed after the attack. The AUMF, however, as seen from the analysis above, is only one of several legal justifications for targeted strikes. Consecutive administrations have defended the practice under Constitutional Authority and international legal rights to self-defense. Furthermore, the Bush administration, as noted by Juan Zarate, relied more heavily on privileges bestowed on the Commander-in-Chief to authorize targeted strikes than the AUMF. The Obama administration, on the other hand, is more reliant on the AUMF to justify lethal action against al Qaeda; Juan Zarate opines that this shift in legal justification is because the Obama administration “relied very much on distancing itself from the Bush administration by changing the legal process.”<sup>74</sup> Zarate added that the real change between the administration’s legal justifications occurred to the legal process. He stated in an author interview, “Harold Koh [the State Department’s top legal advisor] made a real attempt to change the process and forms of legal argumentation—by reiterating and reforming the process calculus—without changing the activity [targeted strikes]. Actually, the Obama administration

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<sup>73</sup> Obama, “Remarks by the President at the National Defense University.”

<sup>74</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

amplified the activity.”<sup>75</sup> Therefore, while the AUMF is undoubtedly a legal justification for targeted strikes, it is not the sole legal justification.

Throughout this thesis many presidents justified the use of lethal force against specific individuals on the legal basis of imminence and national self-defense. This section not only provides a brief summary of how the Bush and Obama administrations legally vindicate targeted strikes, it also establishes a foundation. By establishing the legal foundation for how administrations in the twenty-first century justify targeted strikes, it becomes significantly easier to recognize when administrations in the twentieth century used the same justifications for lethal force.

## **ROADMAP**

The remainder of this thesis will be divided into three chapters. The first chapter will examine historical precedents for targeted killings. In this chapter, I examine several cases for targeted killings—Isoroko Yamamoto in 1943, Muammar Qaddafi in 1986, Osama bin Laden in 1998, and Anwar al-Awlaki in 2011. In addition, I briefly examine the CIA’s Cold War plots to assassinate foreign leaders, which is instrumental in understanding the impact it had on future administrations when contemplating the use of lethal force. The second chapter examines historical precedents for signature strikes, namely, the Phoenix Program in the Vietnam War and the Reagan administration’s proposed preemptive counterterrorism policy in 1984. In the conclusion of each chapter, I will briefly identify historical patterns to further examine in the final chapter. The last chapter summarizes this thesis’s findings, and extrapolates on the identified patterns, which will be then used to craft contemporary policy recommendations to show how history can inform policy.

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<sup>75</sup> Ibid.

# CHAPTER TWO

## TARGETED KILLINGS

*"From the early days of the CIA, its officers contemplated the use of lethal force against named, specific individuals."*<sup>1</sup>  
 -[REDACTED]

General ‘Wild’ Bill Donovan created a wartime intelligence agency that revolved around covert action. Donovan, the founder and director of the Office of Strategic Services (OSS)—the predecessor to the Central Intelligence Agency—used cloak and dagger operations to subvert the Axis powers in World War II. Wild Bill Donovan was an ardent Catholic, World War I war hero, and an ardent American patriot. One project, codenamed “Cross,” which never became operational, called for training left-leaning German nationals to kill top Nazi leaders such as Adolph Hitler, Heinrich Himmler, Hermann Göring, and every Gestapo official with a rank of major or higher.<sup>2</sup> A memo to General Dwight Eisenhower called the operation objective “organized killings.”<sup>3</sup> Barrett McGurn, a foreign correspondent for the *Herald Tribune*, interviewed Donovan and top OSS veterans after the end of the Second World War regarding the intelligence agency’s subversive and lethal activities. In the interview, Donovan told McGurn, “If what you do is for your country, even if it’s stealing and killing, it is no offense to God.”<sup>4</sup>

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<sup>1</sup> The quote came from an article in the CIA’s in house journal—*Studies in Intelligence* “Covert Action, Loss of Life and the Prohibition on Assassination,” 1976-1996,” *Studies in Intelligence*, 40, 2 (1996): 15, accessed via the National Security Archives.

<sup>2</sup> Douglas Waller, *Wild Bill Donovan: The Spymaster Who Created the OSS and Modern American Espionage* (New York: Free Press, 2011), 316.

<sup>3</sup> Ibid.

<sup>4</sup> Barrett McGurn Papers, Wisconsin Historical Society, MSS 149AF, Box 7, Folder: *Herald Tribune*: SPIES (OSS-CIA).

McGurn also prodded John Shaheen, the former head of “special projects” for the OSS, about his role in covert action and Shaheen recalled, “I approved for the killing of a whole group of enemy leaders. Our people said it would surely work but President Roosevelt turned it down.”<sup>5</sup>

The debate of whether to kill individual enemy leaders was clearly present in the days of the OSS, just as it is today with the discussions about drone strikes. The question of whether it is permissible to kill an individual enemy in national self-defense is a pervasive concept in the study of war, but one that leaders and scholars simply take at face value. This chapter serves to rectify that dearth of scholarship. It argues that there are several historical precedents for targeted killings in American history, not all of which were successful in killing the individual. Targeted killings are not limited to drones killing identified terrorists with Hellfire missiles in the twenty-first century. In fact, America has a history of debating whether to kill certain enemies, actively targeting individuals, and in some cases, authorizing lethal force. This chapter will trace the history of targeted killings in the United States from World War II to 2014. In the process, this chapter will actively identify cases of historical precedents and scrutinize them to identify foundational frameworks and trends that, once extracted, will reveal lessons to help inform modern policy on targeted killing drone strikes.

This chapter will analyze the historical cases using the accepted definition of a targeted killing and specific targeting criteria. As mentioned in the previous chapter, this thesis will adhere to a definition presented to the United Nations. In 2010, Philip Alston, a scholar from New York University, delivered a special report on targeted killings to the United Nations General Assembly. In this report, Alston defines targeted killings as, “the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of

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<sup>5</sup> Ibid.

law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”<sup>6</sup>

This chapter will also analyze all targeted killings cases with the targeting criteria—find, fix, finish. These criteria will enable an analysis of the historical cases, an assessment of the historical precedents, and an ability to retain a sense of continuity across decades of American history. Find, fix, finish was originally a phrase used to describe the targeting methodology for missions carried out by U.S. Special Forces during the wars in Iraq and Afghanistan.<sup>7</sup> These targeted operations are broken down into three phases: find, fix and finish. During the find phase, possible targets are identified and recorded for further action.<sup>8</sup> The fix stage is when the intelligence functions of the operation identify the location of a potential target.<sup>9</sup> The final phase, finish, is when “action is taken against the target.”<sup>10</sup> Although the term was originally used for Special Forces operations, it has evolved to describe drone strikes.<sup>11</sup> By combining the find, fix, finish criteria with Philip Alston’s definition of a targeted killing, this chapter will create a framework for analyzing the historical cases. This framework is presented in **Table B**.

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<sup>6</sup> Philip Alston, “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,” United Nations General Assembly, (Human Rights Council: Fourteenth session, May 28 2010).

<sup>7</sup> Charles Faint and Marshall Harris, “F3EAD: Ops/Intel Fusion “Feeds” The SOF Targeting Process,” *smallwarsjournal.com*, January 31, 2012, <http://smallwarsjournal.com/jrnl/art/f3ead-opsintel-fusion-%E2%80%9Cfeeds%E2%80%9D-the-sof-targeting-process>.

<sup>8</sup> Department of Defense, “Joint Targeting,” Joint Publication 3-60, (April 13 2007): ix.

<sup>9</sup> *Ibid.*, x.

<sup>10</sup> *Ibid.*

<sup>11</sup> Micah Zenko, “Reforming U.S. Drone Strike Policies,” Council on Foreign Relations, Special Report no. 65 (January 2013): 6.

**Table B: Historical Precedents for Targeted Killings**

Operation	Criteria	Precedents
Targeted Killings	<p><i>Find</i></p> <p>The intentional targeting of an individual by a State.</p>	<p><i>Osama bin Laden (1998)</i> The Clinton administration authorized the CIA to locate Osama bin Laden for lethal targeting purposes.</p> <p><i>Anwar al-Awlaki (2011)</i> The Obama administration authorized the CIA to hunt al-Awlaki in Yemen for an armed drone operation.</p>
	<p><i>Fix</i></p> <p>Deliberately locating an individual target who is not in physical custody of the State.</p>	<p><i>Isoroku Yamamoto (1943)</i> American intelligence units decrypted a message explicitly detailing Yamamoto’s travel itinerary for April 18, 1943 in the Southern Pacific.</p> <p><i>Osama bin Laden (1998)</i> The CIA located Osama bin Laden near Khowst, Afghanistan on August 20, 1998.</p> <p><i>Anwar al-Awlaki (2011)</i> Through human intelligence operations in Yemen, the CIA leaders informed the Obama administration Anwar al-Awlaki would be traveling by convoy in Northwest Yemen.</p>
	<p><i>Finish</i></p> <p>The intentional, premeditated, deliberate, and legal use of lethal force against a targeted individual.</p>	<p><i>Isoroku Yamamoto (1943)</i> American Army aviators gunned down Yamamoto’s plane near Guadalcanal on April 18, 1943.</p> <p><i>Anwar al-Awlaki (2011)</i> On September 30, 2011, a fleet of CIA-operated armed drones killed Anwar al-Awlaki in a truck while traveling through Jawf Province.</p>

This chapter will present and analyze four cases of strikes against individuals cited in targeted killings scholarship. Not all of the cases serve as a find-fix-finish precedent for contemporary targeted killings drone strikes; however, all cases presented serve a vital purpose in understanding U.S. policymakers’ dilemma of whether to kill individual enemy combatants. The first operation presented was a successful targeted killing against Admiral Isoroku Yamamoto during World War II. The second case analyzes the U.S. air strike against Libyan terrorist facilities in 1986, which was not a targeted killing, but is fundamental in understanding later targeted killings. The third case examines the unsuccessful targeted killing of Osama bin Laden in 1998 by the Clinton administration. Finally, the fourth case is a modern drone strike,



which targeted Anwar al-Awlaki. Interwoven throughout these cases, this thesis will interject and provide a history of certain events that are integral to understanding the broader historical continuum of targeted killings. For example, Congress intensely investigated the CIA during the 1970s on allegations that it plotted to assassinate foreign leaders. As discussed in the first chapter of this thesis, targeted killings are not assassinations. This interlude on assassinations, however, greatly influenced future generations of CIA officers and policymakers and its ramifications are still present today. This chapter will delve into the historical precedents, uncover trends to dissect, and piece together a general history of the targeted killings continuum spanning between the twentieth and twenty-first centuries.

### **ISOROKU YAMAMOTO, 1943**

Americans loathed Admiral Isoroku Yamamoto during World War II. When the news broke after the war had ended that American aviators gunned him down in a special operations mission, Americans rejoiced.<sup>12</sup> Yamamoto was the architect of the surprise Pearl Harbor attack, the commander of the Japanese fleet at the Battle of Midway, and reportedly bragged in a published letter at the beginning of World War II, “I shall not be content merely to capture Guam and the Philippines and occupy Hawaii and San Francisco. I’m looking forward to dictating peace to the United States in the White House.”<sup>13</sup> For his actions and statements, Yamamoto was described in the media as being at the top of “General MacArthur’s list of war criminals,” and “America’s No. 1 enemy.”<sup>14</sup> After the details of the 1943 Yamamoto mission were released

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<sup>12</sup> Roger Beaumont, “Targeting Military Leaders,” in *Lightning Over Bougainville*, ed. R. Cargill Hall (Washington, D.C.: Smithsonian Institution Press, 1990), 38.

<sup>13</sup> “‘I’ll Capture White House,’ Jap Admiral Bragged Year Ago,” *The Washington Post*, December 17, 1941, ProQuest Historical Newspapers.

<sup>14</sup> “The End of Yamamoto,” *The New York Times*, September 14, 1945; “Tokyo Broadcasts News; He Hated America Bitterly: Yamamoto, Top Jap Sea Officer, Killed,” *The Washington Post*, May 22, 1943, ProQuest Historical Newspapers.

in 1945, Colonel Thomas Lanphier Jr., the ace originally credited with downing Yamamoto's plane, wrote an exposé for the *New York Times* and trumpeted his feat by writing that the Japanese Admiral was, "an easy man to hate," and "one it would be an honor to destroy."<sup>15</sup>

Many historians and political scientists acknowledge and accept the Yamamoto mission in targeted killings literature.<sup>16</sup> Two scholars, however, contend that the Yamamoto mission was not a targeted killing. Gary Solis argues that the Yamamoto mission was not a targeted killing because Admiral Yamamoto was a uniformed combatant.<sup>17</sup> In a legal memorandum for the Army, W. Hays Park also argues that the Yamamoto mission was incorrectly labeled as a targeted killing because it occurred during conventional war.<sup>18</sup> Solis and Park are in the minority of targeted killings scholarship. Disqualifying the Yamamoto mission because Admiral Yamamoto was a uniformed combatant and the operation took place in a conventional war are minute distinctions that are not referenced in existing literature or in this thesis's definition of a targeted killing extracted from Alston's 2010 UN Report.

Extending this premise, modern political leaders have also cited the Yamamoto mission to justify modern targeted killings. The top lawyers in the State Department, Pentagon, and Department of Justice have all mentioned the air raid on Admiral Yamamoto in public speeches defending the legality of targeted killings in the Obama administration.<sup>19</sup> Eric Holder, the 82<sup>nd</sup>

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<sup>15</sup> Thomas Lanphier, "Flier Who Shot Down Yamamoto Says White House Baited the Trap," *New York Times*, September 12, 1945.

<sup>16</sup> For scholarly references on the Yamamoto mission see: Ward Thomas, "Norms and Security: The Case of International Assassination," *International Security* 25, no. 1 (2000): 114; Kevin Govern, "Operation Neptune Spear: Was Killing Bin Laden a Legitimate Military Objective?," in *Targeted Killings: Law and Morality in an Asymmetrical World*, ed. Claire Finkelstein, Jens David Ohlin, and Andrew Altman (Oxford UK; Oxford University Press, 2012), 358-359; Jeffrey Richelson, "When Kindness Fails: Assassination as a National Security Option," *International Journal on Intelligence and Counterintelligence* 15, no. 2, (2010): 247.

<sup>17</sup> Gary Solis, "Targeted Killings and the Law of Armed Conflict," *Naval War College Review* 60, no. 2, (2007): 128.

<sup>18</sup> W. Hays Park, "Executive Order 12333 and Assassination," Memorandum of Law, Department of the Army, November 2, 1989.

<sup>19</sup> Harold Koh, "The Obama Administration and International Law," (Speech, Washington, D.C., March 25, 2010,) The State Department, <http://www.state.gov/s/l/releases/remarks/139119.htm>; Jeh Johnson, "National Security Law,

U.S. Attorney general, has been in charge of outlining and defending the legality for drone strikes in the Obama administration. In a speech given at Northwestern University Law School in 2005, Holder justified targeted killings as legal and cited the Yamamoto strike as a historical example. Holder argued:

It is entirely lawful – under both United States law and applicable law of war principles – to target specific senior operational leaders of al Qaeda and associated forces. This is not a novel concept. In fact, during World War II, the United States tracked the plane flying Admiral Isoroku Yamamoto – the commander of Japanese forces in the attack on Pearl Harbor and the Battle of Midway – and shot it down specifically because he was on board. As I explained to the Senate Judiciary Committee following the operation that killed Osama bin Laden, the same rules apply today.<sup>20</sup>

The examination of the raid on Yamamoto, from find, to fix, to finish, will provide a historical foundation for modern counterterrorism drone strikes as the one of the earliest, if not first, targeted killing in American history. The mission against Admiral Yamamoto precisely aligns with the accepted UN definition of a targeted killing: the intentional, deliberate, and premeditated use of lethal force against a specific individual who is not in the physical custody of the perpetrator and fits into the find-fix-finish framework. After examining the operational similarities with the find, fix, finish criteria, this case will show the major differences with modern targeted killings. Most notably, how the Executive Branch completely hid how Yamamoto died until after the war was over, and the strong tension between the intelligence and policy community. Finally, this case will conclude with a brief examination of the ethical objections to the targeted killing of Admiral Yamamoto, which provide an empirical example for understanding the often cited legal rationales for targeted killings.

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Lawyers and Lawyering in the Obama Administration,” (Speech, New Haven, CT, February 22, 2012), Council on Foreign Relations, <http://www.cfr.org/defense-and-security/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>.

<sup>20</sup> Eric Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law,” (speech, Chicago, IL March 5, 2012), Department of Justice, <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>.

In 1942, the Allied war strategy in the Southern Pacific hinged on ousting the Japanese from the Solomon Islands. The ousting campaign began in August 1942 and lasted until February 1943 when the Allies successfully chiseled a foothold on the island of Guadalcanal. Admiral Yamamoto, a firm believer in air power, in April 1943 helped design a plan, called “Operation I,” for an aerial assault on American positions in Guadalcanal.<sup>21</sup> The Japanese operation was largely unsuccessful and Yamamoto, discouraged by another defeat, made plans to visit Japanese forward operating bases beyond Guadalcanal that had begun to experience increased Allied aerial attacks in early April. On April 13, 1943, American naval intelligence cryptologists decoded and deciphered a Japanese message that included the details of Yamamoto’s itinerary for his April 18 trip.<sup>22</sup> The decrypted radio message identified that the Commander in Chief of the Combined Fleet (Yamamoto) would inspect three forward operating bases. It gave the exact times he would arrive and depart from each base, and said that he would be held in a mid-sized bomber and would be escorted by six fighter planes.<sup>23</sup> The allied intelligence and military functions were not actively searching for Yamamoto, but when the American Naval intelligence cryptologists broke the Japanese message, they found and fixed Yamamoto’s precise location. The following day, April 14, Yamamoto’s American equivalent, Admiral Chester Nimitz, was briefed on the decrypted document and subsequently ordered his Vice-Admiral, William Halsey, to proceed with an interception at Yamamoto’s first stop and told Halsey, “Good luck and good hunting.”<sup>24</sup>

United States military and intelligence services had Admiral Yamamoto’s location fixed and a green light to strike the architect of Pearl Harbor. The Navy was not equipped to handle

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<sup>21</sup> R. Cargill Hill, “The Yamamoto Mission,” in *Lightning Over Bougainville*, ed. R. Cargill Hill (Washington, D.C.: Smithsonian Institution Press, 1990), 18.

<sup>22</sup> Roger Pineau, “The Code Break,” in *Lightning Over Bougainville*, 40.

<sup>23</sup> Ibid.

<sup>24</sup> Hill, “The Yamamoto Mission,” 20.

the air raid for Yamamoto and was forced to use Army aviators for the special operation.<sup>25</sup> Top commanders planned the strike on Yamamoto carefully. They chose to use a new class of fighters, the P-38 Lightning, which could out-climb and out-dive the maneuverable Japanese Zero.<sup>26</sup> The commanders designed a stealth mission. Fourteen Lightning fighters, flying at 20,000 feet, would engage Yamamoto's escorts while four pilots, hand-selected because they were excellent gunners, would skim the waves of the ocean to avoid enemy radar and jet from below to surprise Yamamoto's bomber.<sup>27</sup> On April 17, the army aviators met with top Navy, Marine, and Army commanders. Thomas Lanphier, the ace attributed with gunning down Yamamoto, later recalled all of the Army aviators being handed cablegrams printed on blue tissue, to distinguish that the operation was Top Secret.<sup>28</sup> The cablegram, Lanphier said, directed the aviators to apply "maximum effort" to destroying Yamamoto and was signed "Knox."<sup>29</sup> Frank Knox was the Secretary of the Navy for President Franklin Roosevelt. While some historians debate whether Roosevelt authorized the mission, it is clear that top policymakers, such as Knox, authorized the Yamamoto raid.<sup>30</sup> On April 18, the covert operation against Admiral Yamamoto succeeded and some strike combination by Thomas Lanphier and his fellow gunner, Rex Barber, finished Yamamoto.<sup>31</sup>

From fix to finish, the Yamamoto operation mirrored common elements in modern day targeted killings. The entire mission was Top Secret and covert in nature. Delaying public knowledge of the raid preserved this secrecy. Leading American decision-makers did not want to expose to the Japanese that they had decrypted their cipher and therefore, did not reveal the

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<sup>25</sup> Daniel Haulman makes the argument that the Yamamoto mission was akin to a special operation. For more see: Daniel Haulman, "The Yamamoto Mission," *Air Power History* (2003): 33.

<sup>26</sup> Hill, "The Yamamoto Mission," 19.

<sup>27</sup> Ibid.

<sup>28</sup> Lanphier, "Flier Who Shot Down Yamamoto."

<sup>29</sup> Ibid.

<sup>30</sup> Haulman, "The Yamamoto Mission," 32.

<sup>31</sup> Ibid.

operation until after the war was over. The special operation on Yamamoto was akin to drone strikes because it also involved the deployment of new aerial technology, the P-38 Lightning, which was introduced into the war in 1942. In addition, there was a high-level degree of complicity by top policymakers in Washington, and possibly, President Roosevelt himself. The main difference between the Yamamoto strike and today's drone strikes is that top national security leaders were not actively searching to kill Pearl Harbor's architect, but they sprang on the opportunity once his location was fixed. Nevertheless, operationally, the strike on Yamamoto was intentional, deliberate and used "maximum effort" to "hunt" and use lethal force on a specific individual.

The primary differences between the Yamamoto raid and contemporary drone strikes occurred after American aces gunned down the Admiral's plane. The White House did not release any information about the raid. Americans did not know of Yamamoto's death until a Tokyo radio station solemnly announced the Admiral's death a month later and the *New York Times* published a cover story on May 21, 1943.<sup>32</sup> The same day, the Office of War Information said the commander of the combined Japanese fleet died aboard a warplane "during his direction of operations."<sup>33</sup> The rumor mill also churned out various explanations for how the hated Admiral died; some even reported that he had committed suicide.<sup>34</sup> The Associated Press and American media widely relied on Japanese radio stations for their information regarding the death of Yamamoto. Many American Naval officers were surprised by the operation and were "unaware of any sea-air combat in April sufficiently important to have claimed the attention of

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<sup>32</sup> "Japanese Admiral Killed in Combat," *The New York Times*, May 21, 1943.

<sup>33</sup> "Chief of Jap Fleet Killed Fighting U.S." *Chicago Daily Tribune*, May 21, 1932, Proquest Historical Newspapers.

<sup>34</sup> "Yamamoto Death Called Mystery: One Authority Suspects Suicide," *The New York Times*, May 22, 1943.

Japan's ranking officer."<sup>35</sup> Moreover, the military hid the raid from the official "air actions listed" communiqués in April of 1943.<sup>36</sup> When reporters questioned Roosevelt on Yamamoto's death, the President gasped, "Is he dead? Gosh!"<sup>37</sup> Americans were not informed that the United States military tracked and killed Yamamoto until a month after Victory in Japan Day and a week after Japanese representatives officially surrendered aboard the *USS Missouri*. On September 10 and 11, 1945, American newspapers published numerous stories with headlines describing how: "American Pilots Killed Jap Sea Chief," and "Navy Broke Japanese Code."<sup>38</sup> The following day, the Army informed the media that Thomas Lanphier was responsible for gunning down Yamamoto.<sup>39</sup>

The delay in informing the American public of the killing of Yamamoto and admitting that the United States government was responsible for his death occurred due to internal tension over intelligence. This tension over intelligence is the second major difference when compared with modern drone strikes. When the *New York Times* first reported that Yamamoto was killed in May 1943 Winston Churchill was irate. Churchill reportedly lambasted Roosevelt because the United States risked jeopardizing the security of communications intelligence, which was vital for the Allied war effort, for a venal pursuit of an enemy admiral.<sup>40</sup> Moreover, in a Congressional Committee's investigation into Pearl Harbor in 1945, Vice-Admiral Halsey mentioned that there were disagreements within the Navy and with Admiral Nimitz over whether

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<sup>35</sup> "Japan's Navy Chief Killed in Action, *The Christian Science Monitor*, May 21, 1943, ProQuest Historical Newspapers.

<sup>36</sup> "Tokyo Broadcasts News; He Hated America Bitterly," *The Washington Post*.

<sup>37</sup> "'Gosh!'" Says Roosevelt On Death of Yamamoto," *The New York Times*, May 21, 2013.

<sup>38</sup> "How American Pilots Killed Jap Sea Chief," *Chicago Daily Tribune*, September 10, 1945, ProQuest Historical Newspapers; "Navy Broke Japanese Code, Causing Yamamoto's Death," *The Washington Post*, September 11, 1945, ProQuest Historical Newspapers.

<sup>39</sup> "Yamamoto's Killer Identified by Army," *The New York Times*, September 12, 1945, ProQuest Historical Newspapers.

<sup>40</sup> Hill, "The Yamamoto Mission," 26.

to authorize the Yamamoto mission, as it could risk exposing the intelligence operations aimed at the Japanese.<sup>41</sup>

After World War II, more information surfaced on Admiral Yamamoto and the air raid that killed him, and some scholars and government figures questioned the ethics of the strikes. In 1946, Admiral Nimitz was furious when he discovered at an Associated Press event that the often-cited bit that Yamamoto boasted he would “dictate peace to the White House,” was actually a hoax perpetrated by the Japanese government for increased morale in Japan. This purported phrase had served as a lightning rod in the case against Yamamoto in the United States.<sup>42</sup> Historians have discovered that Yamamoto was not fiercely anti-American (as he was often depicted) and initially argued against making war with the United States, but was overruled by ultra-nationalist Japanese politicians.<sup>43</sup> Later Rex Barber—one of the select gunners in the Yamamoto mission who was eventually found to share responsibility for gunning down the Admiral’s bomber—would later write that “the more I study and read about Admiral Yamamoto, the more I respect and admire him...the world did lose a great man.”<sup>44</sup> In addition, former Supreme Court Justice John Paul Stevens, who served as a cryptographer and helped break the code that fixed Yamamoto’s location, told Jeffery Rosen of the *New York Times*:

I was on the desk, on watch, when I got word that they had shot down Yamamoto in the Solomon Islands, and I remember thinking: this is a particular individual they went out to intercept. There is a very different notion when you’re thinking about killing an individual, as opposed to killing a soldier in the line of fire.<sup>45</sup>

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<sup>41</sup> “Yamamoto Trap Threatened U.S. Secret About Jap Code,” *The Christian Science Monitor*, December 17, 1945, ProQuest Historical Newspapers.

<sup>42</sup> “Yamamoto ‘Boast’ Declared a Hoax,” *The New York Times*, January 11, 1946, ProQuest Historical Newspapers.

<sup>43</sup> John Keegan, *Intelligence in War: Knowledge of the Enemy from Napoleon to Al Qaeda* (New York: Alfred Knopf, 2003), 189-190.

<sup>44</sup> Tom Crouch, “Foreword,” in *Lightning Over Bougainville*, IX.

<sup>45</sup> Jeffrey Rosen, “The Dissenter, Justice John Paul Stevens,” *The New York Times*, September 23, 2007, [http://www.nytimes.com/2007/09/23/magazine/23stevens-t.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2007/09/23/magazine/23stevens-t.html?pagewanted=all&_r=0).



Paul Woodruff, a philosophy professor, during an academic panel at the Smithsonian decades after the strike also questioned the ethics of the Yamamoto raid.<sup>46</sup> Woodruff stated that the morality of Yamamoto's raid depends on whether the motives for killing Yamamoto looked forward or backward.<sup>47</sup> If revenge and vengeance had guided the decision to kill Yamamoto, the action would be less ethical. Despite being called "Operation Vengeance," Woodruff ultimately concluded that the mission was ethical because it was forward motivated; Yamamoto was irreplaceable in the Japanese military and his death would save American lives.<sup>48</sup> The forward-thinking rationale for gunning down Yamamoto was to hasten the victory in the Pacific theatre and to save American troops. Forward-thinking rationale is aligned with the notion of preventative self-defense. By eliminating an individual who has a record of doing you harm, you can assume that the same person will do harm to you again, and you are therefore justified to defend yourself against said person. Justifying targeted killings as self-defense is a common attribute of the other historical cases discussed in this chapter.

### **CIA ASSASSINATIONS AND THE CHURCH COMMITTEE, 1975-76**

In 1975, a Congressional Committee, the Church Committee, unearthed the CIA's deepest secrets: the nation's top intelligence agency planned to assassinate several of the world's leaders who were Communist sympathizers. The CIA's Cold War assassination attempts on world leaders do not act as precedents for targeted killings, but are frequently mentioned by scholars in targeted killings literature.<sup>49</sup> The public revelations regarding the assassinations were

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<sup>46</sup> Paul Woodruff, "Was it Right to Gun for Yamamoto?" in *Lightning over Bougainville*, 46-53.

<sup>47</sup> It is important to note that in the aftermath of the Yamamoto strike, the public *strongly* supported the strike and historical revisions did not occur until decades later.

<sup>48</sup> Woodruff, "Was it Right to Gun for Yamamoto?" in *Lightning over Bougainville*, 46-53.

<sup>49</sup> For examples see: Howard Rachtel, "Targeting Osama Bin Laden: Examining the Legality of Assassination as a Tool of U.S. Foreign Policy," *Duke Law Journal* 55, no. 3, (2005): 696; Rafsheen Adhan, "The Evolution of Law and Policy for CIA Targeted Killings," *Journal of National Security Law and Policy* 339 (2012): 457; Jeffrey

a watershed moment for the American public about the CIA and the American presidents who seemingly unleashed it. The Church Committee hearings led to subsequent executive orders by three different presidents barring assassinations from America's foreign policy toolkit. For the purpose of this thesis, this section will not go into the details of the assassinations, but will discuss the wider implications by examining the Church Committee and its findings. The results are important because when future presidents, policymakers, and intelligence officials weighed targeted killing operations they were forced to address the pressing question remaining from 1975: Is this an assassination?

After the media's revelations about the CIA document dubbed "The Family Jewels," the media, Congress, and Americans became fixated on CIA covert action. Senator Frank Church, a Democrat from Idaho, led the "Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities Committee" in 1975. The Senate Select Committee, commonly referred to as the Church Committee, began to examine the CIA's role in covert action and it immediately investigated allegations that the U.S. government attempted to assassinate foreign leaders.<sup>50</sup> The Church Committee examined cases of alleged CIA assassinations on the leaders of South Vietnam, Chile, the Dominican Republic, the Congo, and Cuba, concluding "the United States was implicated in several assassination plots."<sup>51</sup> All of the plots took place from 1960 to 1970. The CIA was implicated in plotting to assassinate the leaders, although the planned operations were not successful. The Committee placed the hearings into the wider context of the Cold War and understood that coercive covert action was

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Richelson, "When Kindness Fails: Assassination as a National Security Option," *International Journal on Intelligence and Counterintelligence* 15, no. 2, (2010): 243-274.

<sup>50</sup> Loch Johnson, "The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability," *Intelligence and National Security* 23, no. 2 (2008): 200-201.

<sup>51</sup> United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, "Alleged Assassination Plots Involving Foreign Leaders," Interim Report, Report no. 94-465, November 20, 1975, 1.

used in the Cold War, but made the strong distinction between killing leaders and meddling in other nations' politics. The authors wrote, “[there is] a significant difference between a coldblooded, targeted, intentional killing of an individual foreign leader and other forms of intervening in the affairs of foreign nations.”<sup>52</sup> The main scope of the committee was to examine how and why the plots happened, where they were authorized, and by whom.

The major implication from the findings, and for the purpose of this thesis, was the Church Committee's discovery of “plausible deniability” by the executive branch. Covert action is an accepted practice of the CIA and is used to conceal the nation's identity in sponsoring foreign policy objectives by permitting a buffer of plausible deniability by policymakers.<sup>53</sup> The Committee uncovered that in the assassination cases the National Security Council created a maze of special committees able to authorize covert action—in this case assassinations—to insulate the president.<sup>54</sup> The committee concluded “this concept [plausible deniability], [was] designed to protect the United States and its operatives from the consequences of disclosures, has been expanded to mask decisions of the president and his senior staff members.”<sup>55</sup> The conclusion regarding plausible deniability, along with other the details unearthed in the individual plots, led the Church Committee to determine that “assassination is incompatible with American principles, international order, and morality.”<sup>56</sup> Moreover, the committee called for it to be rejected as a tool of American foreign policy and advocated that a “flat ban against assassination should be written into law.”<sup>57</sup>

The Church Committee findings were the icing on the cake for an American public already weary of the government. They came after the withdrawal from Vietnam, Watergate,

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<sup>52</sup> Ibid., 6.

<sup>53</sup> This definition was crafted from the Church Committee's findings. See: Ibid., 9.

<sup>54</sup> Ibid., 10.

<sup>55</sup> Ibid., 11.

<sup>56</sup> Ibid., 1.

<sup>57</sup> Ibid., 281.

and the resignation of a President Nixon. These events coupled with the jarring findings from the Church Committee, scarred the image of the CIA and depicted it as a “rogue elephant.”<sup>58</sup> The Church Committee led to more rigorous Congressional intelligence oversight, including a standing Senate Select Committee on Intelligence.<sup>59</sup> In addition, in 1976 President Ford responded by signing Executive Order 11,905, which banned “political assassination.” President Carter removed the word “political” from the order in 1978. President Reagan superseded both executive orders with Executive Order 12,333 in 1981, which stipulated, “No one employed or acting on behalf of the U.S. government shall engage in, or conspire to engage in assassination.”<sup>60</sup>

The Church Committee and its investigation of assassinations have two implications for this thesis. First, the Church Committee led to one of the legal constructs that all targeted lethal policies must abide by: Executive Order 12,333. The subsequent executive orders barring assassinations are the result of the Church Committee and as noted in the first chapter, one of the primary legal frameworks for targeted killings. Banning assassinations by executive order instead of Congressional law, however, has some benefit for the White House because it makes it possible to rewrite, revoke, or create a new Executive Order.<sup>61</sup> Moreover, Executive Order 12,333 would provide a legal framework that would narrow government officials’ deliberations on using lethal force because they believe executive order legally restricts their policy options.<sup>62</sup> The second important implication is that the Church Committee created a firestorm for the CIA and nearly destroyed its reputation with the American public, creating a cadre of CIA officers

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<sup>58</sup> Christopher Andrews, *For the President’s Eyes Only* (New York: HarperCollins, 1995), 421.

<sup>59</sup> *Ibid.*, 422; and Johnson, “The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability.”

<sup>60</sup> Rachtel, “Targeting Osama Bin Laden,” 698; Executive Order 12333 of Dec. 4, 1981, section 2.11, appear at 46 FR 59941, 3 CFR, 1981 accessed via: <http://www.archives.gov/federal-register/codification/executive-order/12333.html>.

<sup>61</sup> Rachtel, “Targeting Osama Bin Laden,” 699.

<sup>62</sup> *Ibid.*, 707.

and national security policymakers weary, or at least very aware, of the political ramifications of lethal security policy.<sup>63</sup> This weariness is clearly seen in the decades following the Church Committee.

### **MUAMMAR QADDAFI, 1986**

In 1986, Ronald Reagan authorized an airstrike on Libyan “terrorist facilities,” one of which was a command-and-control structure where Libya’s dictator, Muammar Qaddafi, was residing.<sup>64</sup> Scholars frequently mention the 1986 strike, codenamed Operation El Dorado Canyon, in assassination and targeted killings literature.<sup>65</sup> Operation El Dorado Canyon was *not* a targeted killing and is *not* a historical precedent for targeted killings using the find-fix-finish framework. The 1986 Libyan strike, however, does serve as a foundational legal precedent and operational concept that future administrations are known to have mirrored while crafting their own targeted killings policy. The airstrike does not qualify as a targeted killing. Muammar Qaddafi was not actively targeted. U.S. intelligence services did not actively look to find and fix Qaddafi’s location, thus, eliminating two legs of a find-fix-finish operation.<sup>66</sup> In addition, there was no “finish” on the airstrike on an individual target, eliminating the third criterion of a targeted killing.

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<sup>63</sup> Mark Mazzetti, *The Way of the Knife*, 88.

<sup>64</sup> Ronald Reagan, “Address to the Nation on the United States Air Strike against Libya,” (Speech, Washington, D.C., April 14, 1986), <http://www.reagan.utexas.edu/archives/speeches/1986/41486g.htm>.

<sup>65</sup> Richelson, “When Kindness Fails: Assassination as a National Security Option,” 243-274; Rachtel, “Targeting Osama Bin Laden: Examining the Legality of Assassination as a Tool of U.S. Foreign Policy,” 677-710; Kenneth Anderson, “Targeted Killing in U.S. Counterterrorism Strategy and Law,” Working Paper between the Brookings Institution, Georgetown University Law Center, and Hoover Institution (2009), [http://www.brookings.edu/~media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\\_counterterrorism\\_anderson.pdf](http://www.brookings.edu/~media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511_counterterrorism_anderson.pdf).

<sup>66</sup> Ronald Bruce St John, *Libya and the United States: Two Centuries of Strife* (Philadelphia, PA: University of Pennsylvania Press, 2002), 137.

Nevertheless, the airstrike on Muammar Qaddafi provides important ramifications for this chapter. Presenting Operation El Dorado Canyon as a failed case study for a targeted killing acts a theoretical exercise. By examining what *is not* a targeted killing it will clarify what *is* one. While not an operational precedent, this case will serve as a historical precedent for some of the legal arguments made by future administrations to justify targeted killings. Thus, while the air assault on Libyan terrorist facilities was not an operational historical precedent for targeted killings, it is important because American decision makers invoked the legal right to self-defense as a legal justification for a counterterrorist operation. Finally, although the operation was not a targeted killing, it was the first time in American history that the executive branch responded with lethal force to terrorism. This becomes especially pertinent when later administrations looked to the 1986 strike as a precedent for counterterrorism targeted killings.

The Reagan administration labeled Qaddafi's Libyan regime as a state exporter of terror and believed that the Libyan dictator was behind a string of deadly terrorist attacks aimed at American interests in late 1985 and early 1986.<sup>67</sup> In the final months of 1985, a Palestinian group with ties to Libya—Abu Nidal—orchestrated numerous attacks. Abu Nidal bombed a cafe next to a U.S. Embassy in Rome, seized a cruise ship and brutally murdered an elderly American in a wheelchair, firebombed a U.S. military post exchange in Germany, and unleashed coordinated assaults on the Rome and Vienna airports that killed 25 people including five Americans.<sup>68</sup> Qaddafi worsened his international standing by not only presumably backing the terrorist attacks, but also welcoming the commandos that carried out the cruise ship seizure into Libya and publicly praising the airport assaults.<sup>69</sup>

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<sup>67</sup> Reagan, "Address to the Nation on the United States Air Strike against Libya."

<sup>68</sup> Bruce St John, *Libya and the United States*, 132.

<sup>69</sup> *Ibid.*, 135.

For months, the Reagan administration debated retribution against Qaddafi, but finally codified a policy for the Libyan threat when President Reagan signed National Security Decision Directive 205 on January 8, 1986. The declassified document argues that the “evidence of Qadhafi’s support for terrorism to include the December 27 attacks in Rome and Vienna, is indisputable.”<sup>70</sup> The Reagan administration noted that “The scope and tempo of Libyan-supported terrorist activity against Western targets is widening and accelerating,” and that the “support of international terrorism by the Government of Libya constitute[s] an unusual and extraordinary threat” to American national security.<sup>71</sup> By early 1986, the Reagan administration poised itself for retaliation against Libya by outlining a military plan to “heighten the readiness of U.S. forces to conduct military action.”<sup>72</sup> The forces positioning against Libya in early 1986 mobilized after a terrorist attack in April.

The final straw for the Reagan administration occurred on April 5, 1986 when terrorists slid a bomb underneath a disc jockey’s booth at the La Belle Discotheque in West Berlin. The attack on the discotheque, which U.S. persone frequented, killed two Americans and injured hundreds more.<sup>73</sup> The National Security Agency intercepted radio transmissions between Libyan officials and terrorists suggesting certain Western social gathering places, dispatching special teams to Western European capitals to plan attacks, and designating orders to carry out plans.<sup>74</sup> After the bombing in West Berlin, American policymakers now had a “smoking gun” and planned a strike on Libyan terrorist facilities.<sup>75</sup>

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<sup>70</sup> National Security Directive 205, “Acting Against Libyan Support for Terrorism,” The White House, (January 8, 1986), 1.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Alison Pargeter, *Libya: The Rise and Fall of Qaddafi* (New Haven, CT: Yale University Press, 2012): 140.

<sup>74</sup> Brian Davis, *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya*, (New York: Praeger, 1990), 115; Timothy Naftali, *Blind Spot: The Secret History of American Counterterrorism*, (New York, NY: Basic Books, 2006), 183.

<sup>75</sup> Bruce St John, *Libya and the United States*, 132.

The Reagan Administration carefully planned a strike that would cripple Libya's terrorist operations, not political institutions to avoid international recrimination. Margaret Thatcher, the Prime Minister of the United Kingdom, supported the Reagan administration's counterterrorism agenda in Libya when she asserted, "I have no illusion that these actions will eliminate the terrorist threat...the loss of such state sponsorship will inevitably weaken the ability of terrorist organizations."<sup>76</sup> There were five targets that President Reagan approved for retaliation: (1) a naval commando school near Tripoli that trained Palestinian Liberation Organization militants, (2) an airfield near Tripoli used to export nefarious materials, (3) a military Barracks near Benghazi that served as a training facility and alternate command center, (4) a military airfield that although not tied to terrorism was necessary to damage Libya's air defenses for the American raid, (5) and the most contested—the Aziziyah Barracks in Tripoli—that served as Qaddafi's command and control center and residence on occasion.<sup>77</sup> Navy and Air Force pilots carried out Operation El Dorado Canyon on April 15, 1986 and resulted in 36 Libyan deaths, damage to all of the targeted facilities, and (later disproved) accusations by Qaddafi, who claimed that American forces targeted his residential Gucci-made tent and killed his adopted daughter.<sup>78</sup>

Operation El Dorado Canyon leaves a pressing question for the purpose of this thesis: did the Reagan administration use intentional, premeditated, and deliberate use of force against a specific individual? In other words, did the United States attempt to target and kill Muammar Qaddafi? The answer is no. Historians, legal scholars, and former government officials have vehemently argued that Qaddafi was not a primary target for Operation El Dorado Canyon. The

<sup>76</sup> Margaret Thatcher, *The Downing Street Years* (New York: Harper Collins, 1993), 444.

<sup>77</sup> W. Hays Park, "Lessons from 1986 Airstrike," *New England Law Review* 36, no. 4, (2003): 762.

<sup>78</sup> *Ibid.*, 765; W. Hays Park notes Qaddafi's claims were fabrications in a Letter to the Editor in the *Washington Post*. See W. Hays Park, "Truth about 1986 Bombing in Libya," Letter to the Editor, *Washington Post*, July 4, 2011, [http://www.washingtonpost.com/opinions/the-truth-about-1986-us-bombing-in-libya/2011/07/03/gHQAjAWHyH\\_story.html](http://www.washingtonpost.com/opinions/the-truth-about-1986-us-bombing-in-libya/2011/07/03/gHQAjAWHyH_story.html).



1986 airstrike is cited as a precedent because U.S. forces struck the Aziziyah Barracks, where Qaddafi was known to reside and, in fact, was residing the night of the strike.<sup>79</sup> Before they authorized the strike, American intelligence officials and policymakers recognized that Qaddafi had erratic residency behavior and was known to change locations three times in any given night out of fear of internal overthrow.<sup>80</sup> Moreover, intelligence assessments of the Aziziyah Barracks revealed an underground bunker designed by the Soviets, where many in the U.S. intelligence community assumed Qaddafi would be staying *if* at the command center. Although the intelligence community knew of the bunker, the aircraft were not even equipped with bunker-busting ordnance.<sup>81</sup> As noted earlier, there was no find, fix, or finish in Operation El Dorado Canyon. On the contrary, American decision-makers could only guess whether Qaddafi would be at the barracks.

Operation El Dorado Canyon did not intentionally or deliberately target Qaddafi, which fails to qualify as a targeted killing precedent. Ronald Reagan noted the primary objective of the operation in his memoirs. Reagan wrote that he wanted to show the “attack was not intended to kill Qaddafi...The objective was to let him know that we weren’t going to accept his terrorism anymore.”<sup>82</sup> Officials in the White House, however, were prepared that his death could be a possibility. One NSC staff member said in an interview, “Killing him [Qaddafi] was never part of our plan. On the other hand, we certainly made no attempt to protect him from our bombs.”<sup>83</sup> The White House Press Secretary’s office was prepared to call Qaddafi’s death “a fortuitous by-

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<sup>79</sup> Bruce St John, *Libya and the United States*, 137; Stephen Hosmer, *Operations Against Enemy Leaders* (Santa Monica, CA: RAND Corporation, 2001), 27.

<sup>80</sup> Bruce St John, *Libya and the United States*, 122.

<sup>81</sup> Hosmer, *Operations Against Enemy Leaders*, 27.

<sup>82</sup> Ronald Reagan, *An American Life* (New York: Pocket Books, 1990), 519.

<sup>83</sup> Joseph Stanik, *El Dorado Canyon: Reagan’s Undeclared War with Qaddafi* (Annapolis, MD: Naval Institute Press, 2003), 152.

product of our act of self-defense.”<sup>84</sup> The controversial issue over killing a head of state was exacerbated when Seymour Hersh wrote a feature story for the *New York Times* magazine a year after the bombing that claimed the “assassination of Qaddafi was the primary goal of the Libyan bombing.”<sup>85</sup> Hersh’s story, however, has been “sharply disputed” by legal, governmental, and scholarly authorities.<sup>86</sup>

Targeted killings literature cites the Qaddafi air raid because the study and discussion of assassinations utilizes this same literature. The theoretical question of whether a successful killing of Qaddafi in 1986 by American forces would be an assassination under international and domestic law has provoked a massive debate. The complexity with targeting Qaddafi is that he wore two hats. Qaddafi was the commander of an international terrorist network, but he was also the Libyan President. The legal consensus for targeted killings, as noted earlier, is that it is legal to target terrorist leaders under international law and it does not violate the domestic ban on assassinations. Mark Vlasic notes that Operation El Dorado Canyon illustrates the White House’s interpretation of Executive Order 12,333 as “inapplicable in times of armed conflict.”<sup>87</sup> The question, however, is whether killing him would have been illegal because he was the sitting Libyan President. The debate about whether the theoretical killing of Qaddafi would be an assassination is out of the scope of this thesis.<sup>88</sup> It is important to note, however, that some scholars have argued that an overt military mission’s acts are legal (here, a hypothetical Qaddafi

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<sup>84</sup> Ibid.

<sup>85</sup> Seymour Hersh, “Target Qaddafi,” *New York Times*, February 22, 1987.

<sup>86</sup> Anderson, “Targeted Killing in United States Counterterrorism Strategy and Law,” 43.

<sup>87</sup> Mark Vlasic, “Recent Targeted Killing Policy and President Barack Obama’s Expanded Drone Attacks,” *Georgetown Journal of International Law* 43, (2012): 303.

<sup>88</sup> The general legal consensus is that it would not be an assassination because Qaddafi’s confirmed role as terrorist commander supersedes his status as President. To see the complexities of the debate see: John Yoo “Assassinations or Targeted Killings After 9/11,” *New York Law School Law Review* 56, (2011/12); William Banks, “Targeted Killings and Assassinations: The U.S. Legal Framework,” *University of Richmond Law Review* 37, (2009):3; W. Hays Park, “Memorandum Executive Order 12333 and Assassination,” Anderson, “Targeted Killing in United States Counterterrorism Strategy and Law;” and Rachtel, “Targeting Osama Bin Laden: Examining the Legality of Assassination as a Tool of U.S. Foreign Policy.”

killing), rather than the acts by a covert operation similar to the attempts against foreign leaders during the Cold War and unearthed by the Church Committee. Stephen Hosmer, who studies leadership attacks, noted that overt military missions have been permissible because they are conducted by uniformed members of the armed services in accordance with the laws of armed conflict.<sup>89</sup> While the question of whether killing Qaddafi would be an assassination is out of the scope of the thesis, it does facilitate a discussion on precedents that is integral to better understanding the American history of targeted killings.

The 1986 airstrike on Qaddafi was not a historical precedent for modern targeted killings from an operational perspective; however, it is a historical precedent for Obama's drone strikes against terrorist leaders from a legal perspective. The Reagan administration had to consider the possibility of Qaddafi being killed in El Dorado Canyon; therefore, top decision-makers outlined a legal framework that would justify killing a sponsor of state terrorism. The legal arguments used by the Reagan administration are a historical precedent for the Obama administration's framework for targeting terrorists today. As noted in the introduction of this thesis, the Obama administration uses a domestic and international law to justify targeted killings. A fundamental justification for targeted killing is the right to a nation's self-defense as stipulated by the United Nations Charter in Article 51. Ronald Reagan invoked Article 51 to justify his strike against Qaddafi's terrorist operation facilities. In his speech to the American people, Reagan trumpeted, "Self defense is not only our right, it is our duty. It is the purpose behind the mission undertaken tonight, a mission fully consistent with Article 51 of the United Nations Charter."<sup>90</sup> In addition, after the strike on Qaddafi, senior government officials offered a second legal justification that

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<sup>89</sup> Hosmer notes similar cases of American presidents targeting national leaders; specifically: against Saddam Hussein in the first Gulf War and in the 2003 invasion of Iraq, and against Slobodan Milosevic during the 1999 air strikes by NATO. Hosmer, *Operations Against Enemy Leaders*, 16.

<sup>90</sup> Reagan, "Address to the Nation on the United States Air Strike against Libya."

coincides with rationale for modern targeted killings. State Department Legal Adviser Judge Adam Sofaer said Qaddafi was: “personally responsible for Libya’s policy of training, assisting, and utilizing terrorists in attacks on United States citizens...His position as head of state provided him no legal immunity from being attacked when present at a proper military target.”<sup>91</sup> Mark Vlasic, a legal scholar, argues that emphasizing the military target aspect is a trend in U.S. policy to characterize an attack.<sup>92</sup>

Operation El Dorado Canyon is important to understanding the history of targeted killings for three reasons. First, the operation as performed was not a targeted killing. American intelligence services and military forces did not find, fix, or finish the Libyan Dictator and terrorist puppeteer. Moreover, United States decision-makers did not intentionally or deliberately target Qaddafi with lethal force. The Reagan administration, however, was prepared to accept his death as a casualty of the strike, but given the dearth of intelligence on Qaddafi’s location and the insufficient ordnance for destroying the bunker at the Aziziyah Barracks, it is clear that the administration was not actively targeting Libya’s leader. Further, by understanding what the operation was not, it becomes more clear what an actual targeted killing is—such as the raid on Yamamoto or certain drone strikes in the Obama administration. Second, although the air strike against Libya’s terrorist hubs was not a targeted killing operationally, it serves as a legal precedent for the Obama administration. Ronald Reagan invoked Article 51 of the United Nations Charter after a series of international terrorist incidents and used it as a legal justification to authorize a surgical strike in the name of self-defense against a terrorist network. By invoking Article 51 to justify the potentially lethal strike, the Reagan administration set a precedent for future administrations that there is no specific legal framework for targeted strikes. Instead,

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<sup>91</sup> Adam Sofaer, “Terrorism, The Law and the National Defense,” *Military Law Review* 129, no. 89 (1989): 120.

<sup>92</sup> Vlasic, “Recent Targeted Killing Policy and President Barack Obama’s Expanded Drone Attacks,” 303.

presidents can invoke international law—in this case Article 51—on a case-by-case basis. Finally, the strike on Qaddafi serves as the first time the United States used lethal force to respond to an act of terrorism, which is another precedent that is matched in the Clinton, George W. Bush, and Obama administrations.

### **OSAMA BIN LADEN, 1998-2000**

President Bill Clinton authorized an unsuccessful targeted killing on Osama bin Laden in 1998, and his administration considered killing al Qaeda's leader several other times using a variety of methods. This case study establishes another, albeit unsuccessful, historical precedent for U.S. targeted killings before September 11. It also shows how the Clinton administration built off the Qaddafi precedent and how senior government officials in 1998 still were hamstrung by the remnants of the Church Committee. Finally, this case analyzes the origins of the technological tool for twenty-first century—the armed drone.<sup>93</sup>

#### ***Operation Infinite Reach, 1998***

During the last five years of the twentieth century, Osama bin Laden became increasingly bellicose towards the United States and the American intelligence community implicated him in several terrorist attacks against U.S interests around the world. In response, the Clinton administration became increasingly determined to capture or kill Osama bin Laden. By late 1997, the CIA was planning to capture and remove him from Afghanistan.<sup>94</sup> The CIA Counterterrorist Center (CTC) developed a plan to use two tribal proxy groups in Afghanistan to

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<sup>93</sup> By and large the majority of the research from this section comes from the National Commission on Terrorist Attacks upon the United States (9/11 Commission) Report in 2004 because the authors had access to documents that are still classified and sources that are still anonymous.

<sup>94</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report on Terrorist Attacks upon the United States* (Washington, D.C.: United States Government Printing Office, 2004), 111.

capture Osama bin Laden and extract him from the country.<sup>95</sup> These tribal groups collected reliable intelligence on Bin Laden's whereabouts and in the first months of 1998, the CIA was ready to submit the proposal to the White House for approval.<sup>96</sup> On May 18, 1998, the CIA drafted a Memorandum of Notification authorizing the capture operation. A 1986 presidential finding of Ronald Reagan, which authorized worldwide covert action to combat international terrorism, "probably" provided the authority for such an operation.<sup>97</sup> The National Commission on Terrorist Attacks upon the United States, or 9/11 Commission, reasoned that although the CIA had authority, many of the senior officers were scarred from the "old 'rogue elephant' charge" from the Church Committee and wanted "something on paper to show they were not acting on their own."<sup>98</sup> This Memorandum of Notification caused severe consternation inside the Clinton administration over whether the capture operation would look like an assassination. James Pavitt, a senior officer in the CIA's Directorate of Operations, was concerned about the memo because he thought the operation had "at least a slight flavor of a plan for an assassination."<sup>99</sup> The proxy capture operation was turned down because of fear of collateral damage, concern with the tribal groups safety, and fear that the "purpose and nature of the operation would be subject to unavoidable misinterpretation and misrepresentation—and probably recriminations—in the event that Bin Ladin, despite our best intentions and efforts, did not survive."<sup>100</sup>

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<sup>95</sup> The plan called for one group to capture Bin Laden from his home in Tarnark Farms, and the other to transport the terrorist leader to a deserted airstrip for CIA extraction. *Ibid.*, 112.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*, 113.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, 114; Authors cite the quote as "Mike," who was the Chief of the Osama bin Laden Station in the CTC. Michael Sheuer, now a professor at Georgetown, and according to his official biography was the "Senior Advisor for the Usama Bin Laden Department."

After the Clinton administration denied the CIA capture operation, General Hugh Shelton, the Chairman of the Joint Chiefs of Staff, directed the Pentagon's Central Command to develop a plan for military action against Osama bin Laden.<sup>101</sup> General Zinni, of Central Command, proposed a plan that called for Tomahawk cruise missiles to strike eight terrorist base camps in Afghanistan. The 9/11 Commission authors opine that, "Zinni's planners surely considered the two previous times the United States had used force to respond to terrorism, the 1986 strike on Libya and the 1993 strike against Iraq."<sup>102</sup> While the raid on Qaddafi was not a targeted killing, it served as important precedent for the Clinton administration when planning their targeted killing on Osama bin Laden in 1998.

The Clinton administration's concern over killing Osama bin Laden evaporated when al Qaeda suicide bombers simultaneously attacked U.S. Embassies in Kenya and Tanzania killing 224 people on August 8, 1998. The CTC quickly identified al Qaeda as the perpetrators of the attack and the day after the strike, Director of Central Intelligence George Tenet, brought intelligence to the National Security Council Principals Committee that terrorist leaders, including Bin Laden, were expected to gather at a camp near Khowst, Afghanistan.<sup>103</sup> In other words, the CIA's CTC found and fixed Osama bin Laden's location and were waiting on the finish confirmation. During the NSC meeting, the principals reached a consensus that "the strike's purpose was to kill Bin Ladin and his Chief lieutenants."<sup>104</sup> The deliberation in the Principals Committee confirms that the strike against Bin Laden was a targeted killing because it was an intentional and premeditated use of lethal force against a specific individual.

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<sup>101</sup> Ibid., 116.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

On August 20, President Clinton authorized Operation Infinite Reach. Navy Vessels in the Red Sea fired thirteen cruise missiles at al-Shifa—a pharmaceutical plant in Sudan that the CIA reported was manufacturing a chemical for VX poison gas to which Bin Laden “almost certainly” had access.<sup>105</sup> Simultaneously, Navy ships in the Arabian Sea unleashed sixty-six cruise missiles at the camp in Khwost.<sup>106</sup> Most of the cruise missiles hit their targets but none killed Osama bin Laden or top terrorist leaders. In a post-operation review, Tenet concluded that the strikes killed 20 to 30 people in the camps but missed Bin Laden by a few hours.<sup>107</sup> Tomahawk cruise missiles spared Air Force pilots flying over foreign territory, minimizing the risk to U.S. personnel, but were ineffective because there were hours of flight time between fix and finish. In similar fashion to the Reagan administration, the Clinton Administration promptly notified the United Nations Security Council that the military strikes were legally justified as self-defense under Article 51 of the United Nations Charter.<sup>108</sup> Moreover, President Clinton justified the imminent nature of the threat when he addressed the nation following the strike announcing that he struck terrorist facilities in Afghanistan and Sudan “because of the imminent threat they presented to our national security.”<sup>109</sup>

The immediate and revisionist reaction to Operation Infinite Reach was not positive. The strikes failed to kill al Qaeda’s leader and the fallout was muddled in political controversy because many saw it as a “wag the dog” strategy for the ongoing Monica Lewinsky affair.<sup>110</sup> Sandy Berger, the National Security advisor, admitted that he was particularly discouraged by an

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<sup>105</sup> Ibid., 117; Micah Zenko, “Armed Drones and the Hunt for bin Laden,” Council on Foreign Relations Blog, August 20, 2012, <http://blogs.cfr.org/zenko/2012/08/20/armed-drones-and-the-hunt-for-bin-laden/>.

<sup>106</sup> Zenko, “Armed Drones and the Hunt for bin Laden.”

<sup>107</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 117.

<sup>108</sup> Jules Lobel, “The Use of Force to Respond to Terrorist Attacks: The Bombing of Sudan and Afghanistan,” *The Yale Journal of International Law* 24, (1999): 537.

<sup>109</sup> William Clinton, “Address to the Nation by the President,” (Speech, Washington, D.C., August 20, 1988), <http://clinton6.nara.gov/1998/08/1998-08-20-president-address-to-the-nation.html>.

<sup>110</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 118.



*Economist* editorial, which questioned the cruise missile strikes' effectiveness and whether they created new jihadists.<sup>111</sup> The following year, several legal scholars tore into the operation. Jules Lobel argued that the "August 20 missile strikes represent the assertion of imperial might and arrogance in opposition to international law."<sup>112</sup> Another lawyer, Leah Campbell, argued that the mission did not abide by the principles of necessity or proportionality and the world response to the mission shows that, "it is not certain that the world community has agreed to expand permissible use of force to include retaliatory strike against terrorists."<sup>113</sup> Even the U.S. Department of Energy poked holes in the operation. A 400-page report compiled by Sandia National Laboratories in 1999 found more disadvantages than advantages in the retaliatory strike. Some of the disadvantages included: questionable morality, legality, and effectiveness, domestic and international criticism, undermining the rule of law, and sidestepping due process.<sup>114</sup> In addition, with direct connection to this thesis's argument, one of the advantages stated by Sandia Laboratories was: "followed precedents by previous presidents."<sup>115</sup>

While some condemned the action, others pointed to the followed inaction and the historical context of the operation. Daniel Byman, a member of the National Commission on Terrorist Attacks upon the United States and preeminent counterterrorism scholar, stated in an author interview, "[you have to remember] How many Americans did al Qaeda kill in 1998 so pretend that's your baseline and you need to break the assassination thing. The mentality of the people had no appetite for this."<sup>116</sup> The far-reaching effects of the Church Committee are evident in the Clinton administration's deliberations and decisions to target Bin Laden in

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<sup>111</sup> Ibid.

<sup>112</sup> Lobel, "The Use of Force to Respond to Terrorist Attacks: The Bombing of Sudan and Afghanistan," 557.

<sup>113</sup> Leah Campbell, "Defending Against Terrorism: A Legal Analysis of the Decision to Strike Sudan and Afghanistan," *Tulane Law Review* 74, (1999): 1096.

<sup>114</sup> Gary Richter, "Osama bin Laden: A Case Study," (U.S. Department of Energy: Sandia National Laboratories, 1999), via The National Security Archive, 23.

<sup>115</sup> Ibid., 24.

<sup>116</sup> Daniel Byman, interview with author, (Washington D.C.: August 2013).

Operation Infinite Reach. Questions over whether killing Bin Laden would constitute an assassination hamstrung top policymakers and intelligence officials. Hank Crumpton, a senior officer in the CTC, disagreed with the mission because of the inaction that followed. Crumpton argued that “As the weeks rolled by, the U.S. did nothing more to exercise its military might. AQ [al Qaeda] grew more confident than ever, believing there was nothing to fear. They were correct. There was no substantive U.S. response.”<sup>117</sup> Crumpton goes on to explain that while there was no substantive U.S. response there were “limited CIA clandestine operations.”<sup>118</sup> These limited operations were instrumental in the Executive Branch’s transition from worrying about assassination to accepting targeted killing and adopting the armed UAV.

### ***Operation Infinite Resolve, 1998-2000***

Following the August 20 cruise missile strikes, the White House authorized Operation Infinite Resolve, which were follow-up plans to pursue Osama bin Laden.<sup>119</sup> The high threshold for killing Bin Laden was considerably lowered in the various operations considered, but never implemented, during Operation Infinite Resolve. After the initial bombardment of al Qaeda’s facilities, Richard Clarke, the Chief Counterterrorism advisor in the Clinton administration, envisioned a campaign of strikes against Bin Laden’s base inside and outside of Afghanistan, whenever target information was available.<sup>120</sup> While this forecast never came to be because intelligence collection and analysis was slower, Clarke’s strategy is analogous to the contemporary frequency of drone strikes on al Qaeda and associated movements. Another

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<sup>117</sup> Henry Crumpton, *The Art of Intelligence: Lessons from a Life in the CIA’s Clandestine Service* (NY: Penguin Books, 2013), 111.

<sup>118</sup> *Ibid.*, 111.

<sup>119</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 134.

<sup>120</sup> *Ibid.*, 120.

chance to target Osama bin Laden came in December 1998, when the CIA reported that Bin Laden would travel to Kandahar, Afghanistan and could be targeted with cruise missiles from the Arabian sea within a few hours of receiving the targeting data.<sup>121</sup> The Principals Committee turned down the December strike because the chance of collateral damage was too high—between 150 and 300 civilians—due to a near-by mosque.<sup>122</sup> Declining the strike angered many of the lower-level CTC officers.

After the missed chance in December 1998, the NSC pushed for more aggressive covert and overt alternatives. The current Memorandum of Notification on file at the time allowed the CIA's tribal proxies to use lethal force only in self-defense, but shortly after the second missed opportunity, the National Security Council worked on a new order that would allow the CIA and their tribal groups to kill when capture was not feasible.<sup>123</sup> The Clinton administration determined that this order was legal because "under the law of armed conflict, killing a person who posed an imminent threat to the United States would be an act of self-defense, not an assassination."<sup>124</sup> At this point in 1999, the CIA directed their proxies that they could lower the threshold on killing bin Laden from self-defense to lack of feasible capture. Although this new standard presented an opportunity, the CIA never made progress with the tribal groups during this time to make such an ambush possible.

Simultaneously, the military was examining new methods for targeting Bin Laden, using weapons other than cruise missiles. The Pentagon considered Special Forces raids but was discouraged because their history was not necessarily marked with successes, especially after the disastrous operation in Somalia in the first half of Clinton's presidency. The second option was

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<sup>121</sup> Ibid., 130.

<sup>122</sup> Ibid., 131.

<sup>123</sup> Ibid., 131-132.

<sup>124</sup> Ibid., 132.

to use an AC-130 gunship, which could fly undetected at high-altitudes and use precise weapons to limit collateral damage. The AC-130 gunship, however, posed problems because it required near-by basing, a limited flight time due to fuel-requirements, and would need search-and-rescue contingencies in the event it was gunned down or crashed.<sup>125</sup> Although not authorized because of George Tenet's lack of confidence in the intelligence, perhaps "the best opportunity" to target Bin Laden with cruise missiles occurred in May 1999.<sup>126</sup> The 9/11 Commission highlighted two deterring factors to the 1999 strike in Kandahar. The first factor related to the previous proposed strike (December 1998). Bin Laden left his room abruptly and avoided the missile salvo. The second deterring factor is attributable to the intense public scrutiny accorded the CIA following their providing inaccurate targeting data to NATO forces in Serbia, which had resulted in accidentally bombing the Chinese Embassy in Belgrade.<sup>127</sup>

Technological problems created the primary obstacle to the options presented for killing Bin Laden during Operation Infinite Resolve. Even though the White House lowered the threshold for killing Bin Laden via tribal proxy, which is significant given the administration's hesitations with assassination, it still posed logistical issues for the CIA. Hank Crumpton noted in his book *Art of Intelligence* that a fellow CTC official expressed great frustration with the tribal option and vented, "We can only kill him if we're capturing him? But we can't get resources or the green light to do this ourselves. So we depend on Afghan tribesmen, but we hang all these legal and operational limits on them...Most of them can't even read."<sup>128</sup> Moreover, the long find-fix-finish loop hamstrung the overt military option. Once the CIA acquired bin Laden's location, it would take several hours for cruise missiles to get to the

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<sup>125</sup> Ibid., 135-136.

<sup>126</sup> Ibid., 140.

<sup>127</sup> Ibid., 141.

<sup>128</sup> Crumpton, *The Art of Intelligence*, 144.

location and with cruise missiles, the risk of collateral damage existed. Moreover, the other options were not feasible because both options risked American lives. The AC-130, while more precise, could not fly long missions due to its refueling cycle. Therefore, the White House, CIA, and Pentagon needed a solution that did not risk American lives, was precise, and ideally, could loiter for extended periods.

***“The Predator Initiative”***<sup>129</sup>

For the U.S. counterterrorism community, the second millennium was rung in with intense chest pain. On January 1, 2000, the Clinton administration narrowly avoided the al Qaeda terrorist attacks at Los Angeles International Airport and on the *USS Sullivan* in Yemen.<sup>130</sup> Following the millennium plot, the National Security Council issued a memorandum in July 2000 directing the CIA to find a means to locate and identify Osama bin Laden, which Hank Crumpton said, “would be designed to support a lethal military strike.”<sup>131</sup> The Clinton administration designated the CIA, specifically the CTC, to drive the initiative to “come up with new ideas to go after terrorists in Afghanistan,” which began as a mission for reconnaissance purposes only.<sup>132</sup> Once the CTC team worked with the Pentagon to use an Air Force drone called the Predator, the Clinton administration gave the CTC the authorization to command the reconnaissance system.<sup>133</sup> The MQ-1 Predator was a small unmanned aircraft with a 55-foot

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<sup>129</sup> “DCI Report: The Rise of UBL and Al-Qa’ida and the Intelligence Community Response,” Draft, Central Intelligence Agency Analytic Report, March 19, 2004, 60.

<sup>130</sup> For more on the al Qaeda’s millennium plot see: National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 174-182.

<sup>131</sup> Crumpton, *The Art of Intelligence*, 144.

<sup>132</sup> “DCI Report: The Rise of UBL and Al-Qa’ida and the Intelligence Community Response,” 60.

<sup>133</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 189.

wingspan that was deployed in the NATO intervention in Bosnia, which showed it was battlefield capable.<sup>134</sup>

On September 7, 2000, the CIA conducted its first Predator mission over Afghanistan.<sup>135</sup> Top officials from the CIA and the White House watched a grainy satellite feed of a tall man in long white robes flanked by a security detail get out of a vehicle. As Hank Crumpton, who was one of the officials watching, recounts, “This was UBL [Osama bin Laden]. We watched as he walked into the courtyard of the large compound...The sky was clear, the image excellent. No women or children. We had him.”<sup>136</sup> Members of the CIA and the White House called for authorization to strike the al Qaeda leader, but the White House needed confirmation that the notorious terrorist would be there for six hours before authorizing a cruise missile strike.<sup>137</sup> It became clear that the Predator offered an unprecedented ability to close the find-fix-finish loop, if it was armed.

Arming the Predator drone was the second phase of the initiative, and it came with more bureaucratic wrangling and heated policy debates. The CIA determined that the Hellfire missile, an anti-tank laser-guided missile, was the best munitions system for the Predator in the first months of the Bush administration in 2001.<sup>138</sup> Complex bureaucratic issues arose because the CIA controlled the reconnaissance predator missions, the Air Force owned the Predator, and the Army owned the Hellfire missiles.<sup>139</sup> Meanwhile, the White House, CIA, and Pentagon debated who should pull the trigger. George Tenet actively advocated that legal permission was a requisite for whoever controlled the weaponized Predator.<sup>140</sup> According to the 9/11

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<sup>134</sup> “UAV Annual Report Fiscal Year 1996,” Department of Defense, November 6, 1996.

<sup>135</sup> “DCI Report: The Rise of UBL and Al-Qa’ida and the Intelligence Community Response,” 61.

<sup>136</sup> Crumpton, *The Art of Intelligence*, 151.

<sup>137</sup> Ibid., Mazzetti, *The Way of the Knife*, 88-99.

<sup>138</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 210.

<sup>139</sup> Crumpton, *The Art of Intelligence*, 157.

<sup>140</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 211.

Commission, Tenet also raised a series of key questions: “What is the chain of command? Who takes the shot? Are America’s leaders comfortable with the CIA doing this, going outside of normal military command and control?”<sup>141</sup> The situation was even more complicated because within each bureaucratic division there were internal factions. For example, some officers in the CTC supported the CIA running the armed drone while others, like James Pavitt, stood firmly in opposition.<sup>142</sup> Some of the leaders of the CIA were longtime career officers who endured the Church Committee hearings in 1976 had no appetite for covert action. Pavitt worried about the CIA running lethal operations against targeted individuals, which in his mind, constituted assassination.<sup>143</sup>

On August 1, 2001, after the Predator successfully fired Hellfire missiles in a test, the Deputies Committee on the National Security Council concluded it would be legal for the CIA to kill Bin Laden or one of his deputies with the Predator. The Deputies Committee found killing Bin Laden would be an act of self-defense that would not violate Executive Order 12,333.<sup>144</sup> The Deputies Committee left the major issues—who would fund the project, who would authorize strikes and who would pull the trigger—to the Principals Committee.<sup>145</sup> The Principals Committee had its first meeting on al Qaeda on September 4, 2001. At the Principals meeting, Condoleezza Rice, the National Security Adviser, brought up the Predator debate by saying it would not be ready until the spring of 2002, but that the Principals Committee needed to reach a decision on its command and usage. Colin Powell, the Secretary of State, supported the armed Predator. Treasury Secretary Paul O’Neill was concerned about the implications of trying to kill an individual. The Defense Department saw the Predator’s value in surveillance, but not in

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<sup>141</sup> Ibid.

<sup>142</sup> Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden from the Soviet Invasion to September 10, 2001* (New York, NY: Penguin Books, 2008), 581.

<sup>143</sup> Ibid.

<sup>144</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 212.

<sup>145</sup> Ibid.

lethal action, and “favored going after Bin Ladin as a part of a larger air strike, similar to what had been done in the 1986 U.S. strike against Libya.”<sup>146</sup> The Principals Committee ended with Rice summarizing that the armed predator was needed but not ready. In addition, according to the heavily redacted 2004 Director of Central Intelligence Report on al Qaida, “[redacted] September 4. As a result, CIA was authorized [redacted] reconnaissance purpose only.”<sup>147</sup> After September 11, 2001, however, the administration resolved the authorization issues and question of whether the CIA could conduct lethal strikes.

The Clinton administration’s targeting of Osama bin Laden establishes the August 20, 1998 strike as an operational precedent for a targeted killing. The Clinton administration actively targeted Osama bin Laden with the intent to use lethal force, but was unsuccessful in finishing the target. The threat Osama bin Laden posed played a key role in the Clinton administration’s calculation to authorize Operation Infinite Reach. Furthermore, the transition from Afghan proxy operation to missile strike shows that the Clinton Administration rationalized overt action was acceptable because Bin Laden attacked American Embassies in Africa. The case also shows how the historical issues addressed in this chapter weighed on decision-makers. The Clinton administration drew on the 1986 Libya precedent many times in determining how to counter international terrorism. In addition, the Clinton administration and senior CIA officials in the 1990s had vivid memories of the Church Committee and the accusation of being a “rogue elephant” and incessantly debated whether the CIA should get back into the killing business. Finally, the failures to kill Osama bin Laden during the Clinton administration created the technological foundation for the current targeted killings campaign—the armed Predator UAV. The time between find to fix to finish while using cruise missiles was too long; national security

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<sup>146</sup> Ibid., 214.

<sup>147</sup> “DCI Report: The Rise of UBL and Al-Qa’ida and the Intelligence Community Response,” 63.



policymakers needed a solution that would tighten that loop, mitigate risk to U.S. forces, and execute operations with precision. The solution that addressed these problems was found in the MQ-1 Predator. The precedents established in the twentieth century—often overlooked in targeted killings scholarship—reveal a deep history of tense discussions at the highest levels of government over whether to kill an individual enemy. These precedents are integral to understanding the targeted killings that have come to define the war against al Qaeda in the Obama administration.

### **ANWAR AL-AWLAKI, 2011**

The targeted killings campaign in the twenty-first century against al Qaeda started slowly under the Bush administration and reached new heights in the Obama administration. The first armed predator drone strike did not occur in Afghanistan or Pakistan, but in Yemen in 2002. A CIA-operated Predator targeted the vehicle of Qaed al-Harethi, who was an al Qaeda leader and was the mastermind behind the *USS Cole* bombing during the Clinton administration.<sup>148</sup> Unintentionally, the same strike against al-Harethi also killed an American citizen turned al Qaeda terrorist, Kemal Darwish.<sup>149</sup> The Bush administration continued to use armed predator drones for targeted killings against al Qaeda and Taliban leaders in Afghanistan, Pakistan, Yemen, and the Philippines, as well as against Iraqi insurgents.<sup>150</sup> Targeted killings, however, are not exclusive to drone strikes. Special Forces institutionalized targeted killings as a linchpin in its counterinsurgency strategy in Iraq, where they conducted 10 to 15 capture or kill missions

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<sup>148</sup> Brian Glyn Williams, *Predators: The CIA's Drone War on Al Qaeda* (Washington D.C.: Potomac Books, 2013), 42.

<sup>149</sup> *Ibid.*

<sup>150</sup> Sarah Kreps and Michah Zenko, "The Next Drone Wars: Preparing for Proliferation," *Foreign Affairs* 93, no. 2 (2014): 71.

a night, utilizing the same find-fix-finish targeting methodology.<sup>151</sup> In the latter years of the Bush administration, the CIA was authorized to target more terrorists with armed drones in Pakistan and Yemen.

Upon President Obama's arrival into office, he quickly adopted the use of armed drones for targeted killings in Afghanistan, Pakistan, Yemen, Libya (during the NATO intervention), and Somalia.<sup>152</sup> In fact, targeted killings have become so common in the Obama administration that they have created a "next generation" program to organize the kill lists. The program, called the "disposition matrix," manages the intelligence and locations of targeted individuals.<sup>153</sup> The matrix is multilayered software that tracks and prioritizes targeted terrorists. The disposition matrix has facilitated the coordination of multiple national security entities. The Central Intelligence Agency, Department of Defense, National Security Agency, and Joint Special Operations Command (JSOC) all add names to the program and update intelligence on targeted militants.<sup>154</sup> President Obama's National Security Council then culls the roster of terrorists and sends them to President Obama for approval.<sup>155</sup> The functional collaboration of multiple national security agencies with the White House, fostered through the disposition matrix, reflects the institutionalization of armed drone targeted killings operations in the Obama administration. Some of these targeted killings have received intense public notoriety, including the one examined in this case study against Anwar al-Awlaki.

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<sup>151</sup> David Petraeus, "How We Won Iraq," *Foreign Policy*, October 29, 2013,

[http://www.foreignpolicy.com/articles/2013/10/29/david\\_petraeus\\_how\\_we\\_won\\_the\\_surge\\_in\\_iraq](http://www.foreignpolicy.com/articles/2013/10/29/david_petraeus_how_we_won_the_surge_in_iraq).

<sup>152</sup> Kreps and Zenko, "The Next Drone Wars," 71.

<sup>153</sup> Greg Miller, "Plan for hunting terrorists signals U.S. intends to keep adding names to kill lists," *Washington Post*, October 12, 2013, [http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b\\_print.html](http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b_print.html)

<sup>154</sup> Bill Webster, "The Process Behind Targeted Killing," (graphic), *Washington Post*, October 23, 2012, [http://www.washingtonpost.com/world/national-security/the-process-behind-targeted-killing/2012/10/23/4420644c-1d26-11e2-ba31-3083ca97c314\\_graphic.html](http://www.washingtonpost.com/world/national-security/the-process-behind-targeted-killing/2012/10/23/4420644c-1d26-11e2-ba31-3083ca97c314_graphic.html).

<sup>155</sup> Ibid.

Anwar al-Awlaki—an American citizen turned radical firebrand preacher—was connected to nearly every terrorist plot or attack in the United States from September 11 to the Boston Marathon Bombing. Awlaki spoke with two of the 9/11 hijackers in his San Diego mosque.<sup>156</sup> He exchanged emails with Nidal Hasan—the Army Major who went on a shooting spree at Fort Hood in 2009.<sup>157</sup> Umar Farouk Abdulmutallab, the young Nigerian who failed to detonate a bomb in his underwear on a Detroit-bound flight in 2009, confessed to American investigators that he moved to Yemen to track down Awlaki. There, Awlaki discussed martyrdom and jihad with Abdulmutallab, approved him for a suicide mission, and directed the would-be bomber to ensure he detonated the bomb over United States territory.<sup>158</sup> Awlaki was also a planner behind the failed attempt to put bomb-laden printers in cargo planes bound to the United States in October 2010.<sup>159</sup> Moreover, his virulent anti-American sermons were found on the computers of the 2005 London bombers, the would-be terrorists in Toronto in 2006, the six extremists who planned an attack on Fort Dix in 2007, and the Tsarnaev brothers implicated in the 2013 Boston Marathon attack.<sup>160</sup> After Awlaki was killed by a CIA drone in September 2011, President Obama described him as the “leader of external operations for al Qaeda in the Arabian Peninsula,” and in that role, “took the lead in planning and directing efforts to murder innocent

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<sup>156</sup> Scott Shane and Squad Mekhennet, “Imam’s Path from Condemning Terror to Preaching Jihad,” *New York Times*, May 8, 2010, [http://www.nytimes.com/2010/05/09/world/09awlaki.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/05/09/world/09awlaki.html?pagewanted=all&_r=0); Bobby Ghosh, “How Dangerous is the Cleric Anwar al-Awlaki,” *Time*, January 13, 2010, <http://content.time.com/time/world/article/0,8599,1953426,00.html>.

<sup>157</sup> Ghosh, “How Dangerous is the Cleric Anwar al-Awlaki.”

<sup>158</sup> Mark Mazzetti, Charlie Savage, and Scott Shane, “How a U.S. Citizen Came to Be in America’s Cross Hairs,” *The New York Times*, March 9, 2013, <http://www.nytimes.com/2013/03/10/world/middleeast/anwar-al-awlaki-a-us-citizen-in-americas-cross-hairs.html>.

<sup>159</sup> James Blitz and Matthew Green, “CIA drone kills ‘most dangerous al-Qaeda cleric,’” *Financial Times*, September 30, 2011, <http://www.ft.com/intl/cms/s/0/48305e6e-eb42-11e0-adbf-00144feab49a.html>.

<sup>160</sup> Ghosh, “How Dangerous is the Cleric Anwar al-Awlaki;” and Erich Schmitt et. al, “Boston Plotters Said to Initially Target July 4 for Attack,” *The New York Times*, May 2, 2013, <http://www.nytimes.com/2013/05/03/us/Boston-bombing-suspects-planned-july-fourth-attack.html>.

Americans.”<sup>161</sup> A little over a year before President Obama’s speech and before the raid that killed Osama bin Laden, Representative Jane Harman, chairwoman of the House subcommittee on homeland security, called Awlaki the “number one [terrorist] in terms of threat against us.”<sup>162</sup>

Awlaki’s targeted killing is a quintessential example of a find-fix-finish operation by an unmanned aerial vehicle. This section will trace the hunt for Awlaki from find to finish and will address some of the public’s concerns with the operation. There is one major reason why this chapter will analyze the drone strike that killed Anwar al-Awlaki for the contemporary targeted killing case: public knowledge. Joint Special Operations Command and the CIA’s use of drones to kill terrorists in Pakistan, Yemen, and Somalia is a secret. While it is widely reported that the drone strikes come from American drones, the agencies specific role remains covert. Reporters, however, often uncover the perpetrating agency. Greg Miller, the primary intelligence reporter for the *Washington Post*, argues the CIA’s role in the targeted strikes “is one of the worst kept secrets in Washington.”<sup>163</sup> The CIA has never acknowledged the program exists; but the Obama administration openly discusses the program and certain strikes.<sup>164</sup> A recently retired CIA case officer stated in an author interview, “I can tell you I worked Pakistan for three years, but I cannot say anything about the drone program in Pakistan that the media frequently reports on.”<sup>165</sup> President Obama, for example, gave a speech in September 2011 acknowledging the drone strike on Awlaki and called the operation, “another significant milestone in the broader

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<sup>161</sup> Barack Obama, “Remarks by the President at the ‘Change of Office’ Chairman of the Joints Chiefs of Staff Ceremony,” (speech, Fort Meyers, VA, September 30, 2011), The White House, <http://www.whitehouse.gov/the-press-office/2011/09/30/remarks-president-change-office-chairman-joint-chiefs-staff-ceremony#>.

<sup>162</sup> Scott Shane, “U.S. Approves Targeted Killing of American Cleric,” *The New York Times*, April 6, 2010, <http://www.nytimes.com/2010/04/07/world/middleeast/07yemen.html>.

<sup>163</sup> Greg Miller, “Behind the U.S. Targeted Killing Program,” *Washington Post* video, 0:49, October 2013, [http://www.washingtonpost.com/posttv/national/behind-the-us-targeted-killing-program/2012/10/23/e43a3b02-1d39-11e2-9cd5-b55c38388962\\_video.html](http://www.washingtonpost.com/posttv/national/behind-the-us-targeted-killing-program/2012/10/23/e43a3b02-1d39-11e2-9cd5-b55c38388962_video.html).

<sup>164</sup> Miller, “Behind the U.S. Targeted Killing Program,” *Washington Post* video.

<sup>165</sup> CIA case officer, interview with author, (telephone: January 2012).

effort to defeat al Qaeda and its affiliates.”<sup>166</sup> Moreover, because Awlaki was an American citizen, the targeted killing operation against him has been well reported by international media, debated in the press and by scholars, and carefully examined by Congressional subcommittees. Therefore, even though the operation remains classified by the CIA, there is an abundance of information on Awlaki, the strike that killed him, and the public debate that ensued.

The failed 2009 Christmas Day bombing disturbed President Obama. Sensing this, intelligence agencies competed to put details about Anwar al-Awlaki’s location into the President’s Daily Brief.<sup>167</sup> The underwear plot changed Anwar al-Awlaki’s terrorist status from an inspirer to an operator because he was now directly involved in plotting terrorist attacks against the United States. A few months after the Christmas Day plot, in April 2010, the National Security Council took the unprecedented step of authorizing the targeted killing of Awlaki, which was the first time an American citizen was actively targeted.<sup>168</sup> A month after his new designation on the Obama administration’s target list, Awlaki released a video taunting the administration in which he urged jihadists not to distinguish between military and civilian targets in the West.<sup>169</sup> Awlaki also noted he cut off his telephone communications to avoid being detected and said, “If the Americans want me, let them search for me.”<sup>170</sup> The hunt to find Awlaki was on.

Three days after the Osama bin Laden raid in 2011, the United States military found and fixed Awlaki’s location in Yemen’s Shabwa province, but failed to finish. Joint Special Operations Command (JSOC), a top-secret military division that houses elite Special Forces and

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<sup>166</sup> Obama, “Remarks by the President at the ‘Change of Office’ Chairman of the Joints Chiefs of Staff Ceremony.”

<sup>167</sup> Mazzetti et. al, “How a U.S. Citizen Came to Be in America’s Cross Hairs.”

<sup>168</sup> Shane, “U.S. Approves Targeted Killing of American Cleric.”

<sup>169</sup> Eric Lipton, “U.S. Born Cleric Justifies the Killing of Civilians,” *New York Times*, May 23, 2010, <http://www.nytimes.com/2010/05/24/world/middleeast/24awlaki.html>

<sup>170</sup> Ibid.

runs a drone program out of the Horn of Africa, carried out the strike.<sup>171</sup> The military drones fired three rockets but missed the truck in which Awlaki was traveling.<sup>172</sup> Awlaki got out, hopped in a different car, and travelled in the opposite direction.<sup>173</sup> For this mission, the CIA was in an intelligence support role and was assisting JSOC with the intelligence while the military unit handled the lethal portion. After JSOC failed to finish Awlaki, the White House transferred the mission to hunt Awlaki—codenamed Operation Troy—from JSOC to the CIA.<sup>174</sup> The transfer from a military entity to an intelligence agency was part of the White House’s strategy. John Brennan, Obama’s counterterrorism advisor, believed the CIA was better at targeting terrorists because of its experience in Pakistan.<sup>175</sup> JSOC was then relegated to a supporting role because the elite military unit had strong connections with the Yemeni government.<sup>176</sup>

In the summer months of 2011, there were important developments that facilitated the eventual killing of al-Awlaki. The CIA began developing its own drone base in Saudi Arabia enabling it to run its own operations, parallel to JSOC’s fleet in the Horn of Africa.<sup>177</sup> The CIA then began to transfer drones from Pakistan to Saudi Arabia to open up a new drone front for the intelligence agency.<sup>178</sup> The CIA was also actively deploying human intelligence assets to track Awlaki’s location. In collaboration with Saudi Arabian intelligence, the CIA ran extensive human intelligence operations in Yemen to find and fix Anwar al-Awlaki’s location. The CIA

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<sup>171</sup> Mazzetti, *The Way of the Knife*, 307.

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Hakim Almasari, Margaret Coker, and Siobhan Gorman, “Drone Kills Top Al Qaeda Figure,” *The Wall Street Journal*, October 1, 2011, <http://online.wsj.com/news/articles/SB10001424052970204138204576602301252340820>; Mazzetti, *The Way of the Knife*, 308.

<sup>175</sup> Ibid.

<sup>176</sup> Greg Miller, “Strike on Aulqi demonstrates collaboration between CIA and military,” *Washington Post*, September 30, 2011, [http://articles.washingtonpost.com/2011-09-30/world/35272700\\_1\\_lethal-operations-cia-director-qaeda](http://articles.washingtonpost.com/2011-09-30/world/35272700_1_lethal-operations-cia-director-qaeda).

<sup>177</sup> Mazzetti, *The Way of the Knife*, 308.

<sup>178</sup> Ibid.

worked with Danish intelligence and tried to put a tracker in the suitcase of Awlaki's courier, but the operation failed.<sup>179</sup> Eventually, in mid-September, the CIA found a source inside al Qaeda in the Arabian Peninsula who led the intelligence agency to Awlaki.<sup>180</sup> Finally, on September 30, several American drones killed Awlaki and destroyed a convoy of vehicles.<sup>181</sup> On that day, Awlaki and a small group (including another American turned extremist, Samir Kahn) exited from a breakfast break when they met a barrage of Hellfire II missiles.<sup>182</sup> Two weeks later—in what the intelligence community and executive branch have yet to publicly recognize—a Predator drone killed Awlaki's sixteen-year-old son, who was also an American citizen, by accident while trying to target an Al Qaeda bomb maker.<sup>183</sup>

The American reaction to the targeted of Anwar al-Awlaki was not met with the same public approval as most targeted killing operations because Awlaki was an American citizen. According to a Gallup poll in 2013, 65 percent of Americans support targeted killings of suspected terrorists in foreign countries, while only 28 percent oppose such operations.<sup>184</sup> On the other hand, when asked about the targeting of American citizens, only 41 percent of Americans approve while 52 percent believe the United States should not launch strikes against American citizens abroad.<sup>185</sup> There is one clear issue with the poll: the survey does not ask whether Americans approve of the targeted killing of Anwar al-Awlaki, but instead generalize the question and ask whether they believe the United States should not launch strikes against American citizens.

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<sup>179</sup> Mazzetti et. al, "How a U.S. Citizen Came to Be in America's Cross Hairs."

<sup>180</sup> Ibid.

<sup>181</sup> Mazzetti, *The Way of the Knife*, 308.

<sup>182</sup> Ibid; and Mazzetti et. al, "How a U.S. Citizen Came to Be in America's Cross Hairs."

<sup>183</sup> Mazzetti, "How a U.S. Citizen Came to Be in America's Cross Hairs."

<sup>184</sup> Alyssa Brown and Frank Newport, "In U.S. 65% Support Drone Attacks on Terrorists Abroad," *Gallup*, March 25, 2013, <http://www.gallup.com/poll/161474/support-drone-attacks-terrorists-abroad.aspx>.

<sup>185</sup> Ibid.

The major issues raised with the Awlaki killing were, and continue to be, legal. After the Obama administration authorized the targeting of Awlaki, the cleric's father—with the help of the American Civil Liberties Union and Center for Constitutional Rights—filed a lawsuit against President Obama.<sup>186</sup> The courts dismissed the suit.<sup>187</sup> Nevertheless, the issue of legality and constitutionality is the most argued aspect of the Awlaki killing. In response to the critics, the Department of Justice released a white paper outlining the legality of targeting American citizens who are “senior operational leaders” of al Qaeda.<sup>188</sup> In the white paper, the Obama administration outlined three criteria that make such a targeting legal: (1) an informed, high-level official of the United States government has determined that the individual poses an imminent threat of violent attack to the United States; (2) capture is infeasible; and (3) the operation is consistent with the applicable laws of war.<sup>189</sup>

In a Congressional subcommittee hearing in February 2013, a slew of legal experts concurred that the Awlaki strike was legal.<sup>190</sup> Moreover, legal scholars have also found that the Awlaki targeted killing is legal according to the United Nations charter and international human rights law.<sup>191</sup> Even after the dismissal of the lawsuit, the Obama administration's white paper, the Congressional hearing, and legal scholarship, Awlaki's father published an op-ed in the *New*

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<sup>186</sup> Peter Finn, “Secret U.S. Memo sanctioned killing of Aulqi,” *Washington Post*, September 30, 2011, [http://articles.washingtonpost.com/2011-09-30/world/35274507\\_1\\_qaeda-drone-strike-anwar-al-aulqi](http://articles.washingtonpost.com/2011-09-30/world/35274507_1_qaeda-drone-strike-anwar-al-aulqi).

<sup>187</sup> *Ibid.*

<sup>188</sup> “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qaeda or an Associated Force,” Department of Justice (White Paper: 2013).

<sup>189</sup> *Ibid.*

<sup>190</sup> United States House of Representatives, “Drones and the War on Terror: When can the U.S. Target Alleged American Terrorists Overseas?,” Hearing before the House Committee on the Judiciary House of Representatives, February 27, 2013.

<sup>191</sup> Robert Chesney, “The Use of Force Regime and Unconventional Threats: Anwar al-Awlaki as a Case Study,” in *Counterinsurgency Law: New Directions in Asymmetric Warfare*, ed. Williams Banks (Oxford, UK:Oxford University Press, 2013) 162-177; Michael Ramsden, “Targeted Killings and International Human Rights Law: The Case of Anwar Al-Awlaki,” *Journal of Conflict and Security Law* 16, no. 2 (2011): 385-406.



*York Times* in July 2013 arguing that his son and grandson were deprived their constitutional rights and summarily executed without due process.<sup>192</sup>

The case of Anwar al-Awlaki clearly shows a modern find-fix-finish operation. The Obama administration authorized his targeting and the intelligence community, military, and regional allies fiercely tracked the American cleric for over a year before fixing his location with a drone. The Awlaki case, for the purposes of this thesis, sets a contemporary standard by which to compare the targeted killing of Awlaki with the other historical cases presented. In addition, the Awlaki case is the historical capstone to analyze the historical trends underpinning the cases in this chapter, which can inform policy.

## CONCLUSION

The debate of whether to kill individual enemies has long been discussed as an implicit aspect of warfare, but few have sought to rectify that by establishing a history. This chapter rectifies that vacancy in scholarship by establishing historical precedents for targeted killings. This chapter used a framework to determine historical precedents. In each case, this chapter analyzed whether the operation matches the definition provided by Phillip Alston to the United Nations and whether the operation aligned with the find-fix-finish criteria.

This chapter analyzed four cases of strikes against individuals. The strike against Admiral Yamamoto was by definition and framework a targeted killing. The air strike against Libyan terrorist facilities in 1986 was not an operational precedent because American decision-makers and intelligence officers did not actively target Muammar Qaddafi for execution. Operation El Dorado Canyon, however, was an important legal precedent because the Reagan

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<sup>192</sup> Nasser al-Awlaki, "The Drone that Killed My Grandson," *The New York Times*, July 17, 2013, <http://www.nytimes.com/2013/07/18/opinion/the-drone-that-killed-my-grandson.html>.

administration justified the action under Article 51 of the United Nations Charter. In addition, the raid on Qaddafi was the first time the United States responded with lethal force in self-defense to international terrorism, and as such, became a precedent in future counterterrorism targeted killing deliberations. This chapter also examined the Clinton administration's failed targeted killing against Osama bin Laden in 1998, which by definition and framework, was a targeted killing, although the operation failed to finish al Qaeda's leader. The final case analyzed the Obama administration's targeted killing of Anwar al-Awlaki, which is an example of a modern targeted killing executed by armed drones.

In addition to these cases, this chapter examined important aspects of history that influenced the history of targeted killings. The first such event was the Church Committee, which exposed the CIA's plots to assassinate foreign leaders in the Cold War. The Church Committee resulted in three president's signing consecutive executive orders barring assassination as a tool in American covert action. The impact of the Church Committee reverberated through the Reagan, Clinton, George W. Bush, and Obama administrations because each president and their national security staff had to clarify any proposed lethal action in terms of whether it constituted an assassination. The other fundamental event that influenced the history of targeted killings was the Clinton administration's failed attempts to kill Bin Laden, and subsequent search for a better technology that could finish the operation. This search concluded when the CIA and DOD found the MQ-1 Predator drone and armed it with Hellfire missiles. The MQ-1 and its predecessors would become the principal tool used in the twenty-first century to execute individual enemies around the world.

The primary objective of this chapter and thesis is to establish historical precedents for targeted killings by examining cases that predate September 11 and to find how they can inform

modern policy. Through systematic research and analysis this chapter has determined patterns that, when extracted, can reveal lessons to help inform modern policy on targeted killing drone strikes. Through these cases, I have identified **three** trends, which I will analyze in the final chapter of this thesis.

1. In the course of American targeted killings, there has been an increasing **fusion** between the traditional roles of military and intelligence. The military has become more involved in intelligence and collection, and the intelligence community has become increasingly invested in war fighting abilities.
2. There have been more transparent executive **command** mechanisms during targeted killing operations. The era of “plausible deniability” and hiding operations from the public has become increasingly obsolete, as the president has taken a more identifiable role in authorizing strikes and informing the public of targeted killing operations.
3. Targeted killing operations often take place under the highest levels of authority, and as such, frequently look to employ new **technology**. The public and media closely examine the use of technology in targeted killing operations today because the operations employ UAVs. By examining the history of targeted killings, however, it is clear that this attribute is not limited to the twenty-first century and in fact, is an identifiable trend.

# CHAPTER THREE

## SIGNATURE STRIKES

*"We are killing these sons of bitches faster than they can grow them now."<sup>1</sup>*

*-CIA Counterterrorism Center Chief, 2011*

Mir Ahmad, Daraz, and Jarhan Gir—local Afghans—were walking collecting scrap metal outside in Zawhar Khili on February 4, 2002.<sup>2</sup> The men were outside of an old mujahideen complex used in the 1980s by resistance fighters and even Osama bin Laden.<sup>3</sup> Overhead, an armed MQ-1 Predator relayed the footage back to an Air Force pilot contracted to the CIA.<sup>4</sup> The pilot noticed that Mir Ahmad was taller than his Afghan companions and that Daraz and Jarhan Gir were acting reverently towards Mir Ahmad.<sup>5</sup> Zawhar Khili was near Khwost Afghanistan, a hot-bed for al Qaeda fighters and leaders. The pilot and supporting analysts added up the facts. One suspect was tall and was flanked by two others who were gave their tall companion special treatment. All three were walking in an al Qaeda-operated area. This could be Osama bin Laden. The al Qaeda leader was tall, usually had an entourage, and had a history of residing near Khwost. The pilot flicked the dual-lock trigger on the joystick and unleashed a laser-designated

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<sup>1</sup> Anonymous CIA official provided quote to reporters; see: Greg Miller and Julie Tate, "CIA Shifts Focus to Target Killings," *Washington Post*, September 1, 2011, [http://www.washingtonpost.com/world/national-security/cia-shifts-focus-to-killing-targets/2011/08/30/gIQA7MZGvJ\\_story.html](http://www.washingtonpost.com/world/national-security/cia-shifts-focus-to-killing-targets/2011/08/30/gIQA7MZGvJ_story.html).

<sup>2</sup> Doug Struck, "Casualties of U.S. Calculations: Afghan Victims of CIA Missile Strikes Described as Peasants, Not al Qaeda," *Washington Post*, February, 10, 2002.

<sup>3</sup> Brian Glyn Williams, *Predators: The CIA's Drone War on Al Qaeda* (Washington D.C.: Potomac Books, 2013), 36.

<sup>4</sup> *Ibid.*, The CIA contracts Air Force pilots for specific missions. J.R. Reid, interview with author (Washington D.C., August 2013); Mark Mazzetti, interview with author (Washington D.C., August, 2013).

<sup>5</sup> Williams, *Predators*, 36.

Hellfire missile careening towards the targets. The hundred pound missile killed all three Afghans. This was the first known signature strike in the war against al Qaeda.<sup>6</sup>

Signature strikes are operations where the operator bases the target selection on a pattern of behavior or unique characteristics (or “signatures”) that are associated with wider militant or terrorist organizations, rather than the identification of an individual. Daniel Klaidman, an editor for *Newsweek*, reported that the origins of signature strikes date back to the George W. Bush administration. According to Klaidman, the logic for the strikes is that by targeting groups of militants based on patterns of behavior, rather than the individual’s identity, the government can eliminate more threats. Thus, there is no longer the need for targeting data for a specific individual, instead armed drone pilots and analysts can make judgments based on certain characteristics.<sup>7</sup> Under President Obama, there have been more signature strikes than targeted killings.<sup>8</sup> Although they occur more frequently, there is less information and scholarship on signature strikes. The former chapter on targeted killing used a find-fix-finish framework to analyze targeted killings cases. Signature strikes are less methodical. Signature strikes occur when drone pilots target military combatants by behavior patterns, not by identity, and the targets are not preselected. For example, in a strike, pilots operating armed drones will identify combatants by unique signatures, ask their commanders permission to strike, and then engage the target.<sup>9</sup> Therefore, this chapter will use a new framework for evaluating historical precedents.

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<sup>6</sup> Kevin Jon Heller, “‘One Hell of a Killing Machine:’ Signature Strikes and International Law,” *Journal of International Criminal Justice* 11, (2013): 95.

<sup>7</sup> Daniel Klaidman, “Drones: The Silent Killers,” *Newsweek*, May 28, 2012, <http://www.newsweek.com/drones-silent-killers-64909>.

<sup>8</sup> Adam Entous, Siobhan Gorman, and Julian Barnes, “U.S. Tightens Drone Rules,” *Wall Street Journal*, November 4, 2011, <http://online.wsj.com/news/articles/SB10001424052970204621904577013982672973836>.

<sup>9</sup> Martha McSally, witness testimony, “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” Senate Judiciary Committee: Subcommittee on the Constitution, Civil Rights, and Human Rights, (Washington, D.C.: April 23, 2013).

There will be two criteria for this new framework—target devolution and preemption. This chapter will use these criteria to determine whether the cases are historical precedents for signature strikes. The first criterion is target devolution, which stems from a theory proposed by Peter Bergen regarding signature strikes. Bergen, a leading terrorism expert, and curator of the preeminent drone strike database at the New American Foundation, argued in a written congressional testimony in 2013 that because of the increased use of signature strikes in Obama’s drone policy, “the drone program has increasingly evolved into a counterinsurgency air platform, the victims are mostly lower-ranking members of Taliban and lower-level members of al Qaeda and associated groups.”<sup>10</sup> Steve Coll, the Dean of Columbia’s Journalism School, promulgates the same argument—the drone program has evolved from a counterterrorist platform to a counterinsurgency tool. Coll writes, “Increasingly, the CIA and JSOC came to see their campaign against al Qaeda as a worldwide counter-insurgency.”<sup>11</sup> Bergen and Coll both use the term “counterinsurgency.” The definitions of counterterrorism and counterinsurgency are complex and heavily debated. The idea that Bergen and Coll convey is that drone strikes have shifted from killing high-value targets to low-value combatants. Therefore, the first criterion that this chapter will use to analyze the case studies for signature strikes is whether target selection devolved from high-value targets to low-level fighters.

The second criterion is the concept of preemption. The basis of preemptive attacks is the expectation that an adversary will attack and the conclusion that striking first is better than suffering an attack.<sup>12</sup> Preemptive attacks are different from preventative strikes, in which the

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<sup>10</sup> Peter Bergen, written testimony, “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” Senate Judiciary Committee: Subcommittee on the Constitution, Civil Rights, and Human Rights, (Washington, D.C.: April 23, 2013): 4.

<sup>11</sup> Steve Coll, “Remote Control: Our Drone Delusion,” *The New Yorker*, May 6, 2013.

<sup>12</sup> Karl Mueller, Jasen Castillo, Forrest Morgan, Negeen Pegahi, and Brian Rosen, *Striking First: Preemptive and Preventative Attack in U.S. National Security Policy* (Santa Monica, CA: RAND Corporation, 2006), 6-8.

motivation arises from the desire to fight sooner rather than later.<sup>13</sup> Signature strikes by design, are preemptive. Kevin Heller, a legal scholar, found that there are several scenarios that the United States government authorizes signature strikes against unknown militants: when they are planning attacks, transporting weapons, handling explosives, seen at al Qaeda compound or training camp, military age males consorting with known militants, armed men traveling in trucks towards a conflict, trainees and facilitators in suspicious camps in al Qaeda controlled areas.<sup>14</sup> All of these instances are preemptive in nature—the drone pilots and commanding officers recognize that the activities that the militants are performing are imminent threats and therefore, justify the use of preemptive force. Thus, the second criterion in establishing historical precedence for signature strikes is whether the cases examined use preemptive lethal force. Similar to the former chapter on targeted killings, these criteria are outlined in **Table C**, along with summary explanations of the cases.

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<sup>13</sup> Ibid.

<sup>14</sup> Heller, “‘One Hell of a Killing Machine:’ Signature Strikes and International Law,” 94-103.

**Table C: Historical Precedents for Signature Strikes**

Operation	Criteria	Precedents
Signature Strikes	<p><i>Target Devolution</i></p> <p>The shift from high-value to low-value targets. The operator evaluates targets based on patterns of behavior or unique characteristics often associated with militant movements.</p>	<p><i>The Phoenix Program (1967-1972)</i> Over time, the Provincial Reconnaissance Units (PRUs) focused more on neutralizing low-level Viet Cong members than high-value leaders. PRUs evaluated potential Viet Cong on patterns of behavior in special targeting folders.</p> <p><i>Signature Strikes in Pakistan (2009-2011)</i> In the final years in the Bush administration, the CIA began to conduct drone strikes in Pakistan based on an individual’s pattern of life, not identity. The Obama administration continued this policy, which led to a spike in targeting low-value targets from 2009-2011 in Pakistan.</p>
	<p><i>Preemption</i></p> <p>The expectation that the adversary will attack and attacking first is better than suffering an attack. Preemption, like target devolution, is based on the activities, behaviors, or characteristics of the targets.</p>	<p><i>Reagan’s Preemptive Counterterrorism Policy (1984)</i> National Security Decision Directive 138 and a speech by Secretary of State George Schultz call for preemptive military and intelligence operations to combat terrorist organizations in Lebanon.</p> <p><i>Signature Strikes in Yemen (2012-2013)</i> The Obama administration, in 2012 approved the use of signature strikes in Yemen after al Qaeda in the Arabian Peninsula became more of a direct threat to the United States. The administration began to authorize preemptive “terror-attack-disruption” strikes shortly thereafter.</p>

This chapter will examine two historical precedents for signature strikes. First, the Phoenix Program during the Vietnam War shows an operational precedent for signature strikes because when American-advised, Vietnamese teams looked for Viet Cong, they often targeted individuals based on patterns of behavior. The Phoenix Program is an example of a shift in target selection from high to low value. The second precedent occurred in the first term of the Reagan administration. Top officials in Reagan’s National Security Council authorized, but never implemented, a counterterrorism policy that sought authority to use force preemptively against terrorists. While it was not an operational precedent, released documents and speeches



shed light on decision-making precedents regarding the use of preemptive force in counterterrorism. This section will conclude by analyzing the signature strikes in the twenty-first century. The main objective of this chapter are the same as the previous chapter on targeted killings: to determine whether there are historical precedents for signature strikes prior to September 11 by using the aforementioned criteria, and to extract trends from cases the precedents in order to inform modern drone policy.

### **THE PHOENIX PROGRAM, 1967-1972**

The United States military faced an asymmetric threat and full-scale insurgency in the Vietnam War. Hank Crumpton was a career CIA case officer, a leading figure in the CIA's Counterterrorism Center during the Clinton and George W. Bush administrations, and one of the first Agency personnel to set foot in Afghanistan after September 11. Crumpton argues that the Vietnam War was the first time that United States saw "micro actors making a macro impact."<sup>15</sup> Daniel Byman, an authority on terrorism and targeted killings and Director of Georgetown University's Security Studies, stated in author interview that the Phoenix Program was the first institutionalized rendition and killing program that the CIA and military employed. Byman argues that the operations were analogous to modern rendition and targeted strikes programs.<sup>16</sup>

During the Vietnam War and into the 1980s, the Phoenix Program became widely synonymous as a full-scale assassination program. This was a misconception. The Phoenix Program captured the nation's attention in 1970 when *Newsweek* featured a story "The Rise of the Phoenix." *Newsweek* described the purpose of the program as "countering the terror of the

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<sup>15</sup> Hank Crumpton, interview with author (Washington D.C., August 2013)

<sup>16</sup> Daniel Byman, interview with author (Washington D.C., July 2013).

Viet Cong with an anti-VC terror of its own.”<sup>17</sup> The magazine went on to recount two former Army officers who said that in their Phoenix training, they were informed by their instructors they would be required to kill 50 Viet Cong every month. Another account said that the kill teams received a payment for each head or ear they collected from a Viet Cong cadre.<sup>18</sup> Later verification revealed that the Army officers quoted in the story lied about their service and never actually went to Vietnam.<sup>19</sup> Similar accounts underscore the lack of reliability and credibility of Phoenix scholarship and reporting; however, American interventions in the 1990s and the 2003 Iraq invasion spurred the public’s attention to rediscover U.S. counterinsurgency strategy. Prominent scholars and historians then stepped forward to reevaluate the Phoenix Program with more reliability and less politicization. Recent revisions to the Phoenix Program have disputed the Phoenix Program’s systematic murderous reputation and argued that while Phoenix operators did kill suspected Viet Cong, it was not the primary objective of the Phoenix Program. One prominent counterinsurgency theorist, after September 11, even went so far as to recommend a “global Phoenix Program” aimed at dismantling contemporary jihadist and extremist threat networks.<sup>20</sup>

The linchpin of America’s counterinsurgency strategy in the Vietnam War was to secure and pacify the South Vietnamese countryside. Most of the operations included the strategic hamlet program where the United States set up local villages to reinforce the countryside from Viet Cong (VC) expansion and exploitation. The goal was to deny the Viet Cong and its infrastructure a safe haven. The military led the security effort through Military Assistance Command Vietnam (MACV) and consolidated all pacification programs into one entity, the

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<sup>17</sup> “The Rise of the Phoenix,” *Newsweek*, January 12, 1970, 25.

<sup>18</sup> *Ibid.*

<sup>19</sup> Dale Andradé, *Ashes to Ashes: The Phoenix Program and the Vietnam War* (Lexington, MA.: Lexington Books, 1990), 212.

<sup>20</sup> David Kilcullen, “Countering Global Insurgency,” *Small Wars Journal*, version 2.2, (2004): 40.

Civilian Operations and Revolutionary Development Support (CORDS).<sup>21</sup> Although established to dismantle Viet Cong Infrastructure (VCI), CORDS was largely a defensive program, which worked on village security and civil action programs. In June 1967, Ambassador Robert Komer wanted to consolidate anti-VCI operations and won approval from the CIA to establish a program called Intelligence Coordination and Exploitation Program, later known as the Phoenix Program.<sup>22</sup> The CIA funded and administered the Phoenix Program, but the South Vietnamese Government largely ran it.<sup>23</sup> William Colby succeeded Komer in 1968 and ran the Phoenix Program until its termination in 1972. Colby was a leading CIA official and previously served as Chief of the CIA's Far Eastern Division. After Viet Cong orchestrated the Tet Offensive, which began in January 1968, the Phoenix Program accelerated and became increasingly offensive to counterbalance CORDS.<sup>24</sup>

The Phoenix Program's primary objective was to dismantle the Viet Cong Infrastructure in South Vietnam by neutralizing members of the Viet Cong and those who aided them (the infrastructure).<sup>25</sup> In addition, the Phoenix Program was an intelligence exploitation program, which meant that while neutralizing the VCI was imperative, intelligence fueled the Phoenix Program's dismantling of the VCI. Phoenix operators needed fresh intelligence on VCI targets to continue debasing the Viet Cong in South Vietnam.

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<sup>21</sup> Andrew Finlayson, "A Retrospective on Counterinsurgency Operations: The Tay Ninh Provincial Reconnaissance Unit and Its Role in the Phoenix Program, 1969-70," *Center for the Study of Intelligence* 51, no. 2, (2009), <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol51no2/a-retrospective-on-counterinsurgency-operations.html>; William Rosenau and Austin Long, "The Phoenix Program and Contemporary Counterinsurgency," *RAND*, (2009): 7.

<sup>22</sup> Rosenau and Long, "The Phoenix Program and Contemporary Counterinsurgency," 7.

<sup>23</sup> Finlayson, "A Retrospective on Counterinsurgency Operations."

<sup>24</sup> Tal Tovy, "The Theoretical Aspects of Targeted Killings: The Phoenix Program as a Case Study," *Journal of Military and Strategic Studies* 11, no. 4, (2009): 10.

<sup>25</sup> United States Military Assistance Command, Vietnam, *Phung Hoang Adviser Handbook*, (Saigon: U.S. Military Assistance Command, Vietnam, November 20, 1970): 1.

Understanding the term “neutralize” is pivotal in understanding the Phoenix Program. Neutralizing the VCI meant capturing, inducing desertion, turning politically, or killing.<sup>26</sup> The media during the Vietnam War equated neutralization to assassination and William Colby directly addressed the issue in his hearing before Congress to clarify the connotation.<sup>27</sup> Therefore, because intelligence fueled the Phoenix Program, the preferred method of neutralization was capture, interrogation, and detention. Phoenix leaders preferred capturing VCI, but killing was often easier. Official statistics for the Phoenix Program reveal that in its years of operation, the operators neutralized 33,368 VCI and killed 26,329.<sup>28</sup> For the purposes of this thesis the most pertinent aspect of the Phoenix Program was the Provincial Reconnaissance Units (PRUs). These small teams as described by Vietnam historian, Dale Andradé, were “the best anti-infrastructure arm in the Phoenix Program.”<sup>29</sup>

The Provincial Reconnaissance Units were the tip of the Phoenix’s counterinsurgency spear. The PRUs were unconventional paramilitary teams that took the fight directly to the VCI through unconventional methods.<sup>30</sup> By 1972, there were over 4000 PRU members and a PRU in each of South Vietnam’s 44 provinces.<sup>31</sup> Usually five 18-man teams with a few American advisers comprised each PRU.<sup>32</sup> The American advisers were CIA personnel, senior military officers, or noncommissioned officers.<sup>33</sup> The advisers gave policy and technical direction, as

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<sup>26</sup> Tal Tovy, “The Theoretical Aspects of Targeted Killings,” 13; Mark Moyer, *Phoenix and Birds of Prey* (Annapolis: Naval Institute Press, 1997), 189-190; Rosenau and Long, “The Phoenix Program and Contemporary Counterinsurgency,” 14; and Michael Wilcheck, “Risen from the Ashes: Phoenix and the Struggle against the Viet Cong Shadow Government,” (Master’s Thesis, Hawaii Pacific University, 2008): 79.

<sup>27</sup> United States Senate Select Committee on Armed Services, “Hearing Before the Committee on Armed Services United States Senate: Nomination of William E. Colby to be Director of Central Intelligence,” (Washington D.C. 1973): 6.

<sup>28</sup> Moyer, *Phoenix and the Birds of Prey*, 236.

<sup>29</sup> Dale Andradé, *Ashes to Ashes*, 172, 185-186.

<sup>30</sup> Moyer, *Phoenix and the Birds of Prey*, 172.

<sup>31</sup> Finlayson, “A Retrospective on Counterinsurgency Operations.”

<sup>32</sup> Rosenau and Long, “The Phoenix Program and Contemporary Counterinsurgency,” 12.

<sup>33</sup> Finlayson, “A Retrospective on Counterinsurgency Operations.”

well as support and coordination for each of the teams.<sup>34</sup> The other members of the PRU were CIA-recruited South Vietnamese, often with military background, who had reputations for brutality and virulent anti-VC sentiment.<sup>35</sup> While officially a part of the military and the CORDS program, the PRUs were organized, trained, equipped, funded, and advised mostly by the CIA.<sup>36</sup> The use of PRUs or small, asymmetric counter forces predated the official start of the Phoenix Program in 1967. Preceding the Phoenix Program and the implementation of PRUs, the CIA directed and funded Counter-Terror Teams in the 1960s with similar objectives and similar methods of behind the lines, hit-and-run operations.<sup>37</sup> Once Colby directed Phoenix, however, he changed the name from Counter-Terror Teams to Provincial Reconnaissance Units because he thought the name and reputation of Counter-Terror Teams was too lurid.<sup>38</sup>

The Provincial Reconnaissance Units dismantled Viet Cong infrastructure by aiming to neutralize key Viet Cong personnel in each of their respective provinces. According to the official advisers' handbook provided by MACV, each of the American advisers had VCI target folders with key details on VCI cadre including: their habits, contacts, schedule, sufficient evidence on their activities, name and position, and continually updated local VCI organizational charts.<sup>39</sup> The VCI target folders share strikingly similar organizational categories to the Obama administration's disposition matrix, discussed in the former chapter. The disposition matrix is a software program designed by the Obama administration to manage the intelligence and locations of targeted individuals.<sup>40</sup> The matrix is multi-layered software that tracks and prioritizes targeted terrorists. The VCI target folders also share similar targeting criteria for

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<sup>34</sup> Moyer, *Phoenix and the Birds of Prey*, 176.

<sup>35</sup> Andradé, *Ashes to Ashes*, 172.

<sup>36</sup> Rosenau and Long, "The Phoenix Program and Contemporary Counterinsurgency," 11.

<sup>37</sup> Moyer, *Phoenix and the Birds of Prey*, 172.

<sup>38</sup> *Ibid.*

<sup>39</sup> United States Military Assistance Command, Vietnam, *Phung Hoang Adviser Handbook*, (Saigon: U.S. Military Assistance Command, Vietnam, November 20, 1970): 9.

<sup>40</sup> For more on the disposition matrix see: pages 67-68 of this thesis.

establishing patterns of behavior—such as who VCI are meeting with and their “habits.”<sup>41</sup> These patterns of behavior are similar criteria to that used by UAV pilots when determining signature strikes. Once the PRUs selected VCI provincial targets they were aggregated into three categories: most wanted persons such as political cadres or senior military commanders, lower command positions, and ordinary level fighters.<sup>42</sup> There was an apparent stipulation for three positive confirmations of a targets identify from three different intelligence sources; however, Andrew Finlayson, a retired Marine who commanded a PRU, said that the sources of intelligence were at times widely inaccurate.<sup>43</sup>

While the PRUs were effective at neutralizing VCI, they were poorly supervised. Moreover, because locals with fierce hatreds for Viet Cong made up the bulk of each PRU, they would often dictate the methods of neutralization. The American advisers, for example, wanted to exploit intelligence from the captives, but the local PRU members would take other action. In December 1969, an American adviser reported abuses by his own team when his PRU captured eight VCI after killing seven others. A number of the captives were district-level cadre and without interrogating the prisoners, the local PRU members executed five of the members.<sup>44</sup> While most American advisers—notably the CIA advisers—drove their PRUs to capture instead of kill, some advisers—especially those with combat experience—were skeptical of South Vietnamese prison systems and were more likely to kill VCI targets.<sup>45</sup> To combat excessive killing, CIA andCORDS created incentives for capture, but because of the decentralized and provincial-based organizational structure, applying program-wide incentives was difficult.<sup>46</sup>

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<sup>41</sup> United States Military Assistance Command, Vietnam, *Phung Hoang Adviser Handbook*, (Saigon: U.S. Military Assistance Command, Vietnam, November 20, 1970): 9.

<sup>42</sup> Tal Tovy, “The Theoretical Aspects of Targeted Killings,” 14.

<sup>43</sup> Finlayson, “A Retrospective on Counterinsurgency Operations.”

<sup>44</sup> Andradé, *Ashes to Ashes*, 175.

<sup>45</sup> Moyar, *Phoenix and the Birds of Prey*, 228.

<sup>46</sup> *Ibid.*, 229.

The PRUs targeting of high-value fighters devolved during the Phoenix Program. Whether it was lack of reliable intelligence on high-value targets, or ease of neutralizing low-level combatants, the PRUs shifted from targeting high-value targets to low-level militants and facilitators. Many of the VCI neutralized were not senior cadre or commanders, but tax collectors, propagandists, and new recruits.<sup>47</sup> As William Rosenau and Austin Long note:

Critics of the effectiveness of the anti-infrastructure operations also note that most of the VCI who were neutralized were low-ranking individuals rather than the high-value targets that Phoenix and related efforts were designed to apprehend. Although it is true that most neutralization were of low-level figures, they nevertheless had a powerful effect on the VCI.<sup>48</sup>

As the Phoenix Program aged, the successful neutralizations were less aimed at high-ranking VCI and more prolific at eliminating low-level figures and facilitators.

Statistics measured the Phoenix Program and the PRUs effectiveness.<sup>49</sup> While the Phoenix Program in sum neutralized 81,740 VCI, the measure of how many VCI the Phoenix Program killed is highly contested.<sup>50</sup> Historical media reports often cite William Colby's Congressional Hearing in 1971 when he stated that Phoenix killed 20,500 and 87 percent of VCI deaths were due to combat circumstances.<sup>51</sup> Colby's distinction between combat deaths and

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<sup>47</sup> Rosenau and Long, "The Phoenix Program and Contemporary Counterinsurgency," 14.

<sup>48</sup> Ibid.

<sup>49</sup> The statistics found in this paragraph come from Mark Moyar's *Phoenix and the Birds of Prey*. Moyar received significant criticism by historian John Prados in a review of *Phoenix and the Birds of Prey*. Prados lambasted Moyar for a variety of reasons, but one of them was Moyar's argument about the monthly quotas for PRUs. The statistics presented above are not the PRUs monthly quotas, but annual statistics compiled by MACV.

Prados's dismal review of Moyar's work is important to consider when citing *Phoenix and the Birds of Prey*. Prados's arguments, however, do not justify discarding Moyar's work. Moyar's scholarship is one of the few to focus on PRUs, which is most pertinent for this thesis. Moreover, while Prados dismisses Moyar, Rhodri Jeffreys-Jones, a preeminent intelligence historian, is far less critical of Moyar in his review in *The American Historical Review*. Jeffreys-Jones, while still finding critiques in Moyar's work, argues, "Moyar's book is provocative and adds in significant ways to evidence offered in earlier studies of Phoenix."

To examine both reviews in full see: John Prados, "Phoenix and the Birds of Prey: The CIA's Secret Campaign to Destroy the Viet Cong by Mark Moyar," *The Journal of American History* 85, no. 4 (1999):1675-1676; and Rhodri Jeffreys-Jones, "Phoenix and the Birds of Prey: The CIA's Secret Campaign to Destroy the Viet Cong by Mark Moyar," *The American Historical Review* 103, no. 4 (1998): 1354.

<sup>50</sup> Moyar, *Phoenix and the Birds of Prey*, 236.

<sup>51</sup> Darius Jihbvala, "CIA Director Defends 'Covert Actions' Abroad," *Boston Globe*, September 14, 1974, ProQuest Historical Newspapers.

other deaths fed the public speculation that the Phoenix Program was a systematic extermination program. Mark Moyer, an authority on PRUs, argues that is nearly impossible to differentiate between lethal neutralizations that occurred in combat and those that did not. He argues that because the PRUs' operations took place primarily at night and that most resulted in combat with VCI members make for incomplete statistics.<sup>52</sup> Moreover, Moyer adds that "the statistics are grossly inaccurate" because neutralization reporting was highly inflated or deflated for evaluators and incentives, compounding the inability to differentiate who died defenseless and who died in combat.<sup>53</sup> Yet for the sake of comparison, if Colby's testimony was correct in saying that 87 percent of VCI deaths occurred in combat, then 13 percent of the official MACV kill count of 26,320 equates to 3,422 VCI deaths that did not occur in combat. The Council on Foreign Relations averaged three different non-governmental organizations that track U.S. drone strikes' and averaged 3,520 total deaths (combatant and civilian) in Pakistan, Yemen, and Somalia during the Bush and Obama administrations.<sup>54</sup> While it is an unfair to directly compare death statistics from two highly contested programs with known skewed statistics and different circumstances, it highlights the massive scale of the Phoenix Program's neutralization policy.

The highest levels of government received the Phoenix Program well, despite its killer public perception. Seymour Hersh, a journalist who was instrumental in exposing the Phoenix Program and CIA attempted assassinations to the American public. Hersh quoted President Richard Nixon as angrily reacting to proposed cuts on the PRU program by declaring, "[w]e've got to have more of this. Assassinations. That's what they are doing."<sup>55</sup>

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<sup>52</sup> Moyer, *Phoenix and the Birds of Prey*, 224 and 232.

<sup>53</sup> *Ibid.*, 230.

<sup>54</sup> Michah Zenko, "Tracking U.S. Targeted Killings," Council on Foreign Relations, December 31, 2013, <http://blogs.cfr.org/zenko/2013/12/31/tracking-u-s-targeted-killings/>.

<sup>55</sup> Seymour Hersh, *The Price of Power: Kissinger in the Nixon White House* (New York: Penguin Books, 1997): 547. Citation and quotation found in: Rosenau and Long, "The Phoenix Program and Contemporary Counterinsurgency," 13.



The Phoenix Program serves as a historical precedent for signature strikes because of target devolution. The manner by which the PRUs' categorized their targets into VCI folders shares many commonalities with current software that tracks intelligence for targeted individuals. The PRUs also sought to dismantle Viet Cong Infrastructure by eliminating three categories: most wanted persons, lower-level commanders, and ordinary level fighters and facilitators. The devolution in target selection affirms that over time the Phoenix Program focused more on neutralizing low-level fighters and facilitators and less on high-value targets.

### **REAGAN'S PREEMPTIVE COUNTERTERRORISM POLICY, 1984**

Ronald Reagan's first term as President ended with several terrorist attacks. In the last twenty-two months of his first term as President, Islamist terrorists in Lebanon orchestrated three terrorist attacks against U.S. assets in Lebanon, killing a total of 260 Americans, as well as kidnapping multiple Americans including the CIA's Beirut Station Chief.<sup>56</sup> In the second debate during Reagan's re-election campaign in 1984, his opponent, Walter Mondale, challenged him on his counterterrorism policy. Mondale grilled Reagan on his lack of retaliation: "The terrorists have won each time. The President told the terrorists he was going to retaliate. He didn't. They called their bluff. And the bottom line is that the United States [is] left in humiliation, and our enemies are stronger."<sup>57</sup> Reagan rebutted, "We're busy trying to find the centers where these operations stem from, and retaliation will be taken. But we're not going to simply kill some

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<sup>56</sup> Statistics compiled based off of "Terrorist Attacks on Americans, 1979-1988," *pbs.org*, <http://www.pbs.org/wgbh/pages/frontline/shows/target/etc/cron.html>.

<sup>57</sup> "Debate Between the President and Former Vice President Walter F. Mondale in Kansas City, Missouri, October 21, 1984" Library at University of Texas, Transcript, <http://www.reagan.utexas.edu/archives/speeches/1984/102184b.htm>.

people to say, ‘Oh, look, we got even.’”<sup>58</sup> A few days after the debate, William Beecher of the *Boston Globe* reiterated Mondale and called for a response to terrorism. Beecher wrote,

Officials charged with trying to find meaningful answers are nearly stumped... But they know that to simply bomb a suspected terrorist center near Baalbeck, Lebanon may kill some innocent bystanders and perhaps lead to an escalation of anti-US violence throughout the Mideast and beyond... Would that be moral, legal, justifiable, or effective?... It [terrorism] presents a threat that demands an answer- and not just television repartee.<sup>59</sup>

What Mondale and Beecher did not know, however, was that Reagan’s National Security Team was already discussing a range of options for how to preemptively respond to international terrorism.<sup>60</sup>

This case will highlight the development of the Reagan administration’s preemptive counterterrorism policy. The policy authorized by President Reagan, National Security Decision Directive 138, will be the primary subject of this case study, in addition to speeches by administration officials and debates within the National Security Council over the use of force. The Reagan administration did not implement this preemptive counterterrorism policy. They only authorized it, which means this case is not an operational precedent and evaluating the shift from high-value to low-level targets will not be possible. The term “neutralize,” as noted in the former section is very controversial. Thus, when examining the Reagan administration’s proposed, but never implemented, terrorist neutralization policy it is important to recognize that neutralize does not inherently equate to killing. Thus, speculating whether it meant to kill or not, is irrelevant because the proposal was never employed.

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<sup>58</sup> Ibid.

<sup>59</sup> William Beecher, “Seeking an Answer to Terrorism,” *Boston Globe*, October 26, 1984, ProQuest Historical Newspapers.

<sup>60</sup> National Security Decision Directive 138, “Combatting Terrorism,” The White House (April 3, 1984), 4. Accessed via: <http://www.fas.org/irp/offdocs/nsdd/nsdd-138.pdf>.

The Reagan administration crafted their counterterrorism policy after several lethal terrorist attacks against American targets overseas. In June 1982, the Israeli military invaded Lebanon to uproot Palestine Liberation Organization (PLO) fighters. As a response, the Reagan administration sent a multinational force to help PLO fighters withdraw from Beirut and to establish a “presence” while American diplomats negotiated a deal between Israeli and Lebanese governments.<sup>61</sup> While establishing a presence in Lebanon, a string of terrorist attacks targeted Americans. In April of 1983, the U.S. Embassy in Beirut was struck by a suicide bomber in an explosive-laden pickup truck, which resulted in 63 deaths; 17 were Americans and eight of whom were CIA officials including the CIA’s Beirut Station Chief and chief Middle East analyst.<sup>62</sup> Six months later, a suicide bomber detonated a massive truck bomb outside of the U.S. Marine Barracks at the Beirut International airport killing 243 Marines and injuring an additional hundred. In March of 1984, terrorists captured William Buckley, the CIA’s new Beirut Station Chief, who was the fourth Western hostage taken and second American taken in Lebanon. Finally, six months later in September, terrorists bombed a U.S. Embassy annex in Beirut killing 24 people, two of whom were American military officials. According to American officials, Hezbollah—an Islamic extremist group with ties to Iran—either was directly or strongly assumed to be involved with all of the terrorist attacks against American targets in Lebanon in 1983 and 1984.<sup>63</sup>

Ronald Reagan was not the first president to face the complexities of Islamic extremism however; he was the first president who wanted to use lethal force against radical Islamists.<sup>64</sup>

After the Marine Barracks bombing, there were clear factions within the Reagan administration.

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<sup>61</sup> Mattia Toaldo, “The Reagan Administration and the Origins of the War on Terror: Lebanon and Libya as Case Studies,” *New Middle Eastern Studies* 2, (2012): 6.

<sup>62</sup> “Terrorist Attacks on Americans, 1979-1988.”

<sup>63</sup> Ibid.

<sup>64</sup> The Reagan administration responded to state-sponsored terrorism in the 1986 air strike on Libya as noted in the former chapter.

The Secretary of State George Schultz, Director of the Central Intelligence William Casey, and other top National Security Council staffers wanted to strike at Hezbollah with overt military force.<sup>65</sup> Schultz and Casey were the most adamant supporters of retaliating and future lethal policies against Hezbollah. Schultz strove to be the main counterterrorism strategist for the administration and the Secretary of Defense Caspar Weinberger counterbalanced him.<sup>66</sup> Weinberger and Deputy Director of the CIA John McMahon led the opposing faction who wanted to be more prudent with retaliatory strikes.<sup>67</sup> After terrorists kidnapped William Buckley, the National Security Council constructed a more offensive policy that was designed to preempt terrorism.

On April 3, 1984 President Reagan signed National Security Decision Directive 138 (NSDD 138), which was designed “to prevent, counter, and combat terrorism.”<sup>68</sup> The Top Secret policy initiative’s goal was to “ameliorate the subversive effect of terrorism on foreign democratic institutions and pro-Western governments.”<sup>69</sup> In the beginning of the document, the authors state they plan to act in full accord with the “provisions of Executive Order 12,333 and other applicable laws and statues.”<sup>70</sup> Executive Order 12,333, as discussed in the last chapter, was President Reagan’s law banning assassinations. Therefore, NSDD 138 intended to distance itself from any connection to assassination.<sup>71</sup> As seen in the former chapter, every administration since the Church Committee considered whether their covert or overt actions were in accord with Executive Order 12,333. Moreover, all of the directions given to the respective Directors or Secretaries included the provision that they must consult with the Attorney General.

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<sup>65</sup> Toaldo, “The Reagan Administration and the Origins of the War on Terror,” 3-4.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> National Security Decision Directive 138, “Combatting Terrorism,” The White House (April 3, 1984), 1.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> For more on Executive Order 12,333 see: page 45 of this thesis.

The document outlines two phases for implementation that delegates responsibilities to the respective U.S. government agencies. For example, the Secretary of State was charged with improving bilateral and multilateral relations to combat terrorism and “develop a full range of options for dealing directly with terrorism, both at the threat stage and after such attacks are carried out.”<sup>72</sup> The Directive tasked the Secretary of Defense to “develop a military strategy that is supportive of an active, preventive program to combat state-sponsored terrorism.”<sup>73</sup> In addition, it charged the Pentagon with developing a “full range of military options to combat terrorism throughout the entire spectrum.”<sup>74</sup> Finally, and most important for the purposes of this chapter, this Directive tasked the Director of Central Intelligence, in consultation with the Secretaries of State, Treasury, and Defense and the Attorney General to execute the following objectives:

- Develop, in coordination with other friendly security services, capabilities for the pre-emptive neutralization of anti-American terrorist groups which, plan, support, or conduct hostile terrorist acts against U.S. Citizens, interests, and property overseas.
- Develop a clandestine service capability, using all lawful means, for effective response against terrorist acts committed against U.S. Citizens, facilities or interests.
- Provide a new finding on combatting terrorism which includes, inter alia, lawful measures to: Unilaterally and/or in concert with other countries neutralize or counter terrorists organizations and terrorist leaders.<sup>75</sup>

What does NSDD 138 reveal about the Reagan administration’s counterterrorism policy?

The Reagan administration sought preemptive military and intelligence operations that would combat terrorism, all of which were in full accord with the law. Although the Reagan administration was fully prepared to retaliate through a variety of means, no operations were ever executed. The NSC left a variety of methods to counter terrorism: overt military options,

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<sup>72</sup> Ibid., 2-3.

<sup>73</sup> Ibid., 3.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., 4

diplomatic options, and clandestine options. While one can only speculate on the meaning of “neutralize,” it is evidentiary that the Reagan administration fully supported preemptive offensive measures to counter terrorism. Any preemptive measure though, according to the policy, must be in accord with Executive Order 12,333. When examining the legal stipulation, however, it is important to note that the cases discussed in the former chapter on targeted killings acted in accord with the law, but still acted lethally. For example, the Reagan administration justified the 1986 strike against Libyan terrorist-facilities under the legal authority of Article 51 of the United Nations Charter.<sup>76</sup> Moreover, the Bush administration found on August 4, 2001, that killing an individual with an armed predator drone would not violate Executive Order 12,333.<sup>77</sup> Therefore, *if* the Reagan administration employed NSDD 138 operationally they *could* use lethal force, but it would have been legal in a manner consistent with Executive Order 12,333. Nevertheless, NSDD 138 clearly shows that the Reagan administration accepted using preemptive force to combat terrorism.

On October 25, 1984, months after NSDD 138 and four days after the debate between Walter Mondale and Ronald Reagan, Secretary of State George Schultz delivered a blistering speech outlining an offensive counterterrorism doctrine. In the Park Avenue Synagogue, Schultz gave a speech titled “Terrorism and the Modern World.” Daniel Henninger, an editor at the *Wall Street Journal*, would later assert that the speech made Schultz the de facto “Father of the Bush Doctrine.”<sup>78</sup> Excerpts from Schultz’s speech reveal that the administration was fully prepared to utilize force and a variety of means to combat terrorism. Schultz asserted:

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<sup>76</sup> Reagan, “Address to the Nation on the United States Air Strike against Libya.”

<sup>77</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 212.

<sup>78</sup> Daniel Henninger, “George Schultz, Father of the Bush Doctrine,” *The Hoover Digest*, no. 3 (2006), <http://www.hoover.org/publications/hoover-digest/article/7920>.

We must reach a consensus in this country that our responses should go beyond passive defense to consider means of active prevention, preemption, and retaliation... We can expect more terrorism directed at our strategic interests around the world in the years ahead. To combat it, we must be willing to use military force... The public must understand before the fact that some will seek to cast any preemptive or retaliatory action by us in the worst light and will appear to make our military and policymakers—rather than the terrorists—appear to be the culprits. The public must understand before the fact that occasions will come when their government must act before each and every fact is known—and the decision cannot be tied to the opinion polls. If we are going to respond or preempt effectively, our policies will have to have an element of unpredictability and surprise. And the prerequisite for such a policy must be a broad public consensus on the moral and strategic necessity of actions. We will need the capability to act on a moment's notice... We may never have the kind of evidence that can stand up in an American court of law. But we cannot allow ourselves to become the Hamlet of nations, worrying endlessly over whether and how to respond.<sup>79</sup>

George Schultz sharply advocated in his speech the need to be able to use preemptive force to combat terrorism. Schultz recognized that public and moral considerations must be met, however warns the American people that the government needs to respond before “each and every fact is known” and “at a moment's notice.”<sup>80</sup> Schultz's speech demonstrates the pro-retaliation faction within the National Security Council's ardent support of the United States government's right to use preemptive and preventative force. Moreover, as seen through the 1986 strike Libyan facilities, the Reagan administration did not oppose the use of lethal force to counter terrorism.

In addition to Schultz's speech, Robert Gates delivered a briefing to Congress at a time when Congress was debating preemptive lethal counterterrorism measures. Robert Gates, a career-long CIA official and Secretary of Defense under the George W. Bush and Obama administrations, briefed Congress during the Reagan administration about retaliatory counterterrorism measures that have strong similarities to the criteria used in signature strikes.

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<sup>79</sup> Speech was reprinted in the following journal: George Schultz, “Terrorism and the Modern World,” *Terrorism* 7, no. 4 (1985), 431-447.

<sup>80</sup> *Ibid.*

Gates was in a secret briefing with Congress and remembered they had a hypothetical argument of when the U.S. government could kill a terrorist.<sup>81</sup> Gates recalled the substance of the debate, “Well, if the guy is driving toward the barracks, with a truck full of explosives, can you kill him? ‘Yeah.’ Well, what if he’s in the apartment putting the explosives together? ‘Well, I don’t know.’”<sup>82</sup> The hypothetical situation imagined by Gates and Congressional leaders mirrors the signature strike scenarios outlined by Kevin Heller. For example, when militants are: planning attacks, transporting weapons, or handling explosives.<sup>83</sup>

The Reagan administration’s proposed policy for retaliatory force against terrorists during 1984 is an important historical precedent for signature strikes. The measures codified in NSDD 138 and articulated in George Schultz’s speech and Robert Gates’s briefing with Congress all highlight the preemptive nature of the Reagan administration’s counterterrorism policy. In NSDD 138, the Reagan administration outlines a range of options for preemptive measures for combatting terrorism. The document not only stipulates the measures were preemptive, but outlined several different types of methods to counter terrorism. George Schultz’s speech also clearly articulates a strategy for retaliating against terrorists with preventative and preemptive measures. Finally, Robert Gates’s recalled testimony in Congress about whether the United States may use lethal force to kill a terrorist is extremely similar to acceptable scenarios for signature strikes such as when militants are transporting weapons, handling explosives, or seen at al Qaeda compound or training camp.<sup>84</sup>

While NSDD 138 was never implemented, one of the Reagan administration’s counterterrorism policies created an integral institution to the modern drone program. William

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<sup>81</sup> Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden from the Soviet Invasion to September 10, 2001* (New York, NY: Penguin Books, 2008), 141.

<sup>82</sup> Ibid.

<sup>83</sup> Heller, “‘One Hell of a Killing Machine:’ Signature Strikes and International Law,” 94-103.

<sup>84</sup> Ibid.



Casey, in an attempt to combat the growing terrorist threat, proposed and created a new fusion center within the CIA. Casey designed this center to break down the traditional geographic divisions within the CIA and fuse the Directorate of Operations and Intelligence at a single point: the Counterterrorist Center.<sup>85</sup> The CIA's Counterterrorist Center, later renamed the Counterterrorism Center, would become the control room for the Obama administration's drone strikes.

### **SIGNATURE STRIKES, 2008-**

The CIA's Counterterrorism Center is the hub of all modern counterterror operations.<sup>86</sup> On September 11, 2001 the CIA's Counterterrorism Center (CTC) had 300 employees. A decade after the attack, the fusion center's employees swelled to 2000 accounting for roughly 10 percent of the Agency's workforce. The CTC occupies a sizable footprint at Langley that many employees have called the "new headquarters building." Within the CTC, there are separate floors for different departments. One floor is for the "PAD" Unit, or Pakistan-Afghanistan Department, where traditional regional analysts, targeting analysts, and operations officers coalesce to guide human intelligence operations and track a variety of terrorist and insurgent organizations. CTC also established new departments for Yemen and Somalia to replicate the impact of PAD. The CTC coordinates with elite military units for Special Forces raids, guides Afghan militia proxies that the CIA's paramilitary branch—the Special Activities Division—train, and most importantly for this thesis, is the logistical and operational arm for drone strikes.

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<sup>85</sup> Coll, *Ghost Wars*, 142.

<sup>86</sup> All information found in this paragraph was reported in the following article: Greg Miller and Julian Tate, "CIA shifts to killing targets," *Washington Post*, September 1, 2011, [http://www.washingtonpost.com/world/national-security/cia-shifts-focus-to-killing-targets/2011/08/30/gIQA7MZGvJ\\_print.html](http://www.washingtonpost.com/world/national-security/cia-shifts-focus-to-killing-targets/2011/08/30/gIQA7MZGvJ_print.html).

This section will proceed in two parts. First, it will apply the criteria used to assess historical precedence—target devolution and preemption—to signature strikes. By analyzing these criteria in signature strikes, this section will place the use of signature strikes on a wider historical continuum with the Phoenix Program and the Reagan administration’s preemptive policy. Second, because of the dearth of scholarship on signature strikes it will present some of the problems that accompany the signature strike policy, which will lay a foundation for the final chapter that will develop policy recommendations.

### ***Target Devolution and Preemption***

President Bush inaugurated the signature strike policy and began to authorize the use of drones to target unidentified enemy combatants in his final year in the Oval Office.<sup>87</sup> According to Brian Glyn Williams, a scholar who studies drone strikes, the signature strike policy originated as a military idea. The Pentagon wanted to see the CIA’s drone fleet play a “force protection” role by disrupting cross-border militant activities between Afghanistan and Pakistan.<sup>88</sup> The CIA was initially hesitant of the idea because it became more of a military force pursuing targets by “patterns-of-life.”<sup>89</sup> While President Bush inaugurated the policy, President Obama saw his first example of a signature strike in the first month after assuming the Oval Office. On January 23, 2009, President Obama had a tense debate on signature strike policy with then CIA Director Michael Hayden after a drone strike in South Waziristan killed seven civilians; it was President Obama’s inauguration into signature strikes.<sup>90</sup> Obama’s CIA was also hesitant to adopt the signature strike policy. General David Petraeus as Director of the CIA

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<sup>87</sup> Klaidman, *Kill or Capture*, 39-40.

<sup>88</sup> Williams, *Predators*, 68.

<sup>89</sup> Ibid.

<sup>90</sup> Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of Obama’s Presidency* (Boston, MA: Houghton Mifflin Harcourt, 2012), 39-40; “Drone Wars Pakistan,” New America Foundation, database, <http://natsec.newamerica.net/drones/pakistan/analysis>.

voiced “caution against strikes on large groups of fighters,” and initially top CIA officials were wary of spending resources on signature strikes, while the military advocated for it.<sup>91</sup>

During his final year in office, President Bush authorized 36 drone strikes in Pakistan, which was the most for any year of his presidency.<sup>92</sup> While President Bush initiated the signature strike policy, President Obama and his top national security advisers adopted it quickly and strengthened the by policy by adding new drone orbits in Pakistan. By 2010, the Obama administration expanded the CIA’s drone program to 14 new flight orbits—each orbit includes 3 drones and is a designated area where drones are allowed to fly—which is sufficient to provide constant surveillance over Pakistan’s tribal areas, where the vast majority of the drone strikes occur.<sup>93</sup> The approval of new drone orbits signifies that the UAV pilots are hovering above Pakistan’s tribal regions, looking for targets, as opposed to targeted killings where they have intelligence pinpointing a target and then the National Security Council authorizes the CIA or JSOC to pursue the combatant. In comparison to President Bush, during Obama’s first year in office he authorized 52 strikes in Pakistan, and after the expansion of the CIA’s flight orbits, the Obama administration authorized a record 122 strikes in 2010.<sup>94</sup>

The statistics on drone strikes under the Bush and Obama administrations reveal how target selection has devolved. Using the New America Foundation’s database for drone strikes in Pakistan—which is the most cited database—these figures aggregate the strikes against terrorist leaders from other targeted combatants in Pakistan from 2004-2014.<sup>95</sup> The following

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<sup>91</sup> Adam Entous, Siobhan Gorman, and Julian Barnes, “U.S. Tightens Drone Rules,” *Wall Street Journal*, November 4, 2011, <http://online.wsj.com/news/articles/SB10001424052970204621904577013982672973836>.

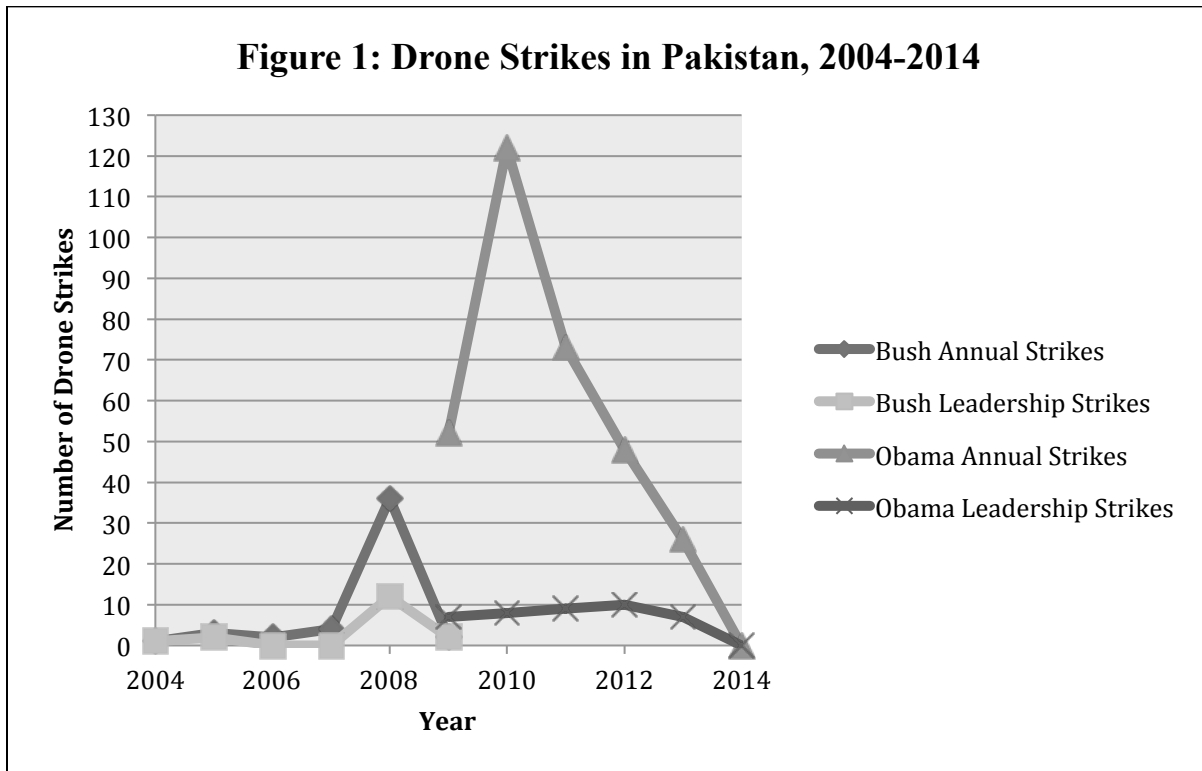
<sup>92</sup> “Drone Wars Pakistan,” New America Foundation, database.

<sup>93</sup> Entous, et. al, “U.S. Tightens Drone Rules.”

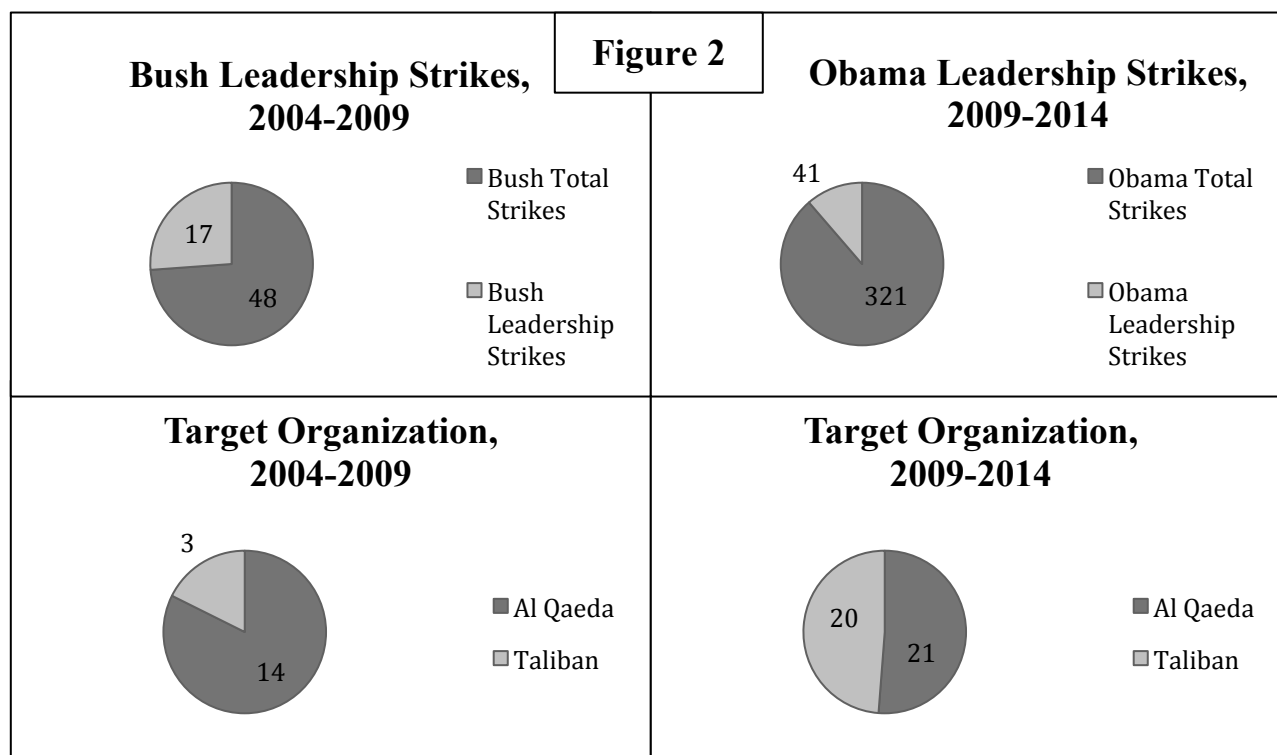
<sup>94</sup> “Drone Wars Pakistan,” New America Foundation, database.

<sup>95</sup> Three non-governmental organizations track drone strikes: the New America Foundation, the Long War Journal, and the London-based Bureau of Investigative of Journalism. While all have different methodologies, scholars and journalists deem the New America foundation the most accurate because how it measures civilian casualties. How each database measures civilian casualties often is a good indication of each organization’s political biases. The less

figures display how the Obama administration has used drones more, but targeted high-value targets less than the Bush administration. This illustrates the shift from high-value to low-level targets.



casualties the more the organization tends support them and vice versa for high casualty estimates. The Long War Journal database on average has the least amount of civilian casualties. In contrast, the Bureau of Investigative Journalism has the most. The New America Foundation lies in between both of the other NGOs and is the most cited by scholars and journalists. Therefore, this chapter relies on the New America Foundation’s data for analysis.



**Figure 1** and **Figure 2** are statistical portraits of the shift from high-value to low-level targets in the CIA drone program in Pakistan. The New America Foundation employs Taliban and al Qaeda experts to label which strikes are against leaders, but fails to give a precise methodology in defining what makes a leader; however, most appear to be “number 2 or number 3” organizational leaders or high-level commanders. In 2008, for example, the Bush administration authorized a targeted killing on Abu Laith al-Libi, a Libyan militant who the intelligence community believed to be al Qaeda’s “number three” and “director of operations.”<sup>96</sup> The Obama administration, in 2012, authorized a strike that killed a similar target—al Qaeda’s then deputy in Pakistan, Abu Yahya al-Libi.<sup>97</sup> While the methodology and labeling may not be ideal given that the drone program is classified and the fuzzy organizational structures of terrorist

<sup>96</sup> Jason Burke, “Demise of al Qaida’s ‘Number Three,’” *The Guardian*, January 31, 2008, <http://www.theguardian.com/world/2008/jan/31/alqaida.afghanistan>.

<sup>97</sup> Declan Walsh and Eric Schmitt, “Drone Strike killed No. 2 in Al Qaeda, Officials Say,” *The New York Times*, June 5, 2012, [http://www.nytimes.com/2012/06/06/world/asia/qaeda-deputy-killed-in-drone-strike-in-pakistan.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/06/06/world/asia/qaeda-deputy-killed-in-drone-strike-in-pakistan.html?pagewanted=all&_r=0).

and militant groups, the statistics paint a clear picture of what kind of targets both administrations killed. In five years of overseeing drone strikes in Pakistan, President Bush authorized 17 strikes against leaders out of 48 total strikes—a little more than every third strike under the Bush administration was against a leader. In addition, 82 percent of the Bush administration’s leadership targets were al Qaeda commanders operating in Pakistan. On the other hand, President Obama has authorized many more strikes against leaders—41 in five years—but a much smaller percentage of the total number of strikes in Pakistan are against high-value targets. Only 13 percent of President Obama’s drone strikes targeted enemy leaders. Moreover, President Obama pursued Taliban leaders more aggressively than his predecessor did. President Obama’s drone strikes targeted Taliban leaders, as opposed to al Qaeda commanders, 48 percent of the time. In addition, President Obama has targeted more strikes against the Haqqani Network—an experienced insurgent organization that attacks NATO troops in Afghanistan and is a subset of the Taliban umbrella organization—in Pakistan’s tribal region. Given this data, it is apparent that President Obama uses drones in Pakistan as a fighting tool of war for combatting the low-level al Qaeda and Taliban militants in Pakistan, as opposed to targeting high-value leaders.

While the data from New America Foundation suggests a shift within the Obama administration towards signature strikes, media reports affirm the tactical shift. In the beginning of the Obama administration, the CIA was more cautious about conducting signature strikes because Agency officials were unsure about the value of expending resources on lower-level combatants, while the military was in favor.<sup>98</sup> Then, as the CIA received more funding and expanded its jurisdiction in Pakistan, the military reversed their positions and opposed signature

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<sup>98</sup> Entous et. al., “U.S. Tightens Drone Rules.”

strikes.<sup>99</sup> Once the program picked up speed, CIA officials reported that the signature strikes netted more terrorists than targeted killings; although, CIA Director David Petraeus still voiced preference for smaller strikes against high value targets as opposed to foot soldiers. Despite the CIA initial reservations, the *Washington Post* and NBC News report that the surge in the drone campaign in 2010 was in large part due to signature strikes; one official reported they contributed about half of the strikes in Pakistan and another reported the “bulk” of CIA drone strikes are signature strikes.<sup>100</sup> Moreover, the scenarios that constitute a “signature” shows how the original purpose was for high-value targets and then devolved to low-level combatants. Scott Shane of the *New York Times* reported, that originally the term signature strike was meant to identify characteristics specific to known high level commanders.<sup>101</sup> One such characteristic, for example might be, the leader’s vehicles parked at a training camp, where the signature is the vehicle. While the CIA and Pentagon originally designed to target high-value signatures, the practice devolved to delineate the signature of militants in general.<sup>102</sup> Shane adds that the signature for general militants usually meant military age males participating in a wide range of nefarious activity such as meeting with known terrorists or operating in insurgent or terrorist controlled areas.<sup>103</sup>

The criteria used for signature strikes also highlights the preemptive nature of the operations. The signature strikes in Yemen and Somalia reflect this preemption. While the majority of the Obama administration’s drone strikes have occurred in Pakistan, the military and

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<sup>99</sup> Ibid.

<sup>100</sup> Richard Engel and Robert Windrem, “CIA didn’t always know who it was killing in drone strikes, classified documents show,” *nbcnews.com*, June 5, 2013, <http://investigations.nbcnews.com/news/2013/06/05/18781930-cia-didnt-always-know-who-it-was-killing-in-drone-strikes-classified-documents-show?lite>; Entous et al., “U.S. Tightens Drone Rules.”

<sup>101</sup> Scott Shane, “Election Spurred a Move to Codify U.S. Drone Policy,” *New York Times*, November 24, 2012, [http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all&_r=0).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

CIA also run drone programs in Yemen and Somalia. After an increased use of signature strikes in Pakistan, CIA officials lobbied to expand the authority to target unidentified combatants in Yemen as well, but President Obama did not grant similar authority.<sup>104</sup> After the 2011 Anwar al-Awlaki targeted killing and an increase of threats from al Qaeda in the Arabian Peninsula, President Obama allowed the CIA to use signature strikes in Yemen with tighter restrictions.<sup>105</sup> The approval for signature strikes in Yemen in 2012 led to a similar surge in total strikes, as seen in Pakistan in 2010. In 2011, there were six drone strikes in Yemen.<sup>106</sup> After President Obama granted the CIA signature strike authority in Yemen, there were 46 drone strikes in 2012.<sup>107</sup> During the surge of strikes in Yemen, the CIA and military pushed to rename signature strikes “terrorist-attack-disruption strikes” or TADS.<sup>108</sup> Terrorist-attack-disruption implies preemption. By disrupting a terrorist attack, it suggests that the United States government has the knowledge that the militants or individual will attack and the decision-makers will strike first to avoid to terrorist attack. Drone technology facilitates preempting or disrupting terrorist attacks easier. The ability to see militant’s activity—whether it be transporting weapons or handling explosives—allows the UAV operators and their commanders to assess the likeliness and imminence of an attack.

Thus, after an increased threat emanating from al Qaeda in the Arabian Peninsula, the Obama administration granted the CIA the ability to use preemptive signature strike or terrorist-attack-disruption to combat the rising threat. In addition, the scenarios provided by Kevin Heller

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<sup>104</sup> Greg Miler, Ellen Nakashima, and Karen DeYoung, “CIA drone strike will get pass in counterterrorism ‘playbook,’ officials say,” *Washington Post*, January 19, 2013, [http://www.washingtonpost.com/world/national-security/cia-drone-strikes-will-get-pass-in-counterterrorism-playbook-officials-say/2013/01/19/ca169a20-618d-11e2-9940-6fc488f3fecfd\\_story.html](http://www.washingtonpost.com/world/national-security/cia-drone-strikes-will-get-pass-in-counterterrorism-playbook-officials-say/2013/01/19/ca169a20-618d-11e2-9940-6fc488f3fecfd_story.html).

<sup>105</sup> Adam Entous, Siobhan Gorman, and Julian Barnes, “U.S. Relaxes Drone Rules,” *Wall Street Journal*, April 26, 2012, <http://online.wsj.com/news/articles/SB10001424052702304723304577366251852418174>.

<sup>106</sup> “Drone Wars Yemen,” New America Foundation, database, <http://natsec.newamerica.net/drones/yemen/analysis>.

<sup>107</sup> Ibid.

<sup>108</sup> Daniel Klaidman, “Drones: The Silent Killers,” *Newsweek*, May 28, 2012, <http://www.newsweek.com/drones-silent-killers-64909>.



all are preemptive. These scenarios, which can lead to a signature strikes, include UAV pilots seeing militants: planning attacks, transporting weapons, handling explosives at an al Qaeda compound or training camp, traveling in trucks towards a conflict, or working trainees camps in al Qaeda controlled areas.<sup>109</sup> All of these situations imply that the militants seen through the UAV are engaging in an activity that will result in an attack against the United States; and therefore, American decision-makers can combat these threats by preemptively eliminating them.

The statistics on drone strikes by the Bush and Obama administrations and the shift in requisite scenarios for signature strikes clearly highlight target devolution. In Pakistan, the Bush administration targeted a higher percentage of high-value targets, while the Obama administration authorized more strikes, against low-level combatants. The term “signature” originally implied the patterns of behavior of a high-value individual such as the case of Mir Ahmad appearing to be Osama bin Laden in 2002. Then, the term signature evolved to mean actions by low-level fighters that permit lethal force. In addition, Obama’s approval to use signature strikes in Yemen shows how the administration was aiming to preempt the growing threat of al Qaeda in the Arabian Peninsula. The proposed name “terrorist-attack-disruption strikes” and the scenarios associated with signature strikes are preemptive in nature. Therefore, by using the two criteria outlined in this chapter—target devolution and preemption—signature strikes share direct commonalities with the Phoenix Program and NSDD 138 precedents.

### *Vexing Problems with Signature Strikes*

While not directly tied to the study of historical precedents, scholarship rarely discusses several important issues with signature strikes policy. By briefly examining these issues, this

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<sup>109</sup> Kevin Jon Heller, “‘One Hell of a Killing Machine:’ Signature Strikes and International Law,” *Journal of International Criminal Justice* 11, (2013): 94-103.

section will lay a foundation, which this thesis's policy recommendations can utilize. There has been significant tension within the White House regarding signature strikes. In addition, Congressional leaders have taken a particular aggressive offensive against signature strikes. The Obama administration has been especially quiet regarding signature strikes, but this section will uncover the near non-existent information that the White House has provided. Lastly, this section will show signature strikes have become a policy for diplomatic relations and negotiations.

Implementing the signature strike policy was not a smooth process and there were tense debates within the White House. In 2009, when the policy was still in its infancy, the military proposed a signature strike against al-Shabab—a Somali terrorist organization with ties to al Qaeda. The top military officials were making their case to President Obama for the strike. Obama asked his advisers' opinions, James Cartwright, a four star Marine General, argued strongly against the strike. Cartwright reportedly said, "In these places where they have not attacked us, we are looking for a person, not a country. If there is a person in the camp who is a clear threat to the United States we should go after him. But carpet bombing a country is a really bad precedent."<sup>110</sup> Top national security lawyers also debated the signature strike policy. The State Department's legal adviser on counterterrorism, Harold Koh, agreed on the legality of targeting senior al Qaeda members, but disagreed with his counterpart in the Pentagon, Jeh Johnson, who advocated for pursuing lower ranking militants and co-belligerents.<sup>111</sup>

Tensions within the Obama administration also were high after a signature strike on March 17, 2011, when Pakistani officials infuriatingly reported that the strike killed over 40 people, many of them innocents.<sup>112</sup> The CIA disputed the Pakistani claim, but the New American Foundation, who synthesizes a variety of news reports, found that the strike killed

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<sup>110</sup> Daniel Klaidman, "Drones: The Silent Killers."

<sup>111</sup> Ibid.

<sup>112</sup> Entous, "U.S. Tightens Drone Rules," *Wall Street Journal*.

between 40 and 45 including 38 civilians and no reported militants killed.<sup>113</sup> The strike severely strained U.S.-Pakistani relations and National Security Adviser Tom Donilon reportedly grilled CIA and military participants saying, “O.K. I got it; it’s war and it’s confusing. Are we doing everything we can to make sure we are focused on the target sets we want? You can kill these foot soldiers all day, every day and you wouldn’t change the course of the war.”<sup>114</sup> The tension over signature strikes, however, is not limited to the annals of the White House.

The debate over signature strikes has expanded to punditry, Congress, and diplomatic negotiation. Commentators such as Philip Mudd, a former CIA official and leader in the Counterterrorism Center, defended signature strikes. Mudd argues that targeting leadership alone only degrades a small percentage of diffuse terrorist groups and it depletes time and treasure to track the tactical intelligence necessary to find, fix, and finish elite commanders. Moreover, Mudd asserts that troops, not leaders, execute an organization’s vision to murder innocents, and signature strikes have destroyed the support structure and sub-tiers of terrorist groups.<sup>115</sup> Jennifer Daskai, a Georgetown Law professor and former attorney in the Obama administration, also supports signature strikes. Daskai rationalizes, “the idea of killing members of an enemy forces without knowing their identities isn’t itself controversial. In traditional conflict there is no requirement that you know every person’s identity before you strike, so long as there are reasonable grounds for deterring that the target is part of an enemy force.”<sup>116</sup> The issue presented by Daskai raises an important question about whether the drone program is comparable to traditional conflict. Although, American UAVs are currently targeting terrorists

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<sup>113</sup> “Drone Wars Pakistan,” New America Foundation, database.

<sup>114</sup> Entous, “U.S. Tightens Drone Rules,” *Wall Street Journal*.

<sup>115</sup> Philip Mudd, “Fear Factor: In defense of Obama’s deadly signature strikes,” *Foreign Policy*, May 24, 2013, [http://www.foreignpolicy.com/articles/2013/05/24/fear\\_factor\\_signature\\_strikes](http://www.foreignpolicy.com/articles/2013/05/24/fear_factor_signature_strikes).

<sup>116</sup> Cora Currier and Justin Elliot, “The Drone War Doctrine We Still Don’t Know About,” *realclearworld.com*, February 28, 2013, [http://www.realclearworld.com/articles/2013/02/28/the\\_drone\\_war\\_doctrine\\_we\\_still\\_dont\\_know\\_about\\_100585.html](http://www.realclearworld.com/articles/2013/02/28/the_drone_war_doctrine_we_still_dont_know_about_100585.html).

in three countries where there are no conventional ground forces mired in conflict and are ran by institutions—CIA and JSOC—who are operating under special covert authority.

Some Congressional leaders on Capitol Hill have voiced their opposition to signature strikes by attempting to ban them.<sup>117</sup> A minority of congressional representatives looked to provide a provision in the Intelligence Authorization Act for Fiscal Year 2014, which is a bill that provides the intelligence community with funds and resources, that would:

Ban so-called “signature strikes,” require an independent alternative analysis any time that U.S. Government is contemplating taking lethal action against a U.S. Person...[and] require an annual, unclassified report on the total number of combatants, noncombatant civilians and total number of individuals killed...by the use of targeted lethal force launched from unmanned aerial vehicles.<sup>118</sup>

Representative Jan Schakowsky (D-IL), an author of the intelligence reauthorization bill, views signature strikes as morally dubious and counterproductive.<sup>119</sup> Other Congressmen have submitted requests to Attorney General Eric Holder and Director of the Central Intelligence Agency John Brennan for more information on signature strikes.<sup>120</sup> Senator John McCain asked in a letter to Brennan, “How do ‘signature strikes’ square with your statement that targeted killing operations are only approved when a targeted individual poses a ‘significant threat to U.S. interests?’”<sup>121</sup>

Despite their attempts, Congressional leaders have received no answer to their questions. Unlike the policy on targeted killings, the Obama administration has made no public reference to

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<sup>117</sup> Josh Gehrstein, “Lawmakers sought ban on signature drone strikes,” *Politico*, December 2, 2013, <http://www.politico.com/blogs/under-the-radar/2013/12/lawmakers-sought-ban-on-signature-drone-strikes-178537.html>.

<sup>118</sup> United States House of Representatives, “Intelligence Authorization Act for Fiscal Year 2014,” 113<sup>th</sup> Congress 1<sup>st</sup> Session, Report 113-277 (November 25, 2013), 28.

<sup>119</sup> Gehrstein, “Lawmakers sought ban on signature drone strikes.”

<sup>120</sup> John Conyer, Jerrold Nadler, and Robert Scott, “Letter to Attorney General Eric Holder,” (letter, May 21, 2012), United States House of Representatives; John Conyer, Jerrold Nadler, Robert Scott, “Letter to Attorney General Eric Holder,” (letter, December 4, 2012), United States House of Representatives.

<sup>121</sup> John McCain, “Letter to John Brennan,” (letter, February 6, 2013), United States Senate, accessed via, <http://www.propublica.org/documents/item/605297-mccain-letter-to-brennan-2-6-13#document/p6>.

signature strikes. President Obama and multiple members of the administration, have given speeches on targeting identified individuals, however, there has been almost zero information released by the administration on signature strikes. The only reference found by the author of this thesis was an indirect statement buried in a footnote. The White House Press Secretary released a fact sheet on “U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,” in May 2013.<sup>122</sup> In the document the Obama administration outlines standards and criteria for the use of lethal force. The criteria included: “near certainty that the terrorist target is present, near certainty that noncombatants will not be injured or killed, an assessment that capture is not feasible at the time of the operation, an assessment that no other reasonable alternatives exist to effectively address the threat to U.S. persons.”<sup>123</sup> The document defines non-combatants in a footnote as “individuals who may not be made the object of attack under applicable international law.”<sup>124</sup> The footnote further explains that “males of military age may be non-combatants; it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants.”<sup>125</sup> While it is not a direct response, the fact that signature strikes are aimed at “military-age males” is often noted by reporters.<sup>126</sup>

Drone strikes have also become a major foreign policy obstacle and negotiation tool for American policymakers. The first drone strike in Pakistan conducted in 2004 required the explicit authorization of Pakistan’s President. Eventually, the authorization was relegated to the CIA’s control under the White House’s direction, without Pakistani supervision or approval, as

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<sup>122</sup> “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,” The White House, May 23, 2013.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Heller, “One Hell of a Killing Machine:” 94.

long as the strikes occurred in certain Pakistani pre-approved “kill boxes.”<sup>127</sup> The relations between the American and Pakistani leaders have become increasingly tense because Pakistanis overwhelmingly disapprove of drone strikes. A 2012 poll of Pakistanis found only 17 percent approve of the government’s cooperation with the United States on drone strikes.<sup>128</sup> In addition, former command of NATO forces in Afghanistan, Stanley McChrystal, stated drones in Pakistan are, “hated on a visceral level, even by people who have never seen one or seen the effects of one.”<sup>129</sup> In the beginning of 2014, American policymakers agreed to curb drone strikes in Pakistan, the first agreement of any kind between the two countries.<sup>130</sup> As Pakistan pursues negotiations with the Taliban to assist with America’s withdrawal from Afghanistan, Pakistani leaders wanted the United States to cease all drone strikes in Pakistan, but the Obama administration agreed to target only a short-list of high-value terrorists.<sup>131</sup> While the *Wall Street Journal* speculates this agreement could lead to an eventual downsizing of the CIA’s drone program in Pakistan, it does signify that the Obama administration is eliminating the use of signature strikes in the interim.

## **CONCLUSION**

Signature strikes are less studied than targeted killings. Nevertheless, signature strikes—like targeted killings—have historical precedents in warfare that predate the use of armed drones.

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<sup>127</sup> Daniel Markey, “A New Drone Deal for Pakistan,” *Foreign Affairs*, August 8, 2013, <http://www.foreignaffairs.com/articles/139584/daniel-markey/a-new-drone-deal-for-pakistan>; Mark Mazzetti, interview with author (Washington D.C., August 2013).

<sup>128</sup> Markey, “A New Drone Deal for Pakistan.”

<sup>129</sup> James Traub, “The Indispensable Nation’s Indispensable Weapon,” *Foreign Policy*, May 24, 2013, [http://www.foreignpolicy.com/articles/2013/05/24/indispensable\\_weapon\\_drones\\_obama](http://www.foreignpolicy.com/articles/2013/05/24/indispensable_weapon_drones_obama).

<sup>130</sup> Karen DeYoung and Greg Miller, “U.S. said to curtail drone strikes in Pakistan as officials there seek peace with Taliban,” *Washington Post*, February 4, 2013, [http://www.washingtonpost.com/world/national-security/us-curtails-drone-strikes-in-pakistan-as-officials-there-seek-peace-talks-with-taliban/2014/02/04/1d63f52a-8dd8-11e3-833c-33098f9e5267\\_story.html](http://www.washingtonpost.com/world/national-security/us-curtails-drone-strikes-in-pakistan-as-officials-there-seek-peace-talks-with-taliban/2014/02/04/1d63f52a-8dd8-11e3-833c-33098f9e5267_story.html)

<sup>131</sup> Adam Entous and Siobhan Gorman, “U.S. to Curb Pakistan Drone Program,” *Wall Street Journal*, February 5, 2014, <http://online.wsj.com/news/articles/SB10001424052702304450904579365112070806176>.

This chapter has presented cases, each of which possesses one of the two criteria of signature strikes—target devolution and preemption. Target devolution occurs when states begin targeting high-value leaders and then eventually devolve to killing low-value combatants. The shift from targeting high-value leaders to low-value soldiers is most likely due to a lack of pertinent intelligence on commanders. As seen through the consecutive strikes on al Qaeda’s top commanders by the Bush and Obama administration, there are only so many high-value targets that the intelligence community has identified. By persistently eliminating top leaders it becomes more difficult for the intelligence community to assess the organizational structure and operational command of a terrorist organization because militant groups often promote from within their own ranks to preserve operational security. Therefore, target devolution most likely occurs because strikes outstrip intelligence. As targeted campaigns age, the military and intelligence communities are more likely to root out notorious leaders, who are then replaced by lesser-known mid-level or low-level soldiers. These internal organizational changes explain why over time in both the Phoenix Program and the modern drone campaign the targets shifted from high-value targets to low-level commanders.

Preemptive strikes are rooted in the expectation that an adversary will attack and that striking first is better than suffering an attack. Signature strikes are preemptive in nature, they began as a lethal measure to attack high-value targets, and devolved into eliminating low-level fighters based on a variety of signature scenarios. The second precedent analyzed in this chapter showed how the Reagan administration’s NSDD 138 policy was also preemptive. Secretary of State George Schultz’s speech reaffirmed one faction in the administration’s support for preemptive retaliatory strikes. Preemption is based on imminence. Over time, the window of imminence has shrunk. New drone technology has allowed American operators and

policymakers to peek into militant activity long before an attack is possible. When the Reagan administration advocated for a preemptive counterterrorism policy they expected Hezbollah to continue to attack American interests because of its past actions. Now, through signature strikes, the Obama administration is able to rationalize preemption because they have visual confirmation of militants performing specific nefarious activities.

By analyzing the Phoenix Program and the Reagan administration's counterterrorism policy with signature strikes specific criteria—target devolution and preemption—this chapter has established both as historical precedents for signature strikes. Through these cases, I have identified **three** trends, which I will form the basis for the final chapter's policy recommendations.

1. Signature strikes and similar historical precedents use the concept of **preemption** as a justification for lethal action. Imminent conditions underpin this justification for preemption.
2. Within the Reagan and Obama administrations, bureaucratic **factions** formed within the national security bureaucracy over the question of whether to use preemptive lethal force and signature strikes.
3. The Phoenix Program led to a virulent **public reaction**. In addition, there seems to be more pushback by pundits and Congress about signature strike policy than targeted killings policy.



# CHAPTER FOUR

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## FINDINGS

Hank Crumpton was one of the few American operators who rode in on horseback with local Afghan allies during the invasion of Afghanistan after September 11. Crumpton spent his career as a CIA officer and was a driving force behind the America's counterterrorism strategy in the twenty-first century. He served in the CIA's Counterterrorism Center before September 11 and then served as Secretary of State Condoleezza Rice's coordinator for Counterterrorism earning the rank of Ambassador. Crumpton, in his memoir *The Art of Intelligence*, identifies three strategic objectives for counterterrorism: nullify enemy leadership, deny safe haven, and ameliorate the local conditions that the enemy exploits.<sup>1</sup> In an author interview, Crumpton stated, "Drone strikes only complete one of the three strategic objectives."<sup>2</sup> Crumpton explained with a pointed Southern drawl:

Drone strikes do not deny safe havens. They can achieve the first objective to nullify enemy leadership, but do not meet the second. They can strengthen enemy safe havens. If the execution of these operations [drone strikes] are such that local inhabitants rally to the side of the enemy and reinforce the safe havens, than the drone impacts at the strategic level are counterproductive even if they are killing enemy leadership. That's the challenge of meeting all three objectives. You have to weave all the instruments of statecraft together to have the right outcomes.<sup>3</sup>

No strategy is a silver bullet. While Crumpton's objectives for counterterrorism are clear and concise, they lack nuance. Geographic dispersion is a trait of terrorist groups and al Qaeda in particular. Al Qaeda's diffusion and factionalization means that there are different local

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<sup>1</sup> Crumpton, *Art of Intelligence*, 274.

<sup>2</sup> Hank Crumpton, interview with author (Washington D.C.: August 2013).

<sup>3</sup> Ibid.

conditions, ideologies, and reliance on safe havens that differ for each affiliate.<sup>4</sup> Nevertheless, al Qaeda and its affiliates do have enemy leaders and as Crumpton stated, drones strikes do succeed in nullifying enemy leadership.

Thus far, this thesis has established historical precedents for targeted killings and signature strikes and extracted trends from the history that can inform policy. This chapter will analyze those lessons comprehensively and will use them to provide policy recommendations for lethal drone policy. Therefore, fulfilling this thesis's argument that historical precedents for targeted killings and signature strikes can inform modern policy.

It is important to distinguish that lethal drone policy is only one of three strategic objectives in counterterrorism, and the other two objectives are much more nuanced and complicated than killing terrorists. In addition, nullifying enemy leadership is more complex than simply killing every commander who is a "number 2" or "number 3." Terrorist organizations have different purposes for their leaders. Some are operational leaders, while others are ideological leaders. Targeting each type of leader can lead to different consequences for the organization. Eliminating an ideologue might cripple the group's momentum, but it also might make the leader a martyr and rally more local support. Similarly, killing an effective operational leader might lead to him being replaced by a more bloodthirsty mid-level commander who is trying to make a name for themselves. These nuances vary by organization and make it difficult to argue for blanket strategic policy recommendations. Thus, the recommendations provided in this chapter are not a silver bullet strategy for counterterrorism, leadership decapitation, or even lethal drone policy as a whole. The recommendations are solely developed from the historical

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<sup>4</sup> Seth Jones, interview with author (Washington D.C: August 2013); Juan Zarate, interview with author (Cambridge, MA: March 2014).

precedents discussed in this thesis and therefore, only seek to answer select dilemmas regarding modern lethal strikes.

This chapter will have three sections. First, it will summarize the key findings from historical precedents for targeted killings and signature strikes that occurred prior to September 11, 2001. In the second section, this chapter will analyze and extrapolate on the historical trends identified in the final pages of each of the preceding chapters. Finally, this thesis will conclude by providing concrete policy recommendations.

### **SUMMARY OF HISTORICAL PRECEDENTS**

The Executive Branch, the CIA, and the military have a history of debating whether to kill individual enemies and have launched operations to do so. Targeted killings are legal operations by a state or its agents that intentionally and deliberately target individuals. Targeted killings are find-fix-finish operations. Governments target an individual, fix their locations, and kill them. The operation against Admiral Isoroku Yamamoto is a clear example of a targeted killing operation that American policymakers consistently cite to justify modern operations.<sup>5</sup> American aviators gunned down Yamamoto, the architect of Pearl Harbor and Admiral of the Japanese Fleet, on April 18, 1943. American intelligence cryptologists deciphered a Japanese message identifying the flight itinerary of Yamamoto. American Admiral Chester Nimitz authorized special joint Army-Navy aviators to gun down Yamamoto's plane en route. In the first decades of the Cold War, the CIA plotted to assassinate various foreign leaders.

Assassinations are different from targeted killings and are illegal operations to kill individuals.

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<sup>5</sup> Eric Holder, "Attorney General Eric Holder Speaks at Northwestern University School of Law," (speech, Chicago, IL March 5, 2012), Department of Justice; Harold Koh, "The Obama Administration and International Law," (Speech, Washington, D.C., March 25, 2010,) The State Department; Jeh Johnson, "National Security Law, Lawyers and Lawyering in the Obama Administration," (Speech, New Haven, CT, February 22, 2012), Department of Defense.

The Church Committee, a Senate Select Committee convened to study government intelligence operations chaired by Senator Frank Church, revealed these plots publicly in 1975. The public reaction was overwhelmingly negative. While the CIA never succeeded in assassinating enemy leaders, the Church Committee and the negative reaction left a significant scar on the CIA and its officers. Moreover, the Church Committee led to three consecutive Executive Orders by presidents banning assassination as a foreign policy tool.

Subsequent administrations were reluctant to engage in targeted killing operations after the Church Committee out of a fear the public would misconstrue them as assassinations. In 1986, the Reagan administration authorized an airstrike against terrorist facilities in Libya. One of the facilities was the command-and-control center and home of Libyan leader Muammar Qaddafi. Although targeted killings literature cites the air strike against Libya as a case, it is not an operational precedent for targeted killing.<sup>6</sup> The United States intelligence community knew that Qaddafi moved locations multiple times each night to avoid internal coup attempts; therefore, the U.S. military did not equip the aircraft with ordnance powerful enough to destroy the bunker at Qaddafi's command center.<sup>7</sup> While the Libyan strikes were not an operational precedent for targeted killings, President Reagan invoked a legal justification that the Obama administration uses to justify its drone strikes—the right to self-defense as stipulated by the United Nations Charter Article 51. While the executive branch was more reluctant to authorize lethal operations in the 1980s and 1990s, the Clinton administration authorized a tomahawk missile salvo on a compound where Osama bin Laden was supposed to be located in August 1998. The operation against Bin Laden was unsuccessful, yet is a precedent for targeted killings

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<sup>6</sup> For mentions of the 1986 airstrike in targeted killings literature see: Richelson, "When Kindness Fails: Assassination as a National Security Option;" Rachtel, "Targeting Osama Bin Laden: Examining the Legality of Assassination as a Tool of U.S. Foreign Policy;" Anderson, "Targeted Killing in U.S. Counterterrorism Strategy and Law," Working Paper between the Brookings Institution, Georgetown University Law Center, and Hoover Institution (2009).

<sup>7</sup> Hosmer, *Operations Against Enemy Leaders*, 27; Bruce St. John, *Libya and the United States*, 122. .

because the CIA actively hunted Bin Laden and fixed his location. The failure to kill Bin Laden in 1998 and 1999 also led to the development of the armed Predator drone, which became the weapon of choice for the Bush and Obama administrations' targeted killing operations.

Signature strikes are preemptive operations aimed at unidentified individuals in which the operators target the individuals based on certain characteristics associated with enemy leaders or militant organizations. For example, characteristics associated with militants' movements are when militants are handling explosives, traveling in trucks toward armed conflict, and training in al Qaeda compounds. Signature strikes do not target high-value commanders with known identities, but rather the strikes target lower-level fighters. The Phoenix Program in the Vietnam War was an intelligence exploitation program aimed at dismantling Viet Cong Infrastructure (VCI). The Phoenix Program relied on Provincial Reconnaissance Units (PRUs) to neutralize Viet Cong soldiers and facilitators. The PRUs had three methods of neutralization: capturing, inducing desertion, and killing. The PRUs and the Phoenix Program neutralized tens of thousands of Viet Cong and the PRUs killed a portion of them. The PRUs used certain criteria to target VCI such as evidence of their activities and positions within the VCI organizational structure.<sup>8</sup> These criteria are similar to how signature strike operators evaluate prospective targets. As the Phoenix Program aged, the PRUs targeted less high-value commanders and more low-level combatants.<sup>9</sup>

In 1984, the Reagan administration authorized a new counterterrorism policy, National Security Decision Directive 138. NSDD 138 called for the CIA and military to develop legal capabilities to preemptively neutralize anti-American terrorist groups.<sup>10</sup> The Reagan

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<sup>8</sup> United States Military Assistance Command, Vietnam, *Phung Hoang Adviser Handbook*, (Saigon: U.S. Military Assistance Command, Vietnam, November 20, 1970): 9.

<sup>9</sup> Rosenau and Long, "The Phoenix Program and Contemporary Counterinsurgency," 14.

<sup>10</sup> National Security Decision Directive 138, "Combatting Terrorism," The White House (April 3, 1984), 4.

administration never implemented NSDD 138 and the CIA, military or America's allies, did not conduct operations to neutralize foreign terrorists; however, the policy explicitly articulates preemptive offensive counterterrorism measures. The Reagan administration's Secretary of State George Schultz also publicly called for the United States to use preemptive force to check international terrorist organizations.<sup>11</sup> The operational precedent of the Phoenix Program shows by their activities how the PRUs chose their VCI targets and how target selection devolved from high-value targets to low-level fighters and facilitators. NSDD 138, while never implemented, demonstrates how the Reagan administration authorized the CIA and military to use preemptive measures to counter terrorism. Preemption and target selection are hallmarks of signature strikes.

There is intense public and scholarly interest in drone strikes. Many evaluate or opine on targeted killings and signature strikes' morality, legality, and effectiveness. Few commentators, however, have sought to expand the spectrum of study before September 11. Targeted killings, signature strikes, and armed drones are not interdependent. Armed drones can carry out operations that are not targeted killings or signature strikes, and likewise Special Forces teams can carry out the same operations. The tools are less important than the nature of the operations. Historically, the White House has authorized operations to kill its enemies and will undoubtedly continue to do so. These past operations and precedents inevitably raise the question: what can targeted killing and signature strikes policy learn from history?

### **HISTORICAL TRENDS**

This section serves as a bridge between history and policy. By examining the historical precedents for targeted killings and signature strikes, this thesis has identified six trends. This

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<sup>11</sup> George Schultz, "Terrorism and the Modern World," *Terrorism* 7, no. 4 (1985), 431-447.

section will analyze each historical trend in turn and then deduce a model for targeted killings and signature strikes policy based on the identified patterns. The trends and concluding policy model will form the basis for the policy recommendations in the final section of this chapter.

1. In the course of American targeted killings, there has been an increasing **fusion** between the traditional roles of military and intelligence. The military has become more involved in intelligence and collection, and the intelligence community has become increasingly invested in war fighting abilities.
2. There have been more transparent executive **command** mechanisms during targeted killing operations. The era of “plausible deniability” and hiding operations from the public has become increasingly obsolete, as the president has taken a more identifiable role in authorizing strikes and informing the public of targeted killing operations.
3. Targeted killing operations often take place under the highest levels of authority, and as such, frequently look to employ new **technology**. The public and media closely examine the use of technology in targeted killing operations today because the operations employ UAVs. By examining the history of targeted killings, however, it is clear that this attribute is not limited to the twenty-first century and in fact, is an identifiable trend.
4. Signature strikes and similar historical precedents use the concept of **preemption** as a justification for lethal action. Imminent conditions underpin this justification for preemption.
5. Within the Reagan and Obama administrations, bureaucratic **factions** formed within the national security bureaucracy over the question of whether to use targeted lethal force and signature strikes.
6. The Phoenix Program led to a virulent **public reaction**. In addition, there seems to be more pushback by pundits and Congress about signature strike policy than targeted killings policy.

### ***Fusion between Military and Intelligence***

Throughout the historical precedents for targeted killings and signature strikes, it is clear that there has been an increasing convergence between the military and intelligence community.<sup>12</sup> The military has taken on more responsibilities traditionally assigned to the

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<sup>12</sup> Mark Mazzetti and Robert Chesney both argue this convergence between military and intelligence as well. For more see: Mark Mazzetti, *The Way of the Knife: The CIA, A Secret Army, and a War at the Ends of the Earth* (New York: Penguin Press, 2013); Robert Chesney, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” *Journal of National Security Law and Policy* 5, (2012): 539-629.

intelligence community and the CIA has amassed more war fighting capabilities. The air raid on Yamamoto is a clear example of traditional military and intelligence roles. Intelligence cryptologists decrypted a Japanese cable and provided actionable intelligence to the military, who then carried out the lethal operation. The Phoenix Program and the use of Provincial Reconnaissance Units, on the other hand, was a convoluted convergence of military and CIA responsibility. The American Advisers on PRUs were either military or intelligence officials and the responsibilities for each team included: intelligence collection and analysis and enemy neutralization—through capture, desertion, or elimination. Intelligence collection and analysis is a traditional role of intelligence officers, and enemy neutralization is usually the responsibility of a soldier. The targeted killing on Anwar al-Awlaki is an example of a nearly seamlessly fused operation. The CIA and JSOC both had intelligence collection capabilities and armed drones programs in Yemen. Moreover, originally the National Security Council assigned the task to fix and finish Awlaki to JSOC, but then switched the mission jurisdiction to the CIA in the final months of the hunt.<sup>13</sup>

The fusion of operational jurisdiction is a by-product of the threat and technology. Terrorist organizations and insurgent movements are asymmetric threats, which usually demand asymmetric responses.<sup>14</sup> Thus, it is unsurprising that the military and intelligence community look to improve their own capabilities to counter terrorism by expanding their traditional roles of war fighting and intelligence collection and analysis. Moreover, armed unmanned systems are the perfect technological platform for these fused operations. Remotely piloted vehicles by

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<sup>13</sup> Hakim Almasmari, Margaret Coker, and Siobhan Gorman, “Drone Kills Top Al Qaeda Figure,” *The Wall Street Journal*, October 1, 2011, <http://online.wsj.com/news/articles/SB10001424052970204138204576602301252340820>; Mazzetti, *The Way of the Knife*, 308.

<sup>14</sup> General Carter Ham, former AFRICOM Commander said in this a lecture. Carter Ham, Graeme Lamb, Marin Leed, “Fit for the Future: Cross-Atlantic Perspectives on Ground Forces,” (Lecture: Center for Strategic and International Studies, Washington D.C.), June 20, 2013.



design are Intelligence Surveillance Reconnaissance systems, meaning the military specifically designed them to conduct intelligence collection operations.<sup>15</sup> When the CIA and DOD decided to equip the MQ-1 Predator drone with a Hellfire II missile in 2000; however, they added a war fighting function. Therefore, there are two layers of fusion. The first is jurisdictional fusion between the CIA and the military, where the military now has greater intelligence capabilities and the CIA has more war fighting responsibilities. The second, more tactical, layer of fusion is the technological platform. Both entities—the intelligence community and Department of Defense—are employing armed unmanned systems, which have the capabilities to collect intelligence and kill enemy combatants.

Another dilemma between the increased fusion of the military and intelligence communities is the legal issue of covert authority. The National Security Act of 1947 reorganized the defense and intelligence communities. The National Security Act of 1947 also added provisions to the U.S. Code. Specifically, it clarified the roles of the intelligence and defense communities in Title 10 and Title 50 in the U.S. Code. There is no strict interpretation of Title 10 and Title 50.<sup>16</sup> The accepted colloquial explanation is: Title 10 refers to the Department of Defense and military operations while Title 50 governs the intelligence agencies, activities, and covert action.<sup>17</sup> The debate over Title 10 and Title 50 burgeoned after the Special Forces raid that killed Osama bin Laden in 2011. The CIA temporarily contracted U.S. Navy Seals under Title 50 authority to conduct a covert action mission because the United States

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<sup>15</sup> J.R. Reid, interview with author (Washington D.C., August 2013). J.R. Reid is a former Air Force Lieutenant and currently an engineer with General Atomics, which is the manufacturer of the MQ-1 and MQ-9 remotely piloted vehicles. The MQ-1 and MQ-9 are the primary aircraft used by the military, the CIA, and JSOC to conduct targeted killings and signature strikes and are better known for their product names “Predator” and “Reaper.”

<sup>16</sup> Andru Wall, “Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action,” *Harvard Law School National Security Journal* 3, (2011): 100.

<sup>17</sup> *Ibid.*, 87.

military did not have authorization to conduct military missions in Pakistan.<sup>18</sup> Mark Mazzetti, a national security reporter for the *New York Times*, notes the national security community's slang term for this phenomenon of temporarily contracting military personnel—notably Special Forces operators—to intelligence agencies is “sheep dipping.”<sup>19</sup> Title 10 and Title 50 authority further explains that the CIA originally secured the contract to use armed drones in Pakistan because the Agency needed to conduct strikes under covert authority.

The increased fusion between the military and intelligence communities highlights important considerations for policy recommendations. This trend has a history that dates back to the Phoenix Program. In addition, the intelligence community and Pentagon catalyzed this convergence when faced with the asymmetric nature of the terrorist threat and the unique war fighting and intelligence capabilities of armed drones. Finally, the U.S. Code has a legal framework for aggregating military and covert action activities. The fusion between the military and intelligence communities, therefore, is not a negative development for U.S. National Security policy, but policymakers need to clarify this convergence, especially when targeting terrorists.

### ***Executive Command***

Throughout the history of targeted killings and signature strikes the executive branch has become increasingly more involved and open about its role in the use of lethal force. The Roosevelt administration did not admit that Admiral Yamamoto died in a plane crash until a month after the operation when Japanese radio stations eulogized the fallen commander. Even then, President Roosevelt simply responded with “Gosh!”<sup>20</sup> Later, the Truman administration

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<sup>18</sup> Chesney, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” 539.

<sup>19</sup> Mazzetti, *The Way of the Knife*, 133.

<sup>20</sup> ““Gosh!” Says Roosevelt On Death of Yamamoto,” *The New York Times*, May 21, 1943.

did not reveal that American aviators gunned down Yamamoto until after Japanese leaders surrendered. The White House stayed removed from any role in the targeted killing, mainly because they did not want to reveal that American intelligence officer cracked the Japanese Code.

Following the killing of Yamamoto, in the early years of the Cold War, the National Security Council authorized the CIA's assassination plots under the auspices of "plausible deniability." The White House intentionally installed mechanisms to distance itself from lethal action. The 1986 airstrike on Qaddafi was a departure from this norm because President Reagan addressed the nation announcing the raid on Libya's terrorist facilities. President Clinton followed Reagan's lead and announced the cruise missile strike on the al Qaeda compound near Khost in 1998.

President Obama has taken the most active role of any President to date in authorizing lethal force. The National Security Council curates the disposition matrix—the software that manages the location and priority of terrorist targets—and President Obama makes the final decisions.<sup>21</sup> In addition, President Obama and his top officials, for years, have taken to public forums to argue the administration's position and criteria on targeted strikes. The role of the executive branch in targeted lethal strikes is more visible today. This shift has been for the better.

If the White House is going to authorize lethal force, it is better to have the President intimately involved than cloaked in plausible deniability. While the Obama administration has undeniably taken on a more public role, there is still room for improvement and increased transparency. There are several possible explanations for why the Obama administration has

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<sup>21</sup> Greg Miller, "Plan for hunting terrorists signals U.S. intends to keep adding names to kill lists," *Washington Post*, October 12, 2012, [http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b\\_print.html](http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b_print.html).

taken such an authoritative role in authorizing and publicizing targeted strikes. The far-reaching effects from the nation's Cold War debate over assassinations are still present today because the administration actively dismisses accusations that targeted killings are assassinations. Jeh Johnson, the top attorney at the Pentagon and current Secretary of Homeland Security, argued in 2010:

On occasion, I read or hear a commentator loosely refer to lethal force against a valid military objective with the pejorative term "assassination." Like any American shaped by national events in 1963 and 1968, the term is to me one of the most repugnant in our vocabulary, and it should be rejected in this context. Under well-settled legal principles, lethal force against a valid *military* objective, in an armed conflict, is consistent with the law of war and does not, by definition, constitute an "assassination."<sup>22</sup>

It is also possible that presidential politics are the primary driver in the Obama administration's shift for greater control and transparency. In his most detailed speech on counterterrorism policy, President Obama stated that after September 11, "in some cases, I believe we compromised our basic values... So after I took office, we stepped up the war against al Qaeda but we also sought to change its course. We relentlessly targeted al Qaeda's leadership."<sup>23</sup> Presidential campaign platforms and promises, however, have mixed records. The most probable scenario that has led to the Obama administration's control over targeted strikes is the technology.

Remotely piloted aircraft have a clear chain of command. Presidents no longer have to wait for the dust to settle to hear the results of cumbersome covert proxy operations. Once the White House authorizes an operation, the results are quickly carried up the chain of command.

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<sup>22</sup> Jeh Johnson, "National Security Law, Lawyers and Lawyering in the Obama Administration," (Speech, New Haven, CT, February 22, 2012), Council on Foreign Relations, <http://www.cfr.org/defense-and-security/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>.

<sup>23</sup> Barack Obama, "Remarks by the President at the National Defense University," (Speech, Washington, D.C., May 23, 2013), The White House, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

Moreover, the public's conception that America is waging war by remote control undoubtedly pushes the authorizing administration to be more forthcoming about the technology and how the respective agency employs it. Therefore, while technology continues to progress it better to have future administrations advance the precedent of greater transparency and control.

### ***Technology***

The military and intelligence community have employed advanced technology throughout the history of targeted killings. In addition, the technology used to kill individuals placed a stronger emphasis on removing the human operator from the equation. From the inventions of the longbow to the airplane, distancing humans from conflict is a trend that has long existed in warfare. Remotely piloted vehicles take that trend to a new level. In the strike on Admiral Yamamoto the Army aviators used a plane with less than a year of combat deployment, the very maneuverable P-38 aircraft.<sup>24</sup> The debates within the Clinton administration over how to kill Osama bin Laden also reveal how the administration was fearful of putting U.S. personnel in danger. The administration used Tomahawk Cruise missiles, which removed its American operators from battle. The Tomahawk Cruise missiles, however, had long flight times necessitating knowledge that a specific target—in this case Bin Laden—would be in one location for an extended period of time. Military officials proposed using AC-130 gunships but were worried about its short flight time, the need for nearby landing zones, and the risk of losing American personnel in foreign territory.<sup>25</sup> These considerations resulted in arming the MQ-1 Predator drone, which has proved to be an effective tool for hunting terrorists.

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<sup>24</sup> "Lockheed P-38J-10-LO Lightning," Smithsonian National Air and Space Museum, [http://airandspace.si.edu/collections/artifact.cfm?object=nasm\\_A19600295000](http://airandspace.si.edu/collections/artifact.cfm?object=nasm_A19600295000).

<sup>25</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 135-136.

Remotely piloted vehicles—like the MQ-1 and the more advanced MQ-9—are ideal platforms for targeted killings and signature strikes. The MQ-9—which is called the Predator or Reaper depending on the agency or military division—can fly for twenty-seven hours at a maximum altitude of 50,000 feet, loiter for hours above a target, and can carry a laser-guided Hellfire II Missile, as well as more sophisticated and substantial bombs.<sup>26</sup> A human operator, often thousands of miles away, remotely pilots this aircraft. The precision munitions systems and the remotely-piloted nature of unmanned aerial vehicles are valuable benefits to counterterrorism operations, but those features are not what make them the ideal tool for lethal strikes. The reason remotely piloted vehicles—like the Predator and the Reaper—have become synonymous with counterterrorism in the Obama administration is because of their unique ability to loiter. The UAV's capacity to circle for hours at a time overhead make it the ideal tool for intelligence collection, target identification, and lethal strikes.

Many drone policy pundits focus on the advancements of UAV technology and what it means in terms of international proliferation and the creation of autonomous systems. While these are important debates, many of the arguments are for fear mongering purposes. The international proliferation of UAV technology does have important consequences if other nations begin to carry out lethal operations, especially outside of their borders; however, it is often overlooked that extraterritorial lethal operations can only be carried out with the host nation's consent. In the current theatres for targeted strikes—Pakistan, Yemen, and Somalia—the host states grant the military or CIA permission to fly in their airspace.<sup>27</sup> UAVs are slow, easy to spot on radar, and a country with reasonably adequate air defense systems can shoot them down. While the thought of Iran, China, or Russia hunting their enemies with UAVs is frightening, it is

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<sup>26</sup> “MQ-9 Reaper/Predator B,” General Atomics, (Product Information Card: Received at the AUVSI Unmanned Systems Conference, August 2013).

<sup>27</sup> Owen Cote, interview with author (March 2014).

important to recognize any operation would have to be carried out within their borders or with a different nation's explicit consent.

Many defense contractors are also building autonomous systems, which means there is no human operator. It is certainly frightening to picture a lethal operation conducted solely by robot, however, these speculations are also overblown. According to a retired naval aviator Jay Stout, who advises the Navy on training UAV pilots, the military will not use unmanned systems for "hunter-killer" missions because human operators will need to be held responsible for targeting mishaps.<sup>28</sup> Moreover, autonomous technology is still in its infancy and lacks critical technological skills such as the ability to sense and avoid other aircraft.

While these major technological advancements and the use of remotely piloted vehicles in lethal counterterrorism missions have raised profound ethical questions, drone technology is rapidly advancing and its use will undoubtedly continue in targeted strikes by the military and CIA. Using new technology has been a trend in targeted killings for decades and has been one of the most debated issues in modern targeted lethal policy. While technology is important to policy, the fears surrounding it are often overblown and it should be apparent that a state seeks use of technology with the greatest precision that protects its own soldiers.

### ***Preemption and Imminence***

Signature strikes and targeted killings are preemptive in nature. The White House authorizes the use of preemptive force under the expectation that an adversary will attack and that striking first is better.<sup>29</sup> A concept that goes hand-in-hand with preemption is determining whether an attack is imminent. John Yoo, an attorney in the Bush administration, wrote, "Imminence classically depends on timing. Only when an attack is soon to occur, and thus

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<sup>28</sup> Jay Stout, interview with author (Washington D.C., August 2013).

<sup>29</sup> Mueller et. al, *Striking First*, 6-8.

certain, can a nation use force in preemptive self-defense.”<sup>30</sup> The Obama administration explicitly outlines imminence as a criterion for a targeted killing. Eric Holder, the Attorney General, wrote in a leaked White Paper, “an informed, high-level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.”<sup>31</sup>

In the historical precedents for targeted killings and signature strikes, imminence and preemption were not always explicitly used as justification by the presiding administrations. It is possible, however, to infer preemption in many of the operations. NSDD 138 was the most explicit reference to using preemptive tactics to counter terrorism, although it is impossible to know whether those tactics would have been lethal because the Reagan administration never implemented the neutralization policy. The targeted killings on Yamamoto, Bin Laden, and Awlaki all highlight the possibilities of preemptive justification. Yamamoto was the architect of Pearl Harbor and the Commander during Midway, as such, military and national security advisors could reason that he would orchestrate a surprise attack on U.S. forces again; therefore, the Roosevelt administration could justify the air raid as preemptive. Bin Laden, by 1998, attacked several U.S. assets around the world and intelligence revealed he was planning to attack more targets, which he did in the *USS Cole* bombings and September 11. Anwar al-Alwaki was an ideologue turned operator who plotted several attacks against the United States and inspired many more, and therefore, there was a clear expectation he would continue to target Americans. Signature strikes are preemptive by design. They kill militants who American officials deem pose an imminent threat to the United States.

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<sup>30</sup> Yoo, “Assassinations of Targeted Killings after 9/11,” 73.

<sup>31</sup> “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qaeda or an Associated Force,” Department of Justice (White Paper: 2013).



The technology raises the issue of imminence—and by extension, preemption—which drives signature strikes. Using armed drones allows the pilot to see militants in the early stages of any imminent attack. For example, a militant might be handling explosives or training in an al Qaeda compound for an attack that could happen in a day, in a month, or in a year, which raises the question: How soon is imminent? Juan Zarate, the Deputy National Security Advisor for Counterterrorism in the Bush administration, stated in an interview that the Obama administration has greatly expanded the concept of imminence. Zarate stated:

The Obama administration widened the justification for imminence. It doesn't require any definition of imminent attack. The notion of preemption changed because it was no longer clear imminence, it morphed into a sort of persistent imminence. Eric Holder describes this in his speech and leaked White Paper as a "window of opportunity." And that window of opportunity has widened. For example the traditional examples of imminence are when tanks are ordered on the border, ships are headed towards the harbor, and aircraft are headed into sovereign airspace, *that* is imminence. Now, that concept has changed to they have tanks, ships, and airplanes.<sup>32</sup>

Preemption has always been implicitly involved in targeted strikes because policymakers are looking to eliminate an individual before that individual can attack the state. Yet even though preemption has been associated with targeted strikes, the shift in imminence is evident because of UAV technology. The ability to spy on militants who are performing nefarious actions, but may not be explicitly planning an attack on the United States, forms the basis of signature strike policy. This new definition of imminence, which has long been a studied in warfare, raises the moral question of when it is too soon to kill an enemy. While imminence is a linchpin justification for the use of preemptive lethal force, it would be prudent to reconsider narrowing the "window of opportunity."<sup>33</sup> If leaders continue to expand the concept of

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<sup>32</sup> Juan Zarate, interview with author (Cambridge, MA: March 2014).

<sup>33</sup> Ibid.

imminence they might begin to make war solely because another nation or actor has “tanks, ships, or airplanes.”

Expanding internationally recognized concepts such as imminence increases the risk of stretching legal authorities. If the future administrations justify signature strikes because of persistent imminence they have to expand legal authorities to match their new preemptive authorities. As noted in the first chapter of this thesis, administrations have a working platter of legal justifications to choose from and each administration uses different authorities. Presidents Reagan and Clinton used Article 51 of the United Nations Charter to justify their strikes. The Bush administration used Constitutional authority. Meanwhile, President Obama has embedded his administration’s legal authority in the 2001 Authorization for the Use of Military Force. Instead of authorizing strikes from presidential authority, the Obama administration grounded their justifications in the 2001 AUMF. Rewriting international and domestic law and internationally recognized concepts—such as imminence—sends a message to other nations that they too can alter accepted norms as they see fit.

### ***Bureaucratic Factions***

The debates within the National Security Council over NSDD 138, arming the MQ-1 Predator, and the use of signature strikes reveal that lethal action often forms strong bureaucratic factions within the White House. In 1984, Secretary of Defense Weinberger did not want to retaliate for Hezbollah’s attacks on American assets in Lebanon while Secretary of State Schultz did.<sup>34</sup> When the CIA and the DOD were testing the capability of arming a Predator drone, James Pavvitt—a senior officer in the CIA’s Directorate of Operations—vehemently opposed the CIA

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<sup>34</sup> Mattia Toaldo, “The Reagan Administration and the Origins of the War on Terror: Lebanon and Libya as Case Studies,” *New Middle Eastern Studies* 2, (2012): 3-4.

using an armed drone to kill terrorists because he believed it constituted assassination.<sup>35</sup> When the signature strike policy was in its infancy, factions within the CIA and DOD opposed the practice at different times.<sup>36</sup>

Factionalization is a hallmark of any bureaucracy and should occur because it encourages public debate. Unfortunately, administrations are not likely to publicize that there are clear factions within their administration surrounding a certain policy. Thus, it usually falls on journalists and reporters to expose those factions or to former officials exposing internal disputes in memoirs.<sup>37</sup> Therefore, while it is unlikely to assume an administration will expose its internal debates, it is reassuring to know that lethal policies are being debated inside the halls of the White House.

### ***Public Support***

This thesis did not explicitly measure the public support to every targeted killing. There are too many variables to calculate—international citizen reaction, international leader reaction, Congressional reaction, American public reaction, and historical revisionist reactions. There are generalizations, however, that this thesis will make. These generalizations are all relative to how Americans respond to targeted lethal force. As opposed to how foreign nations and their citizens respond, because the focus of this thesis is on American, not international, historical precedents.

Two factors theoretically lead to stronger American responses to the use of targeted lethal force. The first is the target's value. The public's support will be more positive if the threat is greater. Unquestionably, the two most well-received targeted killings in American history were

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<sup>35</sup> Steve Coll, *Ghost Wars*, 581.

<sup>36</sup> Entous, "U.S. Tightens Drone Rules," *Wall Street Journal*.

<sup>37</sup> Robert Gates, the former Secretary of Defense, highlights many factions within the Bush and Obama administrations over defense policy. His memoir, however, does not reveal any specific inter-administration arguments on targeted lethal strikes. Robert Gates, *Duty: Memoirs of a Secretary at War* (New York: Alfred Knopf, 2014).

the air raid on Admiral Yamamoto and the 2011 Special Forces raid on Osama bin Laden. Both of these operations were euphorically welcomed because each man had precipitated a devastating loss of life, creating a special hatred for them. The primary differentiating factor between both of these targeted killings, however, is the second factor—when the President announced the operation. In the case of Yamamoto, reporters did not announce Yamamoto’s death until a month after Japanese radio had mourned his death. Then, when asked, Roosevelt responded with “Gosh!”<sup>38</sup> When the White House did reveal that American aviators had killed Yamamoto, it coincided with the official Japanese surrender of World War II. Therefore, the euphoria for the operation overlapped with the America victory of World War II and it is difficult to bifurcate those public reactions. Nevertheless, the Yamamoto killing is an example of when the target value was high and executive transparency was low.

On the other hand, in the Bin Laden 2011 raid, both the target value and the executive transparency were high. Americans turned to their televisions and computers when news began to leak that a strike force had killed Osama bin Laden. Many Americans watched President Obama’s televised address when he announced the success of the mission. The Awlaki drone strike, on the other hand, is a mixed case. From an operational perspective, Awlaki’s target value was high, but the Yemeni cleric did not earn the same public hatred as Bin Laden or Yamamoto. Awlaki’s American citizenship complicated the public reaction. President Obama did announce Awlaki’s death the morning after it occurred, but the administration remained remarkably quiet once reporters discovered that an American drone accidentally killed Awlaki’s son two weeks later.<sup>39</sup>

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<sup>38</sup> ““Gosh!”” Says Roosevelt On Death of Yamamoto,” *The New York Times*, May 21, 2013.

<sup>39</sup> For President Obama’s speech regarding the Awlaki operation see: Barack Obama, “Remarks by the President at the ‘Change of Office’ Chairman of the Joint Chiefs of Staff Ceremony,” (speech, Fort Meyers, VA, September 30, 2011), The White House.

A final factor that affects American reaction is the domestic political landscape. The 2011 Bin Laden targeted killing resulted in Americans dancing in the streets, but when the Clinton administration had targeted Bin Laden in 1998, Americans were indifferent. The Clinton administration’s 1998 cruise missile strike against Bin Laden occurred before September 11, 2001, the notable event that unleashed America’s hatred for him. The ongoing Monica Lewinsky scandal caused a number of Americans to view the 1998 missile strike on Bin Laden with indifference and, in some cases, contempt. Rating the domestic political landscape is nearly impossible because the Executive Branch is unable to control the landscape. Therefore, two factors theoretically contribute to positive American reaction to targeted killings as seen in **Figure 3.**

**Figure 3: Hypothetical Public Support for Targeted Operations**

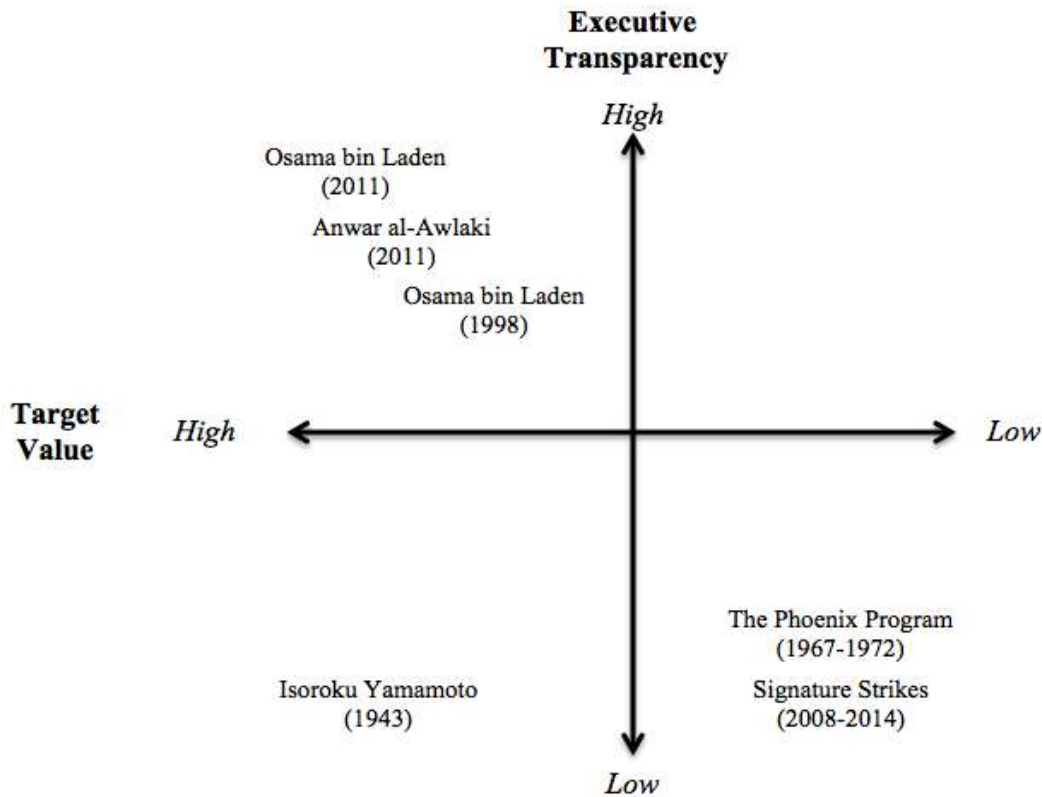
		Target Value	
		<i>High</i>	<i>Low</i>
Executive Transparency	<i>High</i>	POSITIVE	NEUTRAL TO NEGATIVE
	<i>Low</i>	NEUTRAL TO POSITIVE	NEGATIVE

The most positive public support to targeted strikes theoretically will occur when the target value is high and executive transparency is high. Using the same logic, the most negative reaction will occur when target value and executive transparency are low. The other example worth noting is the CIA's assassination attempts in the Cold War, which resulted in negative public reactions. Assassinations are different from targeted killings because the former are illegal. Nevertheless, the executive transparency was very low and the CIA plotted the operations in secrecy against a range of targets. The most notorious target of these proposed assassinations, however, was Fidel Castro. Public reaction where a low target value is coupled with high executive transparency, and high target value is coupled with low executive transparency are both noted as neutral; however the public will more likely respond better to the death of a high-value target (thus neutral to positive), as it did in the Yamamoto raid, even when transparency is low. There is also no real precedent for announcing low-value strikes with high executive transparency because there are not many scenarios where the public would be grateful that the president informed them the military targeted low-level militants. The only possible scenarios is if the president was clarifying an operational mistake, which certainly would not result in positive public support. At this point, subsequent administrations will certainly follow President Obama's lead and publicly announce the death of extremely high-value targets.

This thesis did not explicitly track American public reaction to targeted killings, but examining the history does allow for certain inferences. Therefore, to complement **Figure 3** and to use the historical precedents and cases (CIA Cold War assassinations) discussed in this thesis, **Figure 4** charts observed public reaction to lethal targeted strikes. As noted, it would be bizarre for an executive administration to have high transparency for a low-value target unless an egregious error occurred. Therefore, the quadrant for high transparency and low target value

highlights the rarity of such an event. The major implication of this argument is that high-value targets and executive transparency are the two most important factors in determining positive American reaction to the use of targeted lethal force.

**Figure 4: Observed Public Support for Select Targeted Operations 1943-2011**



***Policy Model***

Given these historical precedents and trends, what does an ideal theoretical policy look like for targeted lethal force? The best way to propose such a model is to create a mock example of an ideal targeted killing operation:

*The American intelligence community has compiled the movements and motivations of an individual who poses an imminent threat to the United States, which is based on a pattern of attempts or disrupted plots to attack the homeland or vital American interests around the globe. The President, after soliciting council from his administration through inter-administration debates, authorizes the intelligence community to mobilize its resources to find the target. The intelligence community then finds and fixes the target's location. After the intelligence community fixes its location, the President ultimately decides whether the operation is the best course of action and will adhere to the principles of distinction and proportionality. Then, the President authorizes the strike and the intelligence community supports the military by handing over all targeting data and reverse sheep-dips its targeting analysts to work for the military community for the operation. Then, military drones carry out the operation while the intelligence community's targeting analysts provide support. After the operation, the President addresses the nation because the individual was an extreme high-value target. If the target was a high-value target but not publicly known, the administration releases information on the individual's past operations and plots against the United States, explaining why the individual posed an imminent threat. In addition, all information that does not spoil future operations or intelligence sources is released to the public. Specifically, the information regarding where, when, and why the individual was targeted, the host government's consent, and any collateral damage reported in the operation is released publicly if such information does not compromise future operations or intelligence sources.*

This would be an ideal targeted killing operation. Unfortunately, however, many of these characteristics are not possible today. The most problematic issue is the role of the CIA and the military in conducting lethal operations. In addition, it may not be feasible for the executive



branch or participating agencies to release details of its agreements with host nations, as the agreements are mired in complexity and often the host nations wish to keep secret their role in allowing American drones in their airspace. Nevertheless, these trends and this theoretical model make it possible to propose three recommendations for America's lethal drone policy.

### **POLICY RECOMMENDATIONS**

There are many elements and questions relating to counterterrorism drone policy that this thesis cannot answer. History does not answer all of the questions; however, it can provide guidance to some. All of these policy recommendations rest on one overriding assumption: the executive branch will continue to authorize lethal counterterrorism strikes for years to come. There are three concrete policy recommendations that are rooted in historical precedents for targeted killings and signature strikes.

1. The Executive Branch should only authorize targeted killings and stop signature strikes.
2. The Central Intelligence Agency should be the sole organization in charge of conducting targeted killings.
3. The Executive Branch should announce the CIA's mandate to conduct targeted killings and release the targeting "playbook."

#### **1. The Executive Branch should only conduct targeted killings and stop signature strikes.**

The White House should eliminate the signature strikes policy. Targeting individuals by characteristics alone, under the justification of persistent imminence, expands the concept of imminence too far and is a dangerous precedent to set. Technological innovations and a public appetite for counterterrorism have expanded the concept of imminence too wide. It is easy to explain how a known individual poses an imminent threat to the United States by looking at that

individual's past actions. It is also possible to convey that individual's misdeeds to the public after the strike. It is impossible, however, to assess an individual's plots or operations when the state does not know the identity of the individual, which also eliminates the opportunity to announce the proposed beneficial ramifications of the strike to the public afterwards.

Signature strikes also set a dangerous precedent in the international arena. If other nations decide to conduct lethal operations to counter terrorism or other national security threats, the White House's targeted killings policy sets a better example than its signature strike policy. The White House is significantly more transparent when it targets individuals than when it targets militants based on their behavior. When a government specifically identifies the individual it is targeting, it also makes it possible for scholars, reporters, international institutions, and the public to assess whether that person poses an imminent threat and the merits of the government's justifications for the targeted killing. It is impossible to do the same for signature strikes. The executive branch, based on its past strikes, has a set of criteria for signature strikes such as: a militant is handling explosives, traveling in an armed convoy towards a conflict, or training in a known al Qaeda facility. The Bush or Obama administrations have never explicitly defined these scenarios; these criteria are only inferred through reports. Thus, another nation's signature strike policy is open to their own government's interpretation, which is especially disconcerting when considering some of the world's more repressive regimes.

Signature strikes may be effective at killing threats by chance, but the pros of signature strikes do not outweigh the cons. Signature strikes may be more effective in active duty war zones when there are troops on the ground and armed drones use the policy for force protection. Signature strikes in limited lethal counterterrorism operations, however, are out of place. The chances of a signature strike going awry and killing scores of civilians is much higher than a

targeted operation against a well-known individual because the scenarios for signature strikes are widely open to the pilot or targeting analyst's interpretation. In addition, if the Executive Branch decides it needs to continue to kill terrorists outside of active war zones in the future, signature strikes run the risk of severely damaging relations with host nations. Many locals where the CIA and military conduct lethal drone operations—most notably in Pakistan—severely oppose American counterterrorism policy.

If the CIA and military conduct too many unsuccessful or collateral damage-ridden signature strikes, as country, the perpetrating agency runs the risk of nullifying the host nation's agreement to allow American UAVs in their airspace. There has yet to be firm reports of leaders from Pakistan, Yemen, or Somalia threatening to ban American UAVs from their airspace. The recently reported negotiations between Pakistani leaders and American policymakers about curbing low-value strikes, however, signal that foreign nations will use their airspace as a diplomatic bargaining chip.<sup>40</sup> Nullifying the agreement would then eliminate any opportunity to target high-value individuals without the host country's specific consent. If the reports are true that the Obama administration agreed to scale back its strikes in Pakistan and only target high-value individuals—which operationally would eliminate all signature strikes—then American officials are already moving towards this recommendation.<sup>41</sup>

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<sup>40</sup> For reporting on this negotiation see: Adam Entous and Siobhan Gorman, "U.S. to Curb Pakistan Drone Program," *Wall Street Journal*, February 5, 2014, <http://online.wsj.com/news/articles/SB10001424052702304450904579365112070806176>.

<sup>41</sup> For reports of the shift in policy in Pakistan, see: Adam Entous and Siobhan Gorman, "U.S. to Curb Pakistan Drone Program," *Wall Street Journal*, February 5, 2014, <http://online.wsj.com/news/articles/SB10001424052702304450904579365112070806176>; Karen DeYoung and Greg Miller, "U.S. said to curtail drone strikes in Pakistan as officials there seek peace with Taliban," *Washington Post*, February 4, 2013, [http://www.washingtonpost.com/world/national-security/us-curtails-drone-strikes-in-pakistan-as-officials-there-seek-peace-talks-with-taliban/2014/02/04/1d63f52a-8dd8-11e3-833c-33098f9e5267\\_story.html](http://www.washingtonpost.com/world/national-security/us-curtails-drone-strikes-in-pakistan-as-officials-there-seek-peace-talks-with-taliban/2014/02/04/1d63f52a-8dd8-11e3-833c-33098f9e5267_story.html).

## 2. The Central Intelligence Agency should be the sole organization in charge of conducting targeted killings.

After President Obama's counterterrorism speech in May 2013, the media's consensus was that the Executive Branch would shift the control of armed drones from the CIA to the military.<sup>42</sup> The question of who should run America's armed drones to counter terrorism has been a question since "The Predator Initiative."<sup>43</sup> When the Bush administration was debating who should run the armed predator program in 2001, George Tenet, the Director of Central Intelligence, raised a series of key questions. According to the 9/11 Commission, Tenet wondered, "What is the chain of command? Who takes the shot? Are America's leaders comfortable with the CIA doing this, going outside of normal military command and control?"<sup>44</sup> These questions over command have only become more complex in the past decade because the CIA and JSOC both run parallel drone programs.

In January 2014, the United States Congress blocked the move by adding provisions in the classified portion of the Federal Budget making it more difficult to transfer the CIA's armed drones to the military, presumably the Joint Special Operations Command (JSOC).<sup>45</sup> The CIA should be the sole organization in charge of targeted killings for one very good reason: the CIA is better at targeted killings. The CIA has more intelligence sources, which makes for accurate targeting data, less civilian casualties, and a more rigorous decision-making process.<sup>46</sup>

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<sup>42</sup> Eric Schmitt, "Congress Restricts Drone Program Shift," *New York Times*, January 16, 2014, [http://www.nytimes.com/2014/01/17/us/politics/congress-restricts-drones-program-shift.html?\\_r=0](http://www.nytimes.com/2014/01/17/us/politics/congress-restricts-drones-program-shift.html?_r=0).

<sup>43</sup> DCI Report: The Rise of UBL and Al-Qa'ida and the Intelligence Community Response," Draft, Central Intelligence Agency Analytic Report, March 19, 2004, 60.

<sup>44</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report*, 211.

<sup>45</sup> Greg Miller, "Lawmakers seek to stymie plan to shift control of drone campaign from CIA to Pentagon," *Washington Post*, January 15, 2014, [http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84\\_story.html](http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84_story.html).

<sup>46</sup> Greg Miller, "Obama's new drone policy leaves room for CIA role," *Washington Post*, May 25, 2013, [http://www.washingtonpost.com/world/national-security/obamas-new-drone-policy-has-cause-for-concern/2013/05/25/0daad8be-c480-11e2-914f-a7aba60512a7\\_story.html](http://www.washingtonpost.com/world/national-security/obamas-new-drone-policy-has-cause-for-concern/2013/05/25/0daad8be-c480-11e2-914f-a7aba60512a7_story.html); Schmitt, "Congress Restricts Drone Program Shift."

On the surface, it makes more sense for JSOC to run the counterterrorism drone program. Many authorities on lethal policy assume that JSOC will take the reins on America's drone program. Owen Cote, a Security Studies expert who specializes in military operations at the Massachusetts Institute of Technology, stated in an author interview, "The CIA will stop conducting operations at some point and JSOC will take over. JSOC is gearing up for the shift. JSOC was a killing machine in Iraq. They would conduct kill-capture raids every night, collect the intelligence, and run the next operation."<sup>47</sup> There are two lethal drone programs in Yemen; the CIA operates one and JSOC operates the other. JSOC was the first organization to have authority over Yemen, but the CIA was given the authorization to expand to Yemen because JSOC made several mistakes including targeting the wrong individuals.<sup>48</sup> Moreover, Congress's decision to block the transition is presumed to be influenced by the poorly executed strike on December 12, 2013, when JSOC controlled drones killed several civilians, tribal leaders, and possibly members of a Yemeni wedding party.<sup>49</sup> If the United States Government is going to kill individuals around the world with a UAV, correct and accurate execution of the operation is more important than which agency controls it. Although JSOC has experience running Special Forces raids in Iraq, the CIA has more experience running lethal drone programs.

The CIA is an intelligence organization, not a killing organization. The CIA, however, is an intelligence organization that has superior results with targeted killings. Targeted killings are intelligence driven operations. The first two legs of a find-fix-finish mission are contingent on intelligence. In addition, the "finish" portion of the operation will only be as successful as the intelligence is accurate. This mission is better suited for the CIA. After September 11, the CIA

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<sup>47</sup> Owen Cote, interview with author (telephone, March 2014).

<sup>48</sup> Miller, "Obama's new drone policy leaves room for CIA role."

<sup>49</sup> Schmitt, "Congress Restricts Drone Program Shift;" Zaid Ali and Laura King, "U.S. Drone Strike on Yemen wedding party kills 17," *Los Angeles Times*, December 13, 2013, <http://articles.latimes.com/2013/dec/13/world/la-fg-wn-yemen-drone-strike-wedding-20131213>.

swelled with a new class of counterterrorism analysts and targeters who spent over a decade hunting terrorist targets in Iraq and Afghanistan. The CIA has more resources to ensure their intelligence is correct. The CIA also has the ability to use human intelligence in their targeted killings, which proved useful in the Anwar al-Awlaki strike.<sup>50</sup>

The CIA was also the first organization to conduct armed drone strikes. The Agency therefore, has created an infrastructure and targeting processes around it. The drone theatre in Pakistan is by far the most pervasive in terms of frequency of strikes and longevity of the program. As a result, the CIA has more experience finding, fixing, and finishing terrorists with an armed drone. The CIA's experience and seasoned personnel translate to more precise results. Austin Long is a scholar at Columbia who specializes in counterinsurgency and has spent time as an embedded researcher with Special Forces teams. Long stated in an author interview, that the while JSOC has expanded rapidly over the last decade with massive increases in personnel, "The Agency has cadres of personnel who are more refined and have better TTP [tactics, techniques and procedures]."<sup>51</sup> These tactics lead to greater precision. Long stated, "In some cases the Agency may launch four drones for one strike. One may designate the target. One may fire the weapons system. But one's job is solely to evaluate possible collateral damage."<sup>52</sup> Long argues that these procedures help alleviate tunnel vision for the pilots by flying multiple drones on one mission, each with different responsibilities. Long stated, "When you are looking at a screen you get so fixed on the target it is sometimes difficult to see a passing car or civilian."<sup>53</sup> Thus, the CIA not only has more seasoned targeters with better intelligence resources, they also have better techniques honed through more years of experience conducting drone strikes.

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<sup>50</sup> For more on the human intelligence operation in the Awlaki strike see: Mark Mazzetti, Charlie Savage, and Scott Shane, "How a U.S. Citizen Came to Be in America's Cross Hairs," *The New York Times*, March 9, 2013, <http://www.nytimes.com/2013/03/10/world/middleeast/anwar-al-awlaki-a-us-citizen-in-americas-cross-hairs.html>.

<sup>51</sup> Austin Long, interview with author, (telephone: March 2014).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

The obvious counterpoint to this recommendation is that the CIA is an intelligence agency and allowing the CIA to conduct targeted killings in the future is outside the mission of the CIA. This shift in CIA culture has already happened. The attacks on September 11 galvanized American leaders to do whatever it took to hunt down terrorists. In effect, the focus on striking down terrorists eliminated any equivocations that top CIA leadership had at the time about returning to killing operations. At this point in U.S. national security policy, it is more important that the government conduct its operations diligently and effectively, taking every opportunity to account for false intelligence and active civilian presence. The CIA already has the resources and, after September 11, the authorization to kill terrorists.

The other counterargument is whether CIA personnel would support continuing targeted killings. According to the media, the most adamant advocate within the CIA to end its lethal strikes is John Brennan, the Director of the Central Intelligence Agency.<sup>54</sup> Brennan was the architect of the Obama administration's targeted strikes program when he the Obama's Deputy National Security Advisor for Counterterrorism. He was also the primary driver behind the disposition matrix—the software that tracks and prioritizes identified targets.<sup>55</sup> During Brennan's confirmation hearing as Director of the CIA, he stated, "The C.I.A. should not be doing traditional military activities and operations."<sup>56</sup> Brennan's opposition is surprising given his influence in amplifying the Obama administration's drone strikes and his decision to transfer the responsibility to hunt Awlaki from JSOC to the CIA.<sup>57</sup> Nevertheless, the media reports

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<sup>54</sup> Mark Mazzetti, "Delay in Effort to Refocus CIA from Drone War," *New York Times*, April 5, 2014, <http://www.nytimes.com/2014/04/06/world/delays-in-effort-to-refocus-cia-from-drone-war.html?smid=nytnow-share&smprod=nytnow&r=0>.

<sup>55</sup> Greg Miller, "Plan for hunting terrorists signals U.S. intends to keep adding names to kill lists," *Washington Post*, October 12, 2013, [http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b\\_print.html](http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b_print.html).

<sup>56</sup> Mazzetti, "Delay in Effort to Refocus CIA from Drone War."

<sup>57</sup> Hakim Almasmari, Margaret Coker, and Siobhan Gorman, "Drone Kills Top Al Qaeda Figure," *The Wall Street Journal*, October 1, 2011, <http://online.wsj.com/news/articles/SB10001424052970204138204576602301252340820>

Brennan aims to refocus the agency on analysis because of the CIA's less-than-stellar analytical performance in forecasting the Arab Spring.<sup>58</sup> Mazzetti reports, that the predominant faction within the CIA to continue targeted strikes is the Counterterrorism Center. The CTC also has the support of Senate Intelligence Committee Chairwoman, Dianne Feinstein, because of the Pentagon's causality prone strikes.<sup>59</sup> Refocusing the agency to emphasize analysis over counterterrorism does not nullify this thesis's recommendation. The dilemma this recommendation looks to solve is not whether the CIA should kill terrorists. The question is *if* the White House is going to continue to authorize targeted lethal action: Which agency will be the most diligent, cautious, and precise? The solution to that question is the CIA.

This recommendation hinges on the reporting accuracy of the disparities between JSOC and the CIA. If, as reported, the CIA is more diligent in their decision-making process and more accurate in their strikes, the decision should be clear—JSOC should stop running the operations. While the CIA already has authority to conduct lethal force, presumably by classified executive order, the CIA should retain its ability to conduct targeted operations by expanding the organization's operational jurisdiction to Title 10 authority solely when conducting targeted killings for counterterrorism purposes.<sup>60</sup> In summation, if the Executive Branch is going to authorize operations to continue to kill terrorists, the organization in charge should be the organization that is best at the job. The Obama administration justifies targeted strikes as adhering to the principles of distinction and proportionately. The CIA is superior in gathering intelligence and is better at minimizing collateral damage, which means saving innocent lives. On a final note, senior officials in the CIA undoubtedly remember the Church Committee and its

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<sup>58</sup> Mazzetti, "Delay in Effort to Refocus CIA from Drone War."

<sup>59</sup> Ibid.

<sup>60</sup> It is presumed that after September 11, President George W. Bush authorized the CIA to conduct lethal operations against al Qaeda. Mark Mazzetti and Scott Shane, "C.I.A. Had Plans to Assassinate Qaeda Leaders," *New York Times*, July 13, 2009, [http://www.nytimes.com/2009/07/14/us/14intel.html?\\_r=0](http://www.nytimes.com/2009/07/14/us/14intel.html?_r=0).



affect on the CIA. The American people have already brought the nation's premier human intelligence agency to its knees once in 1975, and it is safe to assume that CIA decision-makers want to ensure that never happens again.

### **3. The Executive Branch should announce the CIA's mandate to conduct targeted killings and release the targeting "playbook."**

The third and final recommendation rests on the implementation of the second. If the CIA is going to retain control over lethal counterterrorism strikes, the public should know that the intelligence agency is going to continue targeted killings. There are two steps to implementing this change. First, the White House needs to declassify parts of the "playbook" for targeted strikes. Second, the Executive Branch needs to write a new mandate authorizing the CIA to carry out targeted killings solely for counterterrorism purposes. There have been numerous press reports that the National Security Council created a "playbook," which outlines the Obama administration's procedures for targeting terrorists.<sup>61</sup> The National Security Council playbook contains a myriad of sensitive material and is a classified document. The report in full does not need to be declassified because it would most likely compromise agreements with host nations, reveal special technologies, and expose informants. The only substantive material that the Executive Branch should declassify is the institutional process for approving lethal strikes. Americans are still sensitive to terrorists' threats and, for the most part, support counterterrorism agendas; however, it would be preferred to know the procedures that the government uses for killing terrorists and militants. How many people review the list of priority individuals? Who

<sup>61</sup> Karen DeYoung, "A CIA veteran transforms U.S. counterterrorism policy," *Washington Post*, October 24, 2012, [http://www.washingtonpost.com/world/national-security/cia-veteran-john-brennan-has-transformed-us-counterterrorism-policy/2012/10/24/318b8eec-1c7c-11e2-ad90-ba5920e56eb3\\_story.html](http://www.washingtonpost.com/world/national-security/cia-veteran-john-brennan-has-transformed-us-counterterrorism-policy/2012/10/24/318b8eec-1c7c-11e2-ad90-ba5920e56eb3_story.html);

Greg Miller, Ellen Nakashima, and Karen DeYoung, "CIA drone strikes will get pass in counterterrorism 'playbook,' officials say," January 19, 2013, [http://articles.washingtonpost.com/2013-01-19/world/36474007\\_1\\_drone-strikes-cia-director-playbook](http://articles.washingtonpost.com/2013-01-19/world/36474007_1_drone-strikes-cia-director-playbook).

Michael Crowley, "Holder: Obama's New Drone Strike 'Playbook' Has Arrived," *Time*, May 22, 2013, <http://swampland.time.com/2013/05/22/holder-obamas-new-drone-strike-playbook-has-arrived/>.

makes decisions for the priority of certain individuals? What is the nominating process for adding new extremists to the list? These are all questions the executive branch could answer by releasing a version of the secretive “playbook.”

The CIA’s new mandate should address covert authority, include an executive order, and outline Congress’s role in the new targeted killings program. The NSC needs to sift through the logistical details to determine whether to conduct operations under covert authority or not. The host nation’s citizens should see that the United States government is conducting lethal operations; therefore, the White House and CIA should end the era of keeping the intelligence agency’s hand in armed drone strikes hidden. The Executive Branch should formally authorize the CIA to conduct targeted killings by declassifying the original executive order in the Bush administration that expanded the Agency’s responsibilities. Alternatively and preferably, the NSC should draft a new executive order with Congressional input. In this new executive order, the White House should outline why the CIA will continue targeted killings by highlighting its successes and failures in the past decade. In addition, the mandate should provide full legal justifications for the Agency’s new role in counterterrorism. Finally, the new mandate for the CIA should include new responsibilities for Congressional intelligence oversight committees to oversee the program and allow the committees complete access to the disposition matrix and all operations.



Since September 11, 2001 the Bush and Obama administrations have conventionalized the use of targeted lethal force, but they did not inaugurate the policy. For decades, American Presidents have waged war by precisely targeting enemies and killing them. Today’s operations only differ from those in prior decades because of their technology and frequency. These operations will undoubtedly continue, as will the debates surrounding them. Open debate is a

fundamental feature of democracy and will only serve to clarify the nation's position on using lethal force. The impetus is to look forward when considering how, why, and when the American government should act with lethal resolve, yet it is equally important to look backwards. Understanding the past debates about killing individual enemies will only serve to enlighten the contemporary debates. Recognizing that our leaders have authorized these operations in years past is fundamental to understanding today's events. Extracting the lessons from history not only teaches us where we have been, it can provide a roadmap for where we are and should be going.

**AUTHOR INTERVIEWS**

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