



Written by [Thomas R. Eddlem](#) on October 10, 2011

Obama's Death Panel and Charles I's Star Chamber

Of the death panel, Reuters [reported](#) October 5,

There is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council, several current and former officials said. Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate.

The Obama administration has refused to comment officially or publicly on the existence of the death panel.



New York Times reporter Charlie Savage described the legal memorandum in detail after lengthy, perhaps administration-approved, conversations with anonymous Obama administration officials. Savage [describes](#) the document as "a roughly 50-page memorandum by the Justice Department's Office of Legal Counsel, completed around June 2010," which means that it was drawn up about six months after the assassination list already existed. Savage continued:

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

The question is, with the U.S. military's ability to project its power to any place around the globe, is there anywhere on the planet where it is not "feasible to capture" a terrorist suspect? The U.S. government has military deployed in [more than 150 countries](#), including on every continent and in carrier groups in every ocean of the world.

Savage [noted](#) that the Office of Legal Council (OLC) approved the assassination policy

despite an executive order banning assassinations, a federal law against murder, protections in the Bill of Rights and various strictures of the international laws of war, according to people familiar with the analysis.

The memo, however, was narrowly drawn to the specifics of Mr. Awlaki's case and did not establish a broad new legal doctrine to permit the targeted killing of any Americans believed to pose a terrorist threat.

Savage [described](#) the assassination policy as working this way: "American militants like Anwar al-Awlaki are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions."

In that sense, Obama's death panel works largely like the [Star Chamber](#) of Charles I of England. The Star Chamber was a court that imposed the will of the King, but was secret in deliberations, did not inform a defendant of charges against him, and accorded no due process or trial by jury. And while the



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court of the Star Chamber could and did impose severe penalties — including [whippings, branding on the forehead, and mutilations such as cutting off ears, slitting the nose, and cutting a hole through the tongue](#) — the Star Chamber could not impose the death penalty. So in that one sense — no imposition of the death penalty — the infamous Star Chamber of Charles I was more lenient and limited than Obama's death panel. Yet the Star Chamber — a committee of the King's advisory board, the Privy Council — has come down as one of history's most brutal examples of government punishment without due process.

The Star Chamber of English Kings James I and Charles I was [deployed](#) against religious dissenters, especially the Puritans who had already begun colonizing Massachusetts and Connecticut. The chamber ordered the mutilation and imprisonment of Puritan leaders such as William Prynne, John Bastwick, and Henry Burton because their religious views were deemed to be a threat to the Anglican Church-led English government. But in reality, the Star Chamber was actually milder than the martial law — "law of war" — imposed by Charles I that led to a number of political killings during his reign.

Excesses of the Star Chamber and martial law forced Parliament to pass the [Petition of Right](#) condemning them in 1628 and to abolish them completely during the 1640 "long Parliament." The Petition of Right, drafted by Edward Coke, specifically condemned both denial of "due process" at the Star Chamber and the King's killings of nobles and commoners alike without trial under martial law. The petition stated in part:

No freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.... By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

The Petition of Right became a key part — along with the Magna Carta of 1215 and the later English Bill of Rights of 1689 — of what became known as the "English constitution." And many of the principles in the Petition of Right became part of the U.S. Constitution and Bill of Rights. King Charles I responded to the Petition of Right with the [claim](#) that he alone could judge or make the law, declaring that "only under me belongs the interpretation of the laws; for none of the house of commons, joint or separate, what new doctrine soever may be raised, have any power either to make or declare a law without my consent."

The irony of the Star Chamber is that it had existed for some 150 years before its abolition. And the Star Chamber was [even favored by some businessmen](#) for swift judgments at times. It administered justice with great leniency under the early kings. But when the Kings became more tyrannical, the principle of trial without due process inevitably ended in repression: punishment of religious dissenters, censorship of publications, and eventually punishment of political dissenters.

James Madison stressed that the American Revolution was not fought to oppose a tiny tax on tea. Indeed, the colonists in the 1760s had great sympathy for the national debt of Great Britain, as it had been accumulated just a few years earlier in an expensive war that had kept the colonists free from the absolutist French King. Instead, the U.S. War for Independence had been fought to preserve the principle of "no taxation without representation," a principle enshrined in both of the ancient British charters, the Magna Carta and the Petition of Right. Madison noted in his 1785 [Memorial and Remonstrance](#):



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It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it.

Meanwhile, back in Washington, the President is waging a public relations campaign to popularize his death panel. *New York Times* public editor Arthur S. Brisbane [explained](#) that the Obama administration is cagily trying to manipulate the media into whipping up public support for its assassination campaign:

The administration invokes secrecy to shield the details while simultaneously deploying a campaign of leaks to build public support. For *The Times*, and its peers, this dynamic is beyond awkward: it gives the appearance that the government is manipulating them.

This scenario can only get worse as the United States, moving to pull conventional military forces out of Afghanistan, comes to rely ever more on covert operations like the C.I.A. drone strikes in the region.

But constitutionalists note that just like Charles I's Star Chamber, a popular case of killing an unsavory character is no substitute for genuine justice or sound principles.

Among presidential candidates, only Ron Paul has [spoken out forcefully](#) against presidential killings of American citizens without legal restraint. (Herman Cain had been [on record as opposing them](#), but [flip-flopped](#).) Indeed, Paul has spoken out against the secret assassination list since Washington newspapers first revealed their existence in [early 2010](#).



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