#### Our 1AC begins with a re-telling of the Rehman family’s story, as told by Rania Khalek after she spent time with the family in November

Rania Khalek is an independent journalist living in the Washington, DC “Drone Victims Tell Empty US House Their Story; Is America Listening?” November 1 http://truth-out.org/news/item/19751-drone-strike-victims-tell-their-story-but-is-america-listening

Pakistani school teacher Rafiq ur Rehman traveled over 7,000 miles with his children - 13-year-old Zubair and 9-year-old Nabila - from a small, remote village in North Waziristan to tell lawmakers about the US drone strike that killed his 67-year-old mother, Mamana Bibi. It was a harrowing tale that brought many in the room to tears, including Rep. Alan Grayson (D-Fla.), who was responsible for inviting the family to Capitol Hill for the briefing.

In the end, only five members of the US House of Representatives bothered to attend. Grayson was joined by Reps. Jan Schakowsky (D- Ill.), Rush Holt (D-NJ), John Conyers (D-Mich.) and Rick Nolan (D-Minn.).

Meanwhile, President Obama, according to his October 29 schedule, was meeting with the CEOs of Lockheed Martin and Northrup Grumman, both of which manufacture drones. More importantly, Lockheed Martin manufactures hellfire missiles, the very weapon fired from the drone that killed Mamana Bibi.

Though Obama did not publicly acknowledge the briefing, his actions the next day suggest he was either unmoved or did not tune in.

Just one day after the Rehman family addressed Congress, a US drone strike killed three people and injured at least three more in North Waziristan. The identities of the dead have yet to be confirmed, but Pakistani intelligence officials say they were suspected militants, the same claim made in the aftermath of Mamana Bibi's death.

In Their Own Words

"On October 24, 2012, a CIA drone killed my mother and injured my children," Rehman said, speaking through a translator. And so began the first time members of Congress heard a drone victim tell their story.

"Nobody has ever told me why my mother was targeted that day," he continued. "Some media outlets reported that the attack was on a car, but there is no road alongside my mother's house. Others reported that the attack was on a house. But the missiles hit a nearby field, not a house. All of them reported that three, four, five militants were killed. But only one person was killed that day.

"She was the string that held our family together. Since her death, the string has been broken, and life has not been the same. We feel alone and we feel lost."

Rehman was returning from buying groceries when he learned his mother had been killed. "When I heard this news, all the groceries - the fruits and sweets I had bought - just fell from my hands. It was as if a limb had been cut from my body to hear the news of my mother's death," he told Truthout.

"All my neighbors and relatives were telling me to come immediately to the mosque because they were going to start the prayers. But I said no, I want to go to my house, I want to see my mom's face before they bury her to rest. They were telling me that no, you don't want to see the condition she is in," said Rehman. "Later, I realized that because she was blown to pieces, they collected whatever they could and put it in a box. I wanted to see my mom's face for the last time but they had taken her remains and put it into a box."

It was the day before Eid and Rehman's mother was outside with eight of her grandchildren picking okra. Both Zubair and Nabila said they noticed a drone overhead but, as Zubair explained, "I wasn't worried because we are not militants."

Nabila described to Truthout what happened next. "All of the sudden I heard this 'dum dum' noise, and I saw these two white lights come down and hit right where my grandmother was. Everything had become dark, and it was smelling weird. I was really scared and didn't know what to do so I started to run, and I just kept running and running," she said.

"I felt some pain in my hand. When I looked, it was bleeding. I tried to bandage it and wipe it with my scarf to stop the bleeding but the blood just kept coming out. I had lost a lot of blood. Next thing I know I ended up in a hospital and it was evening time."

Zubair's experience was equally as horrific. "My grandmother was blown up into pieces, and I got injured in my leg," he told Truthout. "At the funeral, everyone was trying to console me, saying, 'We all lost a grandmother.' There was no one else like her. She would always make sure that we would have something to eat, and she would always make our favorite meals or buy our favorite fruits from the market."

Zubair has since undergone multiple surgeries to have shrapnel removed from his leg. Medical costs have piled up, forcing Rehman to borrow money and sell his land to pay for treatment. In the meantime, the US government has yet to provide an explanation for the strike or offer any compensation to the family for their loss, which appears to be a widespread problem. The peace group Codepink recently discovered that over the last four years, not a single dime of the $40 million allocated by Congress for that purpose has gone to Pakistani victims of drone strikes.

Rep. Grayson told Truthout he was unaware of the problem but promised to have his office look into it.

Since the briefing, Rehman says no one from the US government has approached him about compensation, though he stressed, "That's not the reason why I came here. I wasn't looking for any compensation in any way. What I was coming here to do is tell the truth, to share my story. This is about humanity. This is about the truth. This is about justice."

The briefing came one week after the release of several scathing reports by human rights organizations and the UN criticizing the US drone program as a violation of international law. The Obama administration responded to the UN by defending the program as "necessary, legal and just."

Amnesty International, which investigated 45 drone strikes carried out in Pakistan's North Waziristan region between January 2012 and August 2013, accused the United States of "exploiting the lawless and remote nature of the local region to evade accountability for violations of the right to life." Amnesty was particularly concerned about "signature strikes," where drone operators fire on unidentified groups of people based on patterns of behavior that signify militant activity. A signature strike is believed to have killed 18 laborers and injured 22 others in July 2012, according to the report, which also documents several double-taps or follow-up strikes targeting rescuers and mourners. Amnesty concluded that up to 900 civilians have been killed by US drone strikes in Pakistan in "unlawful killings that may constitute . . . war crimes."

Despite the mounting evidence to the contrary, the White House has insisted that the president requires "near-certainty" that civilians will not be harmed before approving a drone strike, adding that there is a "wide gap" between the administration's casualty numbers and those of the nongovernmental organizations. Unfortunately, it is impossible to compare the two because the White House refuses to release its data. That being said, if the president's numbers are significantly lower, it might be related to his definition of the term "militant." Obama tallies "all military-age males in a strike zone as combatants . . . unless there is explicit intelligence posthumously proving them innocent," a counting method that surely lowers the casualty number.

Shahzad Akbar, the Rehman family's attorney who was refused a visa to attend the briefing, told Truthout that Obama administration claims about low civilian casualties are absurd. "Either [Obama] is lying or he is being lied to," he said.

Akbar is a legal fellow with the British human rights group Reprieve and the director of the Pakistan-based Foundation for Fundamental Rights, where he represents over 150 drone strike victims. "I didn't expect this from Obama," he said. "I liked him. I thought that he was the hope of East meets West. He turned out to be the biggest disappointment." Akbar continued, "Obama's first drone strike hit a house filled with civilians, and he was informed of this fact. But what does he do? He escalates the drone strikes."

At the briefing, the lawmakers were asked repeatedly whether certain drone strikes constituted war crimes, as suggested by Amnesty International. All deflected the question except for Grayson, who argued that US drone strikes are not war crimes because the killing of civilians is not "deliberate."

Asked whether signature strikes, which target unidentified persons, might constitute war crimes, Grayson declined to speculate, calling instead for more transparency. "I do think that there is overwhelming evidence that we need a different, more reliable system if we're going to be undertaking operations like this," he told Truthout.

But according to Reprieve attorney Jennifer Gibson, intention is not the only litmus test.

"[Intention] matters to the degree that you are required to be proportionate in your targeting to minimize civilian casualties," Gibson told Truthout. "To the extent that you're being deliberately negligent in minimizing civilian casualties, which is the category that signature strikes would fall into, then yes, in certain instances we very well might be committing war crimes." But there are no agreed-upon parameters for proportionality. Still, Gibson argued, "What I do know is a grandmother and her eight grandchildren is disproportionate."

"Before, I would hear the drones but I didn't think much of it. I would just go about my daily life. I'd want to go to school. There would hardly be a time that I would refuse to go outside," Zubair told Truthout. "But now, after I've seen what's happened to me and my family and that I've had two operations, I'm scared. I don't want to go outside anymore. I don't feel like playing cricket, volleyball and soccer with my friends. I don't even want to go to school. I just fear every time I hear the noise overhead."

Zubair added that there are already too few schools in his community and due to the fear of drone strikes, "students have stopped going to the ones that exist," echoing a report published last year by Stanford and NYU, in which researchers observed that the presence of US drones buzzing over northwest Pakistan 24 hours a day "terrorizes men, women and children, giving rise to anxiety and psychological trauma among civilian communities," who "have to face the constant worry that a deadly strike may be fired at any moment and the knowledge that they are powerless to protect themselves." As a result, "Some parents choose to keep their children home, and children injured or traumatized by strikes have dropped out of school."

"As a teacher, my job is to educate. But how do I teach something like this? How do I explain what I myself do not understand?" asked Rehman, bringing his translator to tears. "How can I in good faith reassure the children that the drone will not come back and kill them, too, if I do not understand why it killed my mother and injured my children?"

"In the end I would just like to ask the American public to treat us as equals. Make sure that your government gives us the same status of a human with basic rights as they do to their own citizens," said Rehman. "This indiscriminate killing has to end, and justice must be delivered to those who have suffered at the hands of the unjust."

Rafiq, Zubair and Nabila stood bravely before the US Empire and demanded peace. Let's hope that America listens.

### Plan

#### The United States Congress should create a statutory cause of action for damages for those unlawfully injured by targeted killing operations or their heirs that overrides the state secrets and official immunity doctrine and replaces them with carefully considered procedures for balancing the secrecy concerns.

#### The plan creates a deterrent effect and overcomes judicial deference and the government’s ability to assert state secret privileges.

Stephen I. Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, Feb 27 2013, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?” Hearing Before the House Committee on the Judiciary, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Lawsuits are a visible platform advocates can use to generate media attention and public conversations. The conversations that result from the aff spillover to broader conversations about constitutional concerns and human rights issues.

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412

This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media atten-tion about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such a judicial role may influence executive branch behavior.

#### The poorly informed public continues to prop up Obama’s drone policy. Current government justifications enable it to discount alternate media narratives and cast a fog over public debate about drones.

Naiman 11/15 Robert Naiman is Policy Director at Just Foreign Policy. Mr. Naiman edits the Just Foreign Policy daily news summary and writes on U.S. foreign policy at Huffington Post. Naiman has worked as a policy analyst and researcher at the Center for Economic and Policy Research and Public Citizen's Global Trade Watch. He has masters degrees in economics and mathematics from the University of Illinois and has studied and worked in the Middle East. “WikiLeaks and the Drone Strike Transparency Bill” http://www.huffingtonpost.com/robert-naiman/wikileaks-and-the-drone-s\_b\_4282595.html

The Senate Intelligence Committee recently took an important step by passing an intelligence authorization which would require for the first time -- if it became law -- that the administration publicly report on civilian casualties from U.S. drone strikes. Sarah Knuckey, Director of the Project on Extrajudicial Executions at New York University School of Law and a Special Advisor to the UN Special Rapporteur on extrajudicial executions, calls this provision "an important step toward improving transparency," and notes that "Various U.N. officials, foreign governments, a broad range of civil society, and many others, including former U.S. Department of State Legal Advisor Harold Koh ... have called for the publication of such basic information." This provision could be offered as an amendment in the Senate to the National Defense Authorization Act. It could be offered in the House as an amendment on the intelligence authorization, or as a freestanding bill. But it's not likely to become law unless there's some public agitation for it (you can participate in the public agitation here.) Forcing the administration to publish information is crucial, because in the court of poorly informed public opinion, the administration has gotten away with two key claims that the record of independent reporting strongly indicates are not true: 1) U.S. drone strikes are "narrowly targeted" on "top-level terrorist leaders," and 2) civilian casualties have been "extremely rare." Poll data shows that majority public support of the drone strike policy is significantly based on belief in these two false claims; if the public knew that either of these claims were not true, public support for the policy would fall below 50%. By keeping key information secret, the administration has been able to avoid having its two key claims in defense of the policy refuted in media that reach the broad public. You might think that if a key reason that it's been difficult to do anything politically in the U.S. about the drone strike policy has been the apparent public support for the policy among people who do not know that the strikes have not been "narrowly targeted" on "top-level terrorist leaders" and who do not know that civilian casualties have not been extremely rare, then if there were a proposed transparency reform that could force the administration to disclose information that would likely contribute greatly to knowledge among the general public that these two key claims are not true, it should be a no-brainer that critics of the policy should vigorously support this reform. Sadly, it is not, apparently, a no-brainer, because there are people who claim that transparency reforms are meaningless. And while it is tempting to try to ignore such people, they have a disproportionate impact to their numbers because most people don't have the life experience that would enable them to easily judge between the competing claims "transparency reforms are important" and "transparency reforms are meaningless." Our starting point is that many Americans, compared to Europeans, are politically disengaged, alienated from political engagement most of the time. So when you put out a call for people to engage Congress, you have a group of people who get it right away and take action, and a another group of people who think, "Engage Congress? Not that again," and treat it as a huge personal sacrifice to engage Congress, like you asked them to volunteer for a root canal. These people are looking for any excuse to not take action. So if someone pops up and says, "transparency reforms are meaningless," these people have an excuse not to take action. "Oh, this proposed reform is controversial, not everyone agrees, so I don't have to do anything." To people who want to claim that transparency reforms are meaningless, I want to say this: tell it to WikiLeaks. What was the fundamental strategic idea of WikiLeaks? What was the fundamental insight that Julian Assange deeply grasped that caused him to initiate this project, at great personal risk to himself and his close collaborators? It was that governments are hiding key information that the public has the right to know, that allowing governments to continue to hide this information fundamentally undermines democratic accountability, and that forcing this information into public debate fundamentally enables democratic accountability. Case in point: Just Foreign Policy issued a crowd-sourced reward for WikiLeaks to publish the secret negotiating text of the Trans Pacific Partnership agreement, which, among many other concerns, critics like the AARP have charged threatens the ability of the U.S. government to make medicines safe and affordable under the Affordable Care Act. This week, WikiLeaks delivered, publishing the negotiating text of the "intellectual property" chapter of the TPP, the most controversial part of the agreement, including the negotiating positions of different countries. (If you made a pledge to the reward, you can fulfill your pledge here. ) Publishing this information generated a lot of press. (Google "WikiLeaks and TPP.") It also allowed critics of the agreement, like Public Citizen, Doctors Without Borders, and the Electronic Frontier Foundation to respond directly to the TPP text in making their criticisms. Predictably, some journalists wrote what they often write about such disclosures: that there was nothing really shocking for insiders who were closely following the issue. And, in a narrow sense, that's not untrue. But it missed the point. In general, disclosing "secret" government policies mostly isn't about educating journalists and other insiders who are closely following the issues. It's about educating the broad public, which never saw this information clearly presented in major media. In a democracy, it's hard to keep the basics of important public policies secret from well-informed people who are following closely. Official secrecy is mainly about keeping them from the broad public, because official secrecy allows the government to keep the broad public in a fog of competing claims that can't be directly verified and are therefore never resolved in major media. Critics charge that X, but the government denies it. Who knows for sure? The New York Times recently had an editorial in favor of the TPP. Critics complained, saying: 1) either you're endorsing an agreement that you've never seen or 2) you have seen the agreement, and instead of doing journalism, you're collaborating in keeping the public in the dark. No, we haven't seen the agreement, the Times responded. We're just endorsing the idea of an agreement. Never mind what the actual agreement is. That's the kind of "public debate" you can have when the policy is secret - whether you like the official story about the policy, rather than the actual policy. (Now that part of the TPP text has been leaked, the Times is quiet.) This is the same problem we face with the drone strike policy: people like the official story about the drone strike policy, in which drones are a magic super-weapon that only kills terrorist leaders and not civilians, not the actual policy, about which they have no idea. When Edward Snowden leaked information about the NSA's blanket surveillance on Americans, many insiders said, "Yeah, we thought the NSA was doing that, we couldn't prove it, but no-one who follows the NSA was surprised." But the broad public had no clue, because it had never been clearly reported where most people could see it, because critics' claims couldn't be directly verified. When Snowden blew the whistle, the broad public found out, and that's why it's plausible that Congress will now force a change in policy. And that shows that transparency matters. Where we are now with the drone strike policy is where we were with the NSA before Snowden's revelations: insiders know what's going on, but the broad public doesn't. An illustration: earlier this week, I and others engaged in some "street lobbying" of Jeh Johnson, President Obama's nominee to head the Department of Homeland Security. When he was previously in government, Johnson was the Pentagon's top lawyer, and thus participated in constructing the administration's purported legal justifications for the drone strike policy (which still have not been fully disclosed to Congress and the public.) Now, as head of DHS, he's not going to play that role directly. But he's still going to have significant influence, because he'll be in the meeting of the national security department heads, because he's well-connected, and because, by his own account, he cares deeply about the rule of law and working to ensure that the drone strike policy transparently complies with the rule of law. I was lobbying Johnson to support the drone strike transparency bill, so that the administration would have to disclose information about civilian casualties. He said he would look into the bill and consider it. During the discussion, one of my colleagues challenged Johnson about a particular drone strike. Johnson gave the standard administration defense, about people who are planning to attack the United States. I interrupted him: "That's a small percentage of the people being killed by drone strikes." "That's true," Johnson said. That's true. When I called him on it, Johnson immediately conceded that the story that the drone strike policy is all about narrowly targeting people who are trying to attack the United States is basically not true. It's true that the U.S. has tried to target some people who have attacked or tried to attack the United States. But that's a small percentage of the people who have been killed. And so, in the main, that's not what the drone strike policy is about; in particular, the claim that drone strikes have been "narrowly targeted" on "top-level terrorist leaders" is not true. ("I believe it very likely that one of my enemies is standing in that crowd of 50 people, therefore I am going to blow up the crowd" does not constitute "narrow targeting.") Why would Johnson concede to me that a central administration claim in defense of its drone strike policy is basically not true? Because he wasn't giving an interview to a mainstream journalist. He was just talking to some guy on a street corner who wasn't recording what he was saying, a person who had little presumed ability to reach the broad American public, a person who could, at worst, tell some mainstream journalist what Johnson said, which Johnson could then promptly deny. He could say he was misquoted or misunderstood, and life would go on. And so we're left with the usual fog. Critics say X, U.S. officials deny it. Who really knows what the truth is? Johnson was having an insider conversation, conceding that which all insiders know, but which the broad public does not know: the drone strike policy is not narrowly targeted on people who are trying to attack the United States.

#### Drone strikes cause thousands of civilian deaths and massive disruptions of daily life.

Stanford Human Rights Clinic 12 “Living Under Drones Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan” Stanford International Human Rights and Conflict Resolution Clinic (IHRCRC) and Global Justice Clinic (GJC) at NYU School of Law September http://livingunderdrones.org/wp-content/uploads/2012/10/Stanford-NYU-LIVING-UNDER-DRONES.pdf

First, while civilian casualties are rarely acknowledged by the US government, there is significant evidence that US drone strikes have injured and killed civilians. In public statements, the US states that there have been “no” or “single digit” civilian casualties.”2 It is difficult to obtain data on strike casualties because of US efforts to shield the drone program from democratic accountability, compounded by the obstacles to independent investigation of strikes in North Waziristan. The best currently available public aggregate data on drone strikes are provided by The Bureau of Investigative Journalism (TBIJ), an independent journalist organization. TBIJ reports that from June 2004 through midSeptember 2012, available data indicate that drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children.3 TBIJ reports that these strikes also injured an additional 1,228-1,362 individuals. Where media accounts do report civilian casualties, rarely is any information provided about the victims or the communities they leave behind. This report includes the harrowing narratives of many survivors, witnesses, and family members who provided evidence of civilian injuries and deaths in drone strikes to our research team. It also presents detailed accounts of three separate strikes, for which there is evidence of civilian deaths and injuries, including a March 2011 strike on a meeting of tribal elders that killed some 40 individuals. Second, US drone strike policies cause considerable and under-accounted for harm to the daily lives of ordinary civilians, beyond death and physical injury. Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities. Those living under drones have to face the constant worry that a deadly strike may be fired at any moment, and the knowledge that they are powerless to protect themselves. These fears have affected behavior. The US practice of striking one area multiple times, and evidence that it has killed rescuers, makes both community members and humanitarian workers afraid or unwilling to assist injured victims. Some community members shy away from gathering in groups, including important tribal dispute-resolution bodies, out of fear that they may attract the attention of drone operators. Some parents choose to keep their children home, and children injured or traumatized by strikes have dropped out of school. Waziris told our researchers that the strikes have undermined cultural and religious practices related to burial, and made family members afraid to attend funerals. In addition, families who lost loved ones or their homes in drone strikes now struggle to support themselves.

#### Obama and his lawyers continue to justify the targeted killing of hundreds in the name of counterterrorism. Saying nothing in the face of these murders is a passive endorsement of the status quo. Drone victims want to know Americans are listening- they want us to share their stories and demand an end to targeted killing.

Mohammed Al Qawli, whose brother was killed in a drone strike, wrote in December Mohammed Al Qawli is an educational consultant at the Ministry of Education in Sanaa, Yemen and the former director of the Ministry of Education in Khawlan province. His brother, Ali Al Qawli, was killed in a drone strike in January 2013. Dec 5 2013 “The US killed my brother with a drone. I want to know why” http://america.aljazeera.com/opinions/2013/12/grieving-yemena-sinnocentdead.html

I have been waiting for almost a year now for an apology and for meaningful answers as to why my brother had to die, but no one in the U.S. or Yemeni government has ever contacted me or claimed responsibility for their actions. I’d heard that the United States of America was sending support to Yemen, but for a long time I did not know what that meant. Now I can see it firsthand. I have received U.S. gifts and U.S. aid, wrapped in a body bag. These explosive fragments kill Yemenis, destroy their spirits, burn their bodies and only further empower the militants. The U.S. and Yemeni governments killed a young man who strongly opposed terrorism and tried to bring change through education — the very same things they purport to want themselves. I want to know why. Ali al Qawli the schoolteacher has left us, but his tremendous legacy of love, passion and hope remains. I hope that the American people will demand an end to the illegal extrajudicial executions happening in their name. I hope they will stand against the violent actions of their Nobel Peace Prize–winning president and join us in demanding that the U.S. government stop its blind killing of hundreds of innocent people. Most important, I hope they will represent the best ideals of their country’s founding and help end this injustice committed in their name. I may live thousands of miles from the United States, but I hope that when Americans hear about drones, they will share my brother’s story and the stories of countless other civilians who have died in the name of counterterrorism. We must ensure that both courts and governments stop the killing and do not make a farce of the principles they purport to uphold.

#### The process of debating about how to relieve the suffering of others can lead to compassion- listening occurs when we attempt to understand others and even indirectly when we read articles and scour for information.

Porter 6 head of the School of International Studies at the University of South Australia, (Elisabeth, "Can politics practice compassion?" Hypatia Sep, p project muse)

As individuals, we have responsibilities beyond our personal connections to assist whenever it is within our capacities and resources to do so. I do not want to give the impression that our entire lives should be devoted to attending to others' needs. To do so would return women to exclusive nurturance at the expense of self-development and public citizenship. It is, rather, a matter of acting with compassion when it [End Page 108] is possible to do so, and the possibility of course is debatable and requires priorities, which differ with us all. Politically, this means that politicians, nations, and international organizations have a **similar responsibility to alleviate the suffering that results when peoples' basic needs are not met.** There is a heavy responsibility on wealthy nations where the extent of poverty and misery is not as conspicuous as elsewhere to assist less wealthy nations.16 State responsibility is acute when suffering is caused by harsh economic policies, careless sales of arms and military weapons, severe immigration rules, and obscene responses to terrorism by further acts of violence. With the majority of these massive global issues, most of us can only demonstrate the first stage of co-suffering, **and** perhaps **move to** the second and **debate** the merit of options that might meet peoples' needs, and alleviate suffering. This vocal civic debate can provoke the third process of political responses that actually lead to political compassion. Given nations' moral failures of compassion and such conspicuous evidence of oppression, exploitation, brutality, and indifference, we need to be observant, and understand the implications of a failure to practice compassion. AND Those who commit acts of terror, or, as asylum seekers, put themselves at the mercy of unseaworthy vessels, or self-harm as detainees, often despair deeply of being heard without resorting to desperate measures or horrific acts. Within multicultural democracies, there is a responsibility to listen and to respond. The duty to listen includes **being exposed to "unsavoury views** like religious beliefs we disagree with, cultural practices we do not understand, and stories of torture and suffering that are painful to absorb. The duty to respond includes replies to uncomfortable findings like the Amnesty International Human Rights' criticism of Australia's detention, particularly of children" (Porter 2003b, 14).28 Refugee advocacy groups have ongoing contact with asylum seekers and engage in regular dialogue with government departments. These groups demonstrate capacities for empathy, listening, and tolerance, which facilitate democratic persuasion.29 Without compassionate listening there can be little understanding of others' needs. I include here the indirect "listening" that occurs when we are trying to understand the plight of those with whom we do not have personal contact, but about whom we read books and articles, scour the internet for information, network in coalitions and at conferences, and exchange emails in order to hear different voices. Many women's coalitions and peace builders rely on this compassionate listening in order to build trust. Thinking concretely about peoples' differing needs and questioning how they may be met introduces questions of value into the broad international context. "Questioning who is and who is not cared for in the world will **force us to explore the role of social relations and structural constraints** in determining who can and cannot lead a dignified and fulfilled life" (Robinson 1999, 31). [End Page 115] Thus dialogue with sufferers, or, where access is denied, their representatives or advocates, is crucial in order to decide, given our many differences, what a compassionate response might be, and, perhaps more important, how to procure the necessary resources to respond adequately. For example, a central issue in international ethics is humanitarian intervention and the question of when the UN Security Council should authorize overriding a state's sovereignty in order to assist the plight of people suffering from a dictatorship, political tyranny, genocide, or "ethnic cleansing." As Robinson (1999) also argues, to think compassionately, the international community should not wait until emergencies eventuate as with Rwanda in 1994, but listen to early warning cries. Being prepared to listen depends on the nature of relationships within the international community, as well as the background context and the reasons for contemplating intervention. The means of intervention has degrees of morality, where "clearly persuasion is preferable to coercion, positive sanctions to negative ones, diplomatic pressure to embargoes and blockades, economic sanctions to war, warning shots, or attacks on criminal leaders to indiscriminate bombing on their population" (Hassner 1998, 24). Attentive listening to discern what sufferers themselves believe they need affirms their agency and should lead to compassionate, wise responses.

#### Tort litigation succeeds where traditional rights fail. Tort strategies provide forums for a unique and critical form of confronting biopower through the expression of individual bodily experience.

Bloom 12 \*Anne, Professor of Law, the University of the Pacific/McGeorge School of Law. Southwestern Law Review, 41 Sw. L. Rev. 241

My argument is that tort litigation presents us with an interesting alternative to the emphasis on civil rights-based strategies that ought to be more seriously pursued. Historically, tort litigation has played a relatively minor role in the legal tactics of activist lawyers. While tort claims are occasionally tacked on to civil rights cases, they are rarely the focus of activist lawyers' legal strategies. n67 There are many reasons for this, including the structure of tax laws, which makes it more difficult for nonprofits to litigate cases on the contingency fee basis on which most tort claims proceed. There is also the stigma that is associated with tort litigation; in the minds of many elite lawyers (including those who make up the public interest bar), tort practice is less prestigious, particularly when it involves representation of plaintiffs. These biases against the pursuit of tort litigation as part of a broader strategy of resistance need to change. Tort litigation provides a relatively unique opportunity to confront and resist biopower, in both its institutional and more diffuse forms. In part, this is because tort litigation is the area of law that people tend to turn to when medical products and treatments fail to help them successfully comply with biopower's demands. n68 In recent years, for example, we have [\*250] seen increased litigation around the failure of a variety of sexual identity enhancing products, such as breast implants, n69 erectile dysfunction medication, n70 and weight-loss drugs. n71 The existence of this litigation suggests that a very large number of people feel that they need artificial help for their bodies to successfully comply with the bodily "truth" of binary ("male" or "female") identity. Because of this, the litigation exposes the gap between biopower's bodily "truths" and lived experience. At the same time, however, the exposure of this gap presents an opportunity to resist, rework, or reproduce those "truths." Tort litigation is also an important site in which to confront and resist the operation of biopower because of the heavy role that medical experts play in most tort cases. In the typical tort case, medical elites take the stand to offer a diagnosis of how the plaintiff's body varies from idealized bodily "truths" about what normal bodies should look like and how they should function. n72 Moreover, in many cases, medical elites are also relied upon to suggest a course of treatment aimed at helping to bring the body into compliance with these "truths." n73 As a result, tort litigation routinely acts as a venue in which the idealized bodily narratives of biopower are compared against particular material conditions (plaintiffs' bodies). This juxtaposition, however, also presents an important opportunity to expose how these dominant narratives create expectations that are at odds with lived experience. For the same reasons, the litigation also presents an opportunity to directly challenge those narratives with counter-narratives that better reflect lived experience. In sum, tort litigation is an important venue for resistance to biopower because so many tort cases expose a gap between the metaphysical ideals of biopower and the reality of lived experience. But I also believe that there are other reasons why tort litigation may be useful for purposes of resistance. By virtue of its common law roots, tort litigation is less rigid and more "local" than civil rights litigation. As compared to other areas of the law - such as civil rights litigation- there is more room for imaginative pleading in tort litigation; there are also more opportunities for dialogue with grass roots activists. n74 These differences are important because the [\*251] greater flexibility and the closer connection to the community make it more likely that activists will be able to use the litigation to successfully challenge and rework the dominant bodily narratives of biopower.

#### Story telling can be a critical strategy in challenging dominant narratives of the world.

Richard Delgado demonstrates Richard Delgado Professor of Law, University of Wisconsin. J.D. 1974, U.C.-Berkeley School of Law, Michigan Law Review, August, 1989, 87 Mich. L. Rev. 2411, LEGAL STORYTELLING: STORYTELLING FOR OPPOSITIONISTS AND OTHERS: A PLEA FOR NARRATIVE.

The story invites the reader to alienate herself or himself from the events described, to enter into the mental set of the teller, whose view [\*2435] is different from the reader's own. The oppositional nature of the story, the manner in which it challenges and rebuffs the stock story, thus causes him or her to oscillate between poles. n56 It is insinuative: At times, the reader is seduced by the story and its logical coherence -- it is a plausible counter-view of what happened; it has a degree of explanatory power. Yet the story places the majority-race reader on the defensive. He or she alternately leaves the storyteller's perspective to return to his or her own, saying, "That's outrageous, I'm being accused of. . . ." The reader thus moves back and forth between two worlds, the storyteller's, which the reader occupies vicariously to the extent the story is well-told and rings true, and his or her own, which he or she returns to and reevaluates in light of the story's message. Can my world still stand? What parts of it remain valid? What parts of the story seem true? How can I reconcile the two worlds, and will the resulting world be a better one than the one with which I began? These are in large part normative questions, which lead to the final two issues I want to explore. Why should members of outgroups tell stories? And, why should others listen? II. WHY OUTGROUPS SHOULD TELL STORIES AND WHY OTHERS SHOULD LISTEN Subordinated groups have always told stories. n57 Black slaves told, in song, letters, and verse, about their own pain and oppression. n58 [\*2436] They described the terrible wrongs they had experienced at the hands of whites, and mocked (behind whites' backs) the veneer of gentility whites purchased at the cost of the slaves' suffering. n59 Mexican-Americans in the Southwest composed corridos (ballads) and stories, passed on from generation to generation, of abuse at the hands of gringo justice, the Texas Rangers, and ruthless lawyers and developers who cheated them out of their lands. n60 Native American literature, both oral and written, deals with all these themes as well. n61 Feminist consciousness-raising consists, in part, of the sharing of stories, of tales from personal experience, on the basis of which the group constructs a shared reality about women's status vis-a-vis men. n62 This proliferation of counterstories is not an accident or coincidence. Oppressed groups have known instinctively that stories are an essential tool to their own survival and liberation. Members of outgroups can use stories in two basic ways: first, as means of psychic self-preservation; n63 and, second, as means of lessening their own subordination. n64 These two means correspond to the two perspectives from which a story can be viewed -- that of the teller, and that of the [\*2437] listener. The storyteller gains psychically, the listener morally and epistemologically. A. How Storytelling Benefits Members of Outgroups The member of an outgroup gains, first, psychic self-preservation. A principal cause of the demoralization of marginalized groups is self-condemnation. They internalize the images that society thrusts on them -- they believe that their lowly position is their own fault. n65 The therapy is to tell stories. By becoming acquainted with the facts of their own historic oppression -- with the violence, murder, deceit, co-optation, and connivance that have caused their desperate estate -- members of outgroups gain healing. n66 The story need not lead to a violent act; Frantz Fanon was wrong in writing that it is only through exacting blood from the oppressor that colonized people gain liberation. n67 Rather, the story need only lead to a realization of how one came to be oppressed and subjugated. Then, one can stop perpetrating (mental) violence on oneself. n68 So, stories -- stories about oppression, about victimization, about one's own brutalization -- far from deepening the despair of the oppressed, lead to healing, liberation, mental health. n69 They also promote group solidarity. Storytelling emboldens the hearer, who may have had the same thoughts and experiences the storyteller describes, but hesitated to give them voice. Having heard another express them, he or she realizes, I am not alone. n70 Yet, stories help oppressed groups in a second way -- through their effect on the oppressor. Most oppression, as was mentioned earlier, does not seem like oppression to those perpetrating it. n71 It is rationalized, [\*2438] causing few pangs of conscience. The dominant group justifies its privileged position by means of stories, stock explanations that construct reality in ways favorable to it. n72 One such story was put forward in the Introduction to this essay -- the stock story of race relations in this country. n73 This story is drastically at odds with the way most people of color would describe their condition. Artfully designed parables, chronicles, allegories, and pungent tales like the one told in the anonymous leaflet can jar the comfortable dominant complacency that is the principal anchor dragging down any incentive for reform. n74 They can destroy -- but the destruction they produce must be voluntary, a type of willing death. Because this is a white-dominated society in which the majority race controls the reins of power, racial reform must include them. n75 Their complacency -- born of comforting stories -- is a major stumbling block to racial progress. Counterstories can attack that complacency. What is more, they can do so in ways that promise at least the possibility of success. Most civil rights strategies confront the obstacle of blacks' otherness. n76 The dominant group, noticing that a particular effort is waged on behalf of blacks, increases its resistance. Stories at times can overcome that otherness, hold that instinctive resistance in abeyance. n77 Stories are the oldest, most primordial meeting ground in human experience. Their allure will often provide the most effective means of overcoming otherness, of forming a new collectivity based on the shared story. n78 [\*2439] B. Why Members of the Ingroup Should Listen to Stories Members of outgroups should tell stories. Why should members of ingroups listen to them? Members of the majority race should listen to stories, of all sorts, in order to enrich their own reality. Reality is not fixed, not a given. n79 Rather, we construct it through conversations, through our lives together. n80 Racial and class-based isolation prevents the hearing of diverse stories and counterstories. It diminishes the conversation through which we create reality, construct our communal lives. Deliberately exposing oneself to counterstories can avoid that impoverishment, heighten "suspicion," n81 and can -enable the listener and the teller to build a world richer than either could make alone. n82 On another occasion, the listener will be the teller, sharing a secret, a piece of information, or an angle of vision that will enrich the former teller; and so on dialectically, in a rich tapestry of conversation, of stories. n83 It is through this process that we can overcome enthnocentrism and the unthinking conviction that our way of seeing the world is the only one -- that the way things are is inevitable, natural, just, and best -- when it is, for some, full of pain, exclusion, and both petty and major tyranny. n84 Listening to stories makes the adjustment to further stories easier; one acquires the ability to see the world through others' eyes. n85 It can [\*2440] lead the way to new environments. A willing listener is generally "welcomed with open arms." n86 Listening to the stories of outgroups can avoid intellectual apartheid. Shared words can banish sameness, stiffness, and monochromaticity and reduce the felt terror of otherness when hearing new voices for the first time. n87 If we would deepen and humanize ourselves, we must seek out storytellers different from ourselves n88 and afford them the audience they deserve. The benefit will be reciprocal. CONCLUSION Stories humanize us. They emphasize our differences in ways that can ultimately bring us closer together. They allow us to see how the world looks from behind someone else's spectacles. They challenge us to wipe off our own lenses and ask, "Could I have been overlooking something all along?" Telling stories invests text with feeling, gives voice to those who were taught to hide their emotions. Hearing stories invites hearers to participate, challenging their assumptions, jarring their complacency, lifting their spirits, lowering their defenses. Stories are useful tools for the underdog because they invite the listener to suspend judgment, listen for the story's point, and test it against his or her own version of reality. This process is essential in a pluralist society like ours, and it is a practical necessity for underdogs: All movements for change must gain the support, or at least understanding, of the dominant group, which is white. Traditional legal writing purports to be neutral and dispassionately analytical, but too often it is not. In part, this is so because legal writers [\*2441] rarely focus on their own mindsets, the received wisdoms that serve as their starting points, themselves no more than stories, that lie behind their quasi-scientific string of deductions. The supposedly objective point of view often mischaracterizes, minimizes, dismisses, or derides without fully understanding opposing viewpoints. Implying that objective, correct answers can be given to legal questions also obscures the moral and political value judgments that lie at the heart of any legal inquiry. Legal storytelling is an engine built to hurl rocks over walls of social complacency that obscure the view out from the citadel. But the rocks all have messages tied to them that the defenders cannot help but read. The messages say, let us knock down the walls, and use the blocks to pave a road we can all walk together. n89