## 1AC

Same as rounds 2 and 6

## 2AC

### Terrorism

#### Review inevitable – now is better for flexibility

Wittes 8 (Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, “The Necessity and Impossibility of Judicial Review,” https://webspace.utexas.edu/rmc2289/National%20Security%20and%20the%20Courts/Law%20and%20the%20Long%20War%20%20Chapter%204.pdf)

WE COME, then, to the question of what judicial review ought to look like in the war on terror if one accepts that it should exist more robustly than the administration prefers but should not be of an unbridled or general nature, as human rights advocates wish to see. The answer is conceptually simple, though devilishly complicated in operation: Judicial review should be designed for the relatively narrow purpose of holding the executive to clearly articulated legislative rules, not to the often vague standards of international legal instruments that have not been implemented through American law. Judges should have an expanded role in the powers of presidential preemption in the antiterrorism arena, for the judiciary is essential to legitimizing the use of those powers. Without them, the powers themselves come under a barrage of criticism which they cannot easily withstand. And eventually the effort to shield them from judicial review fails, and the review that results from the effort is more intrusive, more suspicious, and less accommodating of the executive's legitimate need for operational flexibility. Judges, in other words, should be a part of the larger rules the legislature will need to write to govern the global fight against terrorism. Their role within these legal regimes will vary-from virtually no involvement in cases of covert actions and overseas surveillance to extensive involvement in cases of long-term detentions. The key is that the place of judges within those systems is not itself a matter for the judges to decide. The judiciary must not serve as the designer of the rules.

### T – Restrictions

Judicial review over targeted killing is an on face restriction of executive authority

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

B. The Aulaqi Case in Federal Court In August 2010, Nasser al-Aulaqi, Anwar's father, filed suit in the District Court for the District of Columbia requesting an injunction against the targeted killing of his son. 36 Represented by the American Civil Liberties Union (ACLU), Nasser al-Aulaqi claimed that outside of the zone of armed conflict, the targeted killing of an American citizen represents an extrajudicial killing without due process of law. 37 The claim stated that under customary international law, the only circumstances allowing an exception to this general rule are those presenting a "concrete, specific, and imminent threat of death or serious physical injury." 38 The targeted killing of an American citizen outside of these circumstances is a violation of the Fourth and Fifth Amendments. 39 The complaint asserted three constitutional challenges to the targeted killing program. 40 By targeting an American for an extrajudicial killing outside of circumstances that present concrete, specific, and imminent threats of harm, the government had violated Aulaqi's Fourth Amendment right to be free from unreasonable seizure and his Fifth Amendment right not to be deprived of life without due process of law. 41 In addition, by refusing to disclose the standards used in determining that Aulaqi should be targeted for extrajudicial killing, the government violated the Fifth Amendment's notice requirement. 42 The complaint further asserted that by claiming this broad and unreviewable power, the Executive Branch permitted itself to conduct at-will extrajudicial killings of Americans, in secret, without any notice. 43 In the suit - filed against President Obama, then-Defense Secretary Robert Gates, and then-Director of the CIA Leon Panetta 44 - Nasser al-Aulaqi requested several forms of relief to [\*1360] prevent the targeted killing of his son. 45 He requested a preliminary injunction against the order to pursue Anwar al-Aulaqi with lethal force, and declaratory relief requiring the government to disclose the standards used for placing people on the targeted killing list. 46 In its brief in response, the DOJ moved for summary judgment on several alternative grounds, with emphasis on standing, the political question doctrine, and the state secrets privilege. 47 The DOJ argued that Nasser al-Aulaqi did not meet the requirements for next-friend standing for two reasons. 48 First, Aulaqi was not denied access to the courts. 49 Rather, Aulaqi seemed to be hiding in Yemen of his own accord. 50 Second, there was no evidence that Aulaqi desired to raise these claims in court to challenge the government's authority to conduct an extrajudicial killing against him. 51 Therefore, Nasser al-Aulaqi did not demonstrate that he was representing his son's interests or purpose. 52 The DOJ also challenged Nasser al-Aulaqi's complaint on grounds of executive authority, arguing that litigating this matter would violate established boundaries in the separation of judicial and executive power. 53 First, the government asserted that the decision to target Anwar al-Aulaqi was a nonjusticiable political question, and that conducting judicial review of this decision would require an infringement on textually committed executive authority. 54 Second, the government invoked the state secrets privilege, a rarely used but mostly successfully employed doctrine claiming that certain issues cannot be litigated because litigating them would require the disclosure of classified intelligence. 55 According to the state secrets doctrine, classified information cannot be disclosed through discovery and public trial because it would threaten national security and disrupt the Executive's ability to discharge its constitutional obligations. 56 The district court granted the defendant's motion to dismiss in December 2010. 57 The court held that Nasser al-Aulaqi did not have [\*1361] standing to raise these constitutional claims on his son's behalf. 58 By ruling on standing grounds the court focused on a narrow legal doctrine and avoided confrontation with the larger, more controversial issues in the suit. 59 However, the court also expressed discomfort with the outcome and its potential implications on due process rights and executive power. 60

#### We meet – due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually committed to the courts as claims brought under the Suspension Clause. Both are fundamental judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir. 1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene, 553 U.S. 723.

#### Counter-interpretation – authority is distinct from policy – authority is a question of jurisdiction – the plan restricts executive jurisdiction by applying judicial due process

Dictionary.com no date cited

http://dictionary.reference.com/browse/authority

au·thor·i·ty [uh-thawr-i-tee, uh-thor-] Show IPA noun, plural au·thor·i·ties. 1. the power to determine, adjudicate, or otherwise settle issues or disputes; jurisdiction; the right to control, command, or determine. 2. a power or right delegated or given; authorization: Who has the authority to grant permission?

### Presumption

#### Ex post review of drone strikes can be enacted without congressional interference

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

 The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

### Politics

#### No link – court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### No deal – lack of compromise

Allen 9/19/13 (Jonathan, staffwriter, “GOP battles boost Obama” <http://www.politico.com/story/2013/09/republicans-budget-obama-97093_Page2.html>)

Still, aides to the president and Boehner have said there’s no back-channeling going on between the two leaders, and White House officials say that while they expect Obama to talk with congressional leaders soon, there’s nothing on the schedule at the moment. There’s also reason to think that the GOP establishment is afraid the brinksmen among House Democrats are right about who will win the political aftermath of a government shutdown or a default. Republican strategists outside the crowded conservative corners of the House Republican Conference are reacting along a spectrum that ranges from scratching their heads to tearing their hair out. Nicolle Wallace, a former communications aide to President George W. Bush, had told MSNBC’s “Morning Joe” on Wednesday that Obama erred by giving a partisan speech on the budget fights on the heels of a massacre in Washington. “It really speaks to me about a White House with no more controls. There are no internal controls anymore. There’s no process by which that staff can get to him and make something stop,” she said. “Once a train has been pushed out of the station, no matter how ill-advised its course, nothing and no one can stop it.” By Thursday, the transportation metaphors cut in the other direction. “We are going to let our party run into moving traffic against a red light,” she said on the same program. “It’s idiotic.” The Wall Street Journal editorial page and Karl Rove, Bush’s chief strategist, have also taken fellow Republicans to task in recent days for letting Obama get the upper hand with their obsessive — and sure to fail — effort to kill Obamacare at any potential political cost. There are potential pitfalls for Democrats, too. They risk getting caught up in a blame game if there’s a shutdown and they vote against a GOP-written bill that would extend government funding while blocking Obamacare funds. Even without the Obamacare provision — which could, conceivably, be stripped out by the Senate — many of them don’t want to lock in current spending levels because they say the sequestration deal struck at the end of a similar showdown in August 2011 has robbed their communities of needed funding. That makes it hard to swallow a so-called clean extension of government funding for a few months. Democratic Rep. Gerry Connolly, who represents thousands of government workers and contractors in northern Virginia, is against both a shutdown and the maintenance of current spending levels. He would vote for a clean CR to keep the government funded rather than letting it shut down but would prefer to see the president strike a deal that increases funding for some priorities. In any event, he said, he won’t vote for legislation that defunds Obamacare — like the version of the CR that the House is set to vote on Friday. But Connolly and other Democrats seem willing to follow Obama, who is vowing not to cut Obamacare or negotiate over whether to raise the debt limit next month, all without getting into the details of a possible deal. At least for now. “He has not really given much away,” Connolly said. “I think his Sphinx-like position with respect to the Republicans makes it harder for them to exact unacceptable concessions, and therefore it’s probably a wise posture at this time.”

#### Debt ceiling won’t cause large economic damage

**Henry, former assistant Treasury secretary, 2013**

(Emil, “Amid the Debt-Ceiling Debate, Overblown Fears of Default”, 1-21, <http://online.wsj.com/article/SB10001424127887323442804578235970716809666.html>, ldg)

These concerns can be largely addressed by legislation or pre-emptive action by the private sector. For example, the first line of defense against default of interest or principal on our debt is legislation, such as that proposed in the Full Faith and Credit Act of 2011 by Sen. Pat Toomey (R., Pa.), which prioritizes payments of interest and principal before other government expenditures. We can afford this commitment because interest payments for 2013 are projected by the Congressional Budget Office to be 7% of tax receipts, meaning 93% of the government's revenues can be deployed elsewhere. Even with this legislation, however, there is further risk of principal default. Namely, once the ceiling is hit, the government will still need to issue new Treasury debt to retire maturing debt—and in large quantities. In 2013, the Treasury will need to issue about $3 trillion to refund maturing securities. A failed auction or the mass refusal of investors to roll over T-bills (a "buyer's strike") might trigger a default. Yet if the Treasury found itself in the highly unlikely position where no amount of interest-rate increase could create a clearing price for a successful auction, Congress always has the ability to raise the ceiling at any time and for any amount. And, as a last resort, if Congress were recalcitrant in such a difficult circumstance, the Federal Reserve would be well within its mandate to intervene to provide liquidity by purchasing securities. The Fed has purchased some $2 trillion of Treasury securities since the financial crisis began in 2007, and it owns more than a trillion dollars in non-Treasury securities that could be partially monetized. Treasury Secretary Timothy Geithner has warned of another form of technical default saying legislation would "not protect from nonpayment the other obligations of the United States, such as military and civilian salaries, tax refunds, contractual payments to individuals and businesses for services and goods, and many others" whose nonpayment would compromise the government's credit-worthiness. To this I suggest an ancient remedy: Figure it out, just as the private sector does when times are difficult. Rationalize bloated agencies. Eliminate duplicative programs. Reduce salaries. Initiate a hiring freeze. Negotiate with vendors to make payments over time. And if these are not workable solutions as Mr. Geithner implies, then he or his successor should come before Congress and explain why they are not. Republicans will listen. They too have no interest in an economic Armageddon. Regarding Social Security payments, there are typically timing differences between the receipt of tax revenues and the payment of entitlement expenses implying the potential for delayed checks. Legislation could allow for temporary increases in the debt ceiling to cover these timing differences and prevent delay. Some Wall Street firms warn of entangling complexities in the market for Treasury securities. They worry that the heightened risk of default will cause funds to divest themselves of Treasurys in such scale as to create mass dislocation. They also worry that the $4 trillion "repo" market, where Treasurys are the preferred collateral, would see rates rise to the extent Treasurys are seen as more risky. Banks might then redeploy capital away from lending to support the additional margin required by the market, thus hurting the economy. These may be reasonable concerns but House Republicans should recognize them as worries of an establishment with, first and foremost, a bottom line to protect. In the summer of 2011, amid great uncertainty over the debt ceiling and ultimately a downgrade by Standard & Poor's to AA+ from AAA, there was similar fear and divestitures of Treasurys, but markets functioned nonetheless. Interest rates even declined as the market continued to adorn U.S. Treasurys with the halo of being safe relative to other sovereign debt.

#### No chance of war from economic decline---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40 None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Ex post review is popular

Somin 4/23/13 (Illya, Professor of Law at George Mason University School of Law, “Oral Testimony on Drones and Targeted Killing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights” <http://www.volokh.com/2013/04/23/oral-testimony-on-drones-and-targeted-killing-before-the-senate-judiciary-subcommittee-on-the-constitution-civil-rights-and-human-rights/>)

A video of my and other witnesses’ oral testimony on the use of drones for targeted killing in the War Terror, before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights is now available here (just click on “webcast”). It was interesting for me to see that there was a broad consensus among the academic and ex-military witnesses on two key points: that the use of drones for targeted killing of terrorists is not inherently illegal or immoral, and that we need stronger safeguards to ensure that we are limiting drone strikes to legitimate military targets. It seems to me that many of the senators who asked questions – both Democrats and Republicans – were also sympathetic on these points. Whether this will lead to appropriate reforms remains to be seen. I will try to post my written testimony by tomorrow. UPDATE: You can also watch the hearing at the C-SPAN site here, though there are a few technical problems in that video that I noticed. UPDATE #2: I do want to clarify one unfortunately ambiguous aspect of an answer I gave to a question by Sen. Michael Lee around 2:07:00 of the video at the Subcommittee website. I mentioned there that the Israeli government government has a judicial review mechanism for considering the legality of targeted killing decisions. I should have made clear that the Israeli system, as outlined in the Israeli High Court of Justice’s 2006 decision on the legality of targeted killing, establishes after-the-fact judicial review rather than judicial review in advance, of the kind contemplated in proposals to create a FISA-like court to review targeting decisions aimed at US citizens in advance. Both Sen. Lee’s question and the part of my answer that mentions Israel were ambiguous on the issue of the timing of judicial review. So I wanted to clarify that point here. As I noted later in my testimony, we cannot and should not simply copy all aspects of Israeli policy in this area, since their strategic situation and political system differ from ours. But we nonetheless should try to learn from their experience.

### Transparency CP

#### No solvency – Public doesn’t trust the executive’s mandates will be transparent and public – secret evidence

Roach 13 (Kent, eds. Cole, D. Fabbrini, F. Vedaschi, A., David Cole, Federico Fabbrini, Arianna Vedaschi, “Managing Secrecy and its Migration in a Post-9/11 World,” Secrecy, National Security and the Vindication of Constitutional Law, google books pg 118-119)

At the same time, the taint of prior uses of secret evidence as well as public suspicion that secrecy will be used to cover up torture and other misconduct lingers. Although Congress decided at the end of 2011 to create a rebuttable presumption in favor of military detention and trial of alien terrorists suspected of involvement in al Qaeda, President Obama has indicated that he will waive this option when it might prevent other countries from extraditing or transferring terrorist suspects to the United States. Secret evidence as it was previously used at Guantanamo stands a potent and easily understood symbol of unfair counter-terrorism. The unfairness of secret evidence towards those targeted may have strategic as well as normative costs. Many believe that al Qaeda has morphed into an ideology that builds on grievances and a sense that Muslims are under attack throughout the world. In such a context, the public relations costs of using secret evidence should be taken seriously because it may promote a sense that innocent people have been unfairly detained, convicted or targeted as terrorists. Secret evidence is used by the US military and the CIA in decisions about targeted killing. Attorney General Holder has stressed that the evidence supporting such decisions is carefully reviewed within the government and has argued that the process satisfies due process because due process need not be judicial process." The problem with this approach is that it requires people to trust the government that the secret evidence has been thoroughly tested and vetted even though the executive has an incentive to err on the side of security. In contrast to the Israeli courts, American courts have taken a hands-off approach to review of targeted killing.12 The Israeli courts have in one prominent case reviewed targeted killings and have stressed the importance of both ex ante and ex post review within the military and involving the courts.0 To be sure. Israel has not gone as far as the United Kingdom in giving security cleared special advocates access to secret information, but it has provided a process that goes beyond the executive simply reviewing itself. The Obama administration does not seem to think that anyone could seriously challenge the legitimacy of their attempts to keep strategic military information behind targeted killings secret. In a sense, this is a return to a Cold War strategy where the need to preserve secrets from the other side was widely accepted. What has changed since 9/11, however, is that terrorism as opposed to invasion or nuclear war is widely accepted as the prime threat to national security. Terrorism is seen by many as a crime and the use of war-like secrecy is much more problematic in responding to a crime than to a threat of invasion or nuclear war. Hence, the legitimacy of the US's use of secrets to kill people in its controversial war against al Qaeda has been challenged. It may become a liability in the US's dealings with the Muslim world.

#### Counterplan doesn’t solve legitimacy or warfighting – the international community doesn’t trust it

Shane 11/24/12 (SCOTT, staffwriter, “Election Spurred a Move to Codify U.S. Drone Policy” http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all&\_r=0)

WASHINGTON — Facing the possibility that President Obama might not win a second term, his administration accelerated work in the weeks before the election to develop explicit rules for the targeted killing of terrorists by unmanned drones, so that a new president would inherit clear standards and procedures, according to two administration officials. The matter may have lost some urgency after Nov. 6. But with more than 300 drone strikes and some 2,500 people killed by the Central Intelligence Agency and the military since Mr. Obama first took office, the administration is still pushing to make the rules formal and resolve internal uncertainty and disagreement about exactly when lethal action is justified. Mr. Obama and his advisers are still debating whether remote-control killing should be a measure of last resort against imminent threats to the United States, or a more flexible tool, available to help allied governments attack their enemies or to prevent militants from controlling territory. Though publicly the administration presents a united front on the use of drones, behind the scenes there is longstanding tension. The Defense Department and the C.I.A. continue to press for greater latitude to carry out strikes; Justice Department and State Department officials, and the president’s counterterrorism adviser, John O. Brennan, have argued for restraint, officials involved in the discussions say. More broadly, the administration’s legal reasoning has not persuaded many other countries that the strikes are acceptable under international law. For years before the Sept. 11, 2001, attacks, the United States routinely condemned targeted killings of suspected terrorists by Israel, and most countries still object to such measures. But since the first targeted killing by the United States in 2002, two administrations have taken the position that the United States is at war with Al Qaeda and its allies and can legally defend itself by striking its enemies wherever they are found. Partly because United Nations officials know that the United States is setting a legal and ethical precedent for other countries developing armed drones, the U.N. plans to open a unit in Geneva early next year to investigate American drone strikes.

#### Counterplan fails – courts are critical to public support and enforceable decisions – counterplan lacks public support or incentive for executive change

Garbus, attorney, 9 (Martin, constitutional, criminal, copyright and intellectual property law, Huffington Post, “A Real Criminal Investigation of Bush/Cheney; No Truth Commission!”, http://www.alternet.org/story/130857/a\_real\_criminal\_investigation\_of\_bush\_cheney%3B\_no\_truth\_commission%21?page=0%2C0)

It's really quite simple. Truth and Reconciliation commissions, Congressional committees and blue ribbon commissions like the 9/11 Commission, are not deterrents to torture, illegal surveillance or lawyers on the Justice Department who attempted to justify the torture. They have a very limited function. But they don't punish anyone; don't deter anyone, don't even put pressure on the people who committed the acts and cannot really get at the truth to determine responsibility. They do not bring the full force of America's 230 years of law down on the offenders. They don't truly help rein in the powers of future presidents or defense secretaries who want to do the same or similar acts the next time they react to what they see as an extraordinary crisis. And different presidents, Democrats and Republicans from Woodrow Wilson and the prosecutions during the Red Scare, to Franklin D. Roosevelt and the internment of 110,000 Japanese, Lyndon Johnson, lying about the Gulf of Tonkin and to dramatically increase troop strength, nearly always find crisis and overreact. Senator Patrick Leahy, the Chairman of the Senate Judiciary Committee, has called at different times for either a Truth and Reconciliation commission or a Blue Ribbon commission. Neither is appropriate. The best truth and reconciliation model comes from the South African experience. In South Africa, these commissions were used to begin the healing after the brutality of apartheid. It grants the confessing wrongdoers immunity. It was for a different time and place. The Blue Ribbon commission gets attention and, along with Congressional committees, can get exposures and may help lead to better laws. But they create the danger of interfering and at times making impossible criminal trials of criminals. And they let criminals go unpunished. Senator Sheldon Whitehouse, a member of both the Judiciary Committee and Intelligence Committees and a former U.S. Attorney, supporting Leahy's call, said that a torture commission might need the power to immunize witnesses on a case-by-case basis, and "it is beside the point" if it endangers criminal prosecutions. We should go ahead with criminal prosecutions. It is the only way, through grand juries, subpoenas and trials, to get the facts and help America clean up some of its recent past. The American people, immersed as they are in the economic crisis, are angry about torture and other illegalities of the Bush administration and want those prosecutions. The February, 2009 USA Today/Gallup Poll shows 38 percent of Americans favor criminal prosecution of torturers, 38 percent for prosecution of those who used illegal surveillance, and 41 percent for those involved in the subversion of the Justice Department. Americans by a wide margin are in favor of criminal prosecutions than independent or Congressional panels. Seventy-five percent of Americans believe something must be done -- we can't walk away from the crimes against humanity committed in our name. The argument is made that criminal prosecutions area too difficult, too lengthy, too expensive, too political and will keep the country divided. But there have always been political expensive and difficult trials. We have had long, expensive, political trials for John Dean during Watergate, Eliot Abrams during Iran-Contra, Scooter Libby today and even Aaron Burr nearly two hundred years ago. Leahy argues against criminal prosecutions because "a failed attempt to prosecute for this conduct might be the worst result of all if it is seen as justifying dishonest actions." But that's true for every criminal prosecution -- should murderers, John Ehrlichmann, Scooter Libby or Enron officials not be prosecuted because the possibility of an acquittal justifies their actions? If so, junk the criminal system. We can't leave it to politicians. Many Democrats, including House Speaker Nancy Pelosi, are alleged to have known about the torture and surveillance programs and either approved or said nothing. Pelosi (who, interestingly, has called for criminal prosecutions) has consistently equivocated on what she knew and when she knew it. It's unlikely Democrats on commissions, let alone Republicans, are going to pursue the inquiry to its final end. They will undermine Congressional Commissions, and blue ribbon Commissions, but they cannot so easily undermine criminal prosecutions. The criminal trials of the chief of the Bush defendants can certainly be shorter and probably less expensive than the Barry Bonds or Scooter Libby prosecution, and less purely political than Thomas Jefferson's presidentially controlled prosecution of Aaron Burr. The Bush people violated some clear specific crimes. Failing to get wiretaps permission from the Federal Internal Security Courts is a felony. Representatives of the Justice Department, local police and federal agent who participated in break-ins or wiretaps without warrants, are guilty of clear and unambiguous federal crimes. Federal Agents who did illegal surveillance even when the Justice Department refused to sign off on its illegality can be found guilty. Violation of the Federal Anti-Torture Act, which has been on the books for years, bars citizens from committing torture abroad, is a felony. The War Crimes Act of 1996 is violated even if there is not what the Bush defendants would claim is "torture." That act punishes those who act cruelly and inhumanely. Waterboarding, vicious dogs, and exposing detainees to temperature extremes could all be punished by a jury. Bush's people, afraid of the applicability of the War Crimes Act, inserted a provision into a 2006 law that made the War Crimes Act retroactively ineffective. But Congress can change that now, that law can be used for prosecutions. The defense will claim, say opponents of criminal trials, that defendants relied on the now infamous August 1, 2002 legal opinion of the Attorney General, Alberto Gonzales, and his assistants justifying torture and the opinions on illegal surveillance creating fog and evasion and therefore, they will get off. And that all the lawyers did was give their albeit controversial opinions, a full defense. Jurors will get confused by legal experts who support the views of the Bush lawyers. It's too complicated for a jury, we are told. But we have prosecuted lawyers, experts and those who rely on legal or accounting opinions in many cases. Kenneth Lay could refer to legal or accounting documents prepared to justify his case all day long and not be saved. The legal opinions rendered by Alberto Gonzales, John Yoo and David Addington are such transparent documents that an American jury of citizens is, at the very least entitled to have an opportunity to pass judgment on them. Even as lawyers within the Bush administration repudiated the opinions, the illegal practices went on. No jury would have difficulty in rejecting John Yoo's memorandum that reject the basic tenets of an American democracy. Can a jury really decide the tough questions, such as whether Alberto Gonzales' opinion, concluding the Geneva Convention Protections do not apply to prisoners of war captured for Al Qaeda or the Taliban? Of course. A jury can determine if the legal opinion was a facade to justify actions already taken -- only the legal process with grand juries and subpoenas has any hope of piercing the wall of defense that will be used to block that inquiry. Those memos were not used to interpret the law -- they were intentionally written to change the law. No Commission can hope to get facts behind these opinions as quickly as the Courts. Our criminal law has specific status that reach overseas to punish torturers. Section 2340A of our Federal Criminal Code makes it a crime for any person "outside the United States to commit or attempt to commit torture." But, say the critics of criminal prosecution, torture is too vague a word for a prosecution. Not so. Judges and juries routinely define much vaguer terms - what does "reasonable doubt of guilt" or "reasonable doubt of guilt with a degree of moral certainty." What does cruel and inhuman treatment mean? They are always past precedents to help us define these terms. Juries determine competency in cases interpreting wills and estates, and sanity in criminal cases, with the help of experts, whom they often barely understand. It is wrong to say that lower level officials, or lower level military personnel can get off by claiming they followed higher orders. They did what fellow soldiers did - they followed the morality culture created by their environment and superiors. That's not a defense. When police officers in Los Angeles, Jackson, or New York beat prisoners, or deny them rights, most know they are violating the laws -- they do it nonetheless. And they can be and often are prosecuted. At times CIA personnel and people within the White House knew with certainty they were acting illegally. When the CIA destroyed at least 92 interrogation tapes to cover up what was done to the detainees, they violated a specific court order that prohibited that destruction. I don't have a religious faith in the majesty of the law. It is just the far best alternative. Is the criminal prosecutors and the process itself often flawed? Of course. At times, are the guilty declared innocent and the innocent declared guilty? Of course. Do conviction make it far less likely that torture will continue? Probably so. Will a string of successful prosecutions ensure that we will never have Americans participate in torture or illegal surveillance? Probably not. Does it make torture and illegal surveillance less likely? Yes. At the end of the day, I would rather have American jurors, bound by the Constitution and the law, make the decision rather than politicians or unelected blue ribbon commission members. I would rather have the judges, bound by precedent and law, determine what is, and is not legal. President Obama has said this is not the time to look back but to look forward. There was a claim that the need for bipartisanship argued against prosecution. But the illusion of bipartisanship, if it ever truly existed, has been broken. President Obama and the Congress should now name a Special Prosecutor.

### Deference

#### Courts solve deference link

Coughenour 08 (John C. , The Right Place to Try Terrorism Cases, July 27, 2008, http://articles.washingtonpost.com/2008-07-27/opinions/36772256\_1\_terrorism-trials-district-court-federal-courts)

I have spent 27 years on the federal bench. In particular, my experience with the trial of Ahmed Ressam, the "millennium bomber," leads me to worry about Attorney General Michael Mukasey's comments last week, urging Congress to pass legislation outlining judicial procedures for reviewing Guantanamo detainees' habeas petitions. As constituted, U.S. courts are not only an adequate venue for trying terrorism suspects but are also a tremendous asset in combating terrorism. Congress risks a grave error in creating a parallel system of terrorism courts unmoored from the constitutional values that have served our country so well for so long. I have great sympathy for those charged with protecting our national security. That is an awesome responsibility. But this is not a choice between the existential threat of terrorism and the abstractions of a 200-year-old document. The choice is better framed as: Do we want our courts to be viewed as another tool in the "war on terrorism," or do we want them to stand as a bulwark against the corrupt ideology upon which terrorism feeds? Detractors of the current system argue that the federal courts are ill-equipped for the unique challenges that terrorism trials pose. Such objections often begin with a false premise: that the threat of terrorism is too great to risk an "unsuccessful" prosecution by adhering to procedural and evidentiary rules that could constrain prosecutors' abilities. This assumes that convictions are the yardstick by which success is measured. Courts guarantee an independent process, not an outcome. Any tribunal purporting to do otherwise is not a court. Critics raise more-legitimate concerns about whether judges have sufficient expertise over the subject matter of terrorism trials and whether the courts can adequately safeguard classified information. The truth is that judges are generalists. Just as they decide cases as varied as employment discrimination and bank robbery, they are capable of negotiating the complexities of terrorism trials. Last month in Boumediene v. Bush, the Supreme Court confirmed its confidence in the capability of federal courts. The justices explicitly rejected an attempt to carve away an area of federal court jurisdiction in service of the war against terrorism, saying: "We recognize, however, that the Government has a legitimate interest in protecting sources and methods of intelligence gathering; and we expect that the District Court will use its discretion to accommodate this interest to the greatest extent possible. . . . These and the other remaining questions are within the expertise and competence of the District Court to address in the first instance." As for protecting classified information, courts are guided by the Classified Information Procedures Act, which played a prominent role during the trial of Ressam in my courtroom in 2001. I found the act's extensive protections to be more than adequate, but I also think that any shortcoming in the law can and should be addressed by further revision rather than by undermining the judiciary.

## 1AR

### T – Restrictions

### Transparency CP

#### You are the definition of a blue-ribbon commission

TheFreeDictionary.com http://www.thefreedictionary.com/blue+ribbon+commission

blue ribbon commission - an independent and exclusive commission of nonpartisan statesmen and experts formed to investigate some important governmental issue

### Politics

#### Obama doesn’t get the blame for Court actions

Sanger-Katz 12 (Margot, healthcare correspondent for the National Journal, Poll: No Blame if Court Nixes Health Care Law, June 5, http://www.nationaljournal.com/daily/poll-no-blame-if-court-nixes-health-care-law-20120605)

Even though President Obama fought for passage of the landmark 2010 health care law, very small minorities say their attitudes about him would change one way or the other should the Supreme Court strike down the law that is so often referred to as “Obamacare.” Two-thirds of those surveyed in a new public-opinion poll said that their respect for Obama would be unchanged if the Supreme Court struck down his signature legislative achievement. Fourteen percent said they would respect Obama more under such a scenario, while 15 percent said they would respect him less. That trend was consistent across the political spectrum—similar proportions of Republicans, Democrats, and independents said they would be unmoved, despite the pundits’ speculation that a Court decision declaring the Affordable Care Act unconstitutional in part or in its entirety might alter public opinion toward the president. The nonplussed attitude also held across nearly all age, income, regional, and racial categories, with at least 60 percent of each surveyed group saying that the ruling would have no impact on their view of the president.