## 1AC

### New Plan

**The United States Federal Government should grant Article III courts exclusive jurisdiction over individuals detained by the United States under its detention policy as described in the 2001 Authorization for Use of Military Force.**

## 2AC

### T

#### We meet --- the plan establishes a statute for the review process, that’s T

Julian Davis Mortenson 11, Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

“Resolved” doesn’t lock the aff into “certainty”:

Merriam Webster ‘9 (http://www.merriam-webster.com/dictionary/resolved)

# Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): resolved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

### Case

#### Current detention policy locks in drones

Jay Lefkowitz 13, senior lawyer and former domestic policy advisor to President George W. Bush and John O'Quinn, former DOJ official in the Bush administration, Financial Times, "Drones are no substitute for detention", March 4, www.ft.com/cms/s/0/dae6552c-84c2-11e2-891d-00144feabdc0.html#axzz2dZnIVyqb

Memo to all those critics of Guantánamo Bay: beware what you wish for. The nomination of John Brennan to head the CIA was put on hold, in no small part because of the growing debate over the use of drone strikes to kill suspected high-value al-Qaeda operatives and other alleged terrorists. President Barack Obama’s administration defends these strikes as “legal”, “ethical”, “wise” and even “humane”. Opponents characterise them as an aggrandisement of executive power in which the president becomes judge, jury and executioner. Sound familiar? It should – because it parallels the debate over the policy of detaining terrorist suspects at Guantánamo that punctuated most of George W. Bush’s time in office.¶ In the past four years, there has been a dramatic shift from detention to drone strikes as the tool of choice for removing al-Qaeda operatives from the field of battle. They have reportedly been used more than 300 times in Pakistan alone by the Obama administration, at least six times more than under Mr Bush. They inevitably come with collateral damage. Meanwhile, not one detainee has been transferred to Guantánamo, and the US has largely outsourced the running of the detention facility at Bagram air base to the Afghan government. Rather than capture enemies and collect valuable information, this administration prefers to pick them off. In short, every successful drone strike is another wasted intelligence-gathering opportunity.¶ Lost amid recent hysteria over the drone programme is the question of why – when detention produces little collateral damage – there appears to be little appetite for capturing and questioning suspects. The answer: it poses hard choices for an administration fearful of the criticism directed at its predecessors – one that in effect abandoned its efforts to close Guantánamo, and came round largely to defending Bush-era policies regarding detention, but only very reluctantly.¶ Detention requires the government to decide: when is a detainee no longer a threat? Should they be tried, and where? When, where and how can they can be repatriated? What intelligence can be shared with a court or opposing counsel? And, one of the hardest questions of all: what if you release a detainee and they take up arms again?¶ On top of that, it raises questions about intelligence-gathering, a primary mission at Guantánamo. Indeed, it has been widely reported that intelligence from detainees helped lead the US to Osama bin Laden. But how is it to be gathered? What techniques are permissible? Moreover, accusations of torture are easily made – it is literally part of the al-Qaeda play book to do so – but hard to debunk without compromising intelligence.¶ By contrast, drone strikes are easy. With a single key stroke, a suspected enemy is eliminated once and for all, with no fuss, no judicial second-guessing and no legions of lawyers poised to challenge detention. Indeed, one of the unintended consequences of the criticism of Guantánamo is to make drone strikes more attractive than detention for removing al-Qaeda operatives from the field of battle.¶ Yet, even as potential intelligence assets are bombed out of existence, the information trail from detainees captured 10 years ago grows cold. At the same time, al-Qaeda evolves and expands. What could we have learnt from even a handful of the high-value operatives killed in drone strikes?¶ We do not dispute that use of drones against al-Qaeda is a legitimate part of the president’s powers as commander-in-chief, and we have doubts about some proposals that purport to circumscribe that authority. But it is clear this administration is using them as a substitute for capture, detention and intelligence-gathering. The current debate highlights the need for Congress and the administration to refocus their efforts on developing a sensible, sustainable policy for detention of foreign enemy combatants – in which enemies are safely held far from US soil, intelligence is actively gathered and justice promptly administered through military courts – instead of taking the easy way out.

#### Obama won’t use drones if he’s no longer forced too---sustainable detention and allies fix this

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

### CP

#### Obama literally tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Congress key to democratic legitimacy and preventing future vacillation in executive policy

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, Stuart Taylor, an American journalist, graduated from Princeton University and Harvard Law School, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 329-330

While President Obama’s policy makes a clean break with the Bush record, it actually does not effectively answer the question of how best to handle this group. Indeed, the new policy seems likely to fail on both a substantive and a procedural level. First, it goes too far by banning all coercion all the time. Second, the rule is unstable because it can so easily be changed at the whim of the president, whether Obama or, perhaps, a successor more like Bush. An administration down the road that wanted to resume waterboarding could rescind the current order and adopt legal positions like those of the prior administration. Unless the Obama administration and Congress hammer out rules that provide interrogators with clear guidance about what is and is not allowed and write those rules into statute, the United States risks vacillating under the vagaries of current law between overly permissive and overly restrictive guidance. The general goals of new legislation should be threefold: —To make it a crime beyond cavil to use interrogation methods considered by reasonable people to be torture. The torture statute already does that to some degree, but the fact that it arguably permitted techniques as severe as waterboarding suggests that it may require some tightening. The key here is that the statute should cover all techniques the use of which ought to prompt criminal prosecution. —To subject CIA interrogators in almost all cases to rules that, without relaxing current law’s ban on cruel, inhuman, and degrading treatment, permit relatively mild forms of coercion that are properly off limits to military interrogators. —To allow the president, subject to strict safeguards, to authorize use of harsher methods short of torture (as defined in the revised criminal statute) in true emergencies or on extraordinarily high-value captives such as KSM. Only Congress can provide the democratic legitimacy and the fine-tuning of criminal laws that can deliver such a regime. Only Congress can, for example, pass a new law making it clear that waterboarding— or any other technique of comparable severity— will henceforth be a federal crime. Only Congress can offer clear assurances to operatives in the field that there exists a safe harbor against prosecution for conduct ordered by higher-ups in a crisis in the genuine belief that an attack may be around the corner. Only Congress, in other words, can create a regime that plausibly turns away from the past without giving up what the United States will need in the future.

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Seen as ineffective

Jessie Blackbourn 12, Postdoctoral Research Fellow on the Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project in the Gilbert + Tobin Centre of Public Law, PhD from Queen’s University Belfast, Dec 30 2012, “Evaluating the Independent Reviewer of Terrorism Legislation,” Parliamentary Affairs, accessed through Oxford Journals

Lord Carlile of Berriew Q.C. was the UK government's first independent reviewer of terrorism legislation (Blunkett, 2001). He held the position until February 2011. In many respects his tenure was defined by the first post-9/11 decade, which included a shift in the government's counter-terrorism focus towards the enactment of a variety of new anti-terrorism and immigration laws. Lord Carlile was initially tasked only with carrying out the annual review of the Terrorism Act 2000 (Blunkett, 2001). This role was expanded to include the review of new laws and matters arising out of the use of those laws (Anderson, 2012). The office of the independent reviewer of terrorism legislation therefore played an important part in the oversight of the UK's anti-terrorism legislation. However, whilst there is a growing body of research on the process of juridification in the field of anti-terrorism legislation (Tomkins, 2007; Ewing and Tham, 2008; Silverstein, 2009; Davis, 2010) and on the role of parliamentary (Whitaker, 2006; Shephard, 2009; Tomkins, 2011), committee (Shephard, 2009; Tolley, 2009) and judicial (Hanlon, 2007; Kavanagh, 2009) scrutiny of those laws, there has been only very limited academic critique of the independent reviewer (Lynch, 2012, pp. 72–76). As one of the key mechanisms for reviewing the UK's extensive regime of anti-terrorism laws, this is surprising. It is also concerning. There are two reasons for this: first, Lord Carlile has been criticised for offering only weak and ineffective scrutiny of the UK's anti-terrorism laws (Bunglawala, 2007; Lynch and McGarrity, 2010, p. 107); secondly, the office of the independent reviewer has been considered a model for other jurisdictions (Roach, 2007; Forcese, 2008). This article therefore makes a modest contribution to starting a debate on the impact of the office of the independent reviewer through an evaluation of Lord Carlile's tenure.

#### UK proves the reviewer gets ignored

Jessie Blackbourn 12, Postdoctoral Research Fellow on the Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project in the Gilbert + Tobin Centre of Public Law, PhD from Queen’s University Belfast, Dec 30 2012, “Evaluating the Independent Reviewer of Terrorism Legislation,” Parliamentary Affairs, accessed through Oxford Journals

The above analysis reveals some evidence to suggest that the government favoured the opinions of the independent reviewer over those of the JCHR and the courts. Lord Carlile made eight recommendations in total, seven of which were accepted by the government and only one rejected. In contrast, the government accepted only two of the JCHR's recommendations and rejected six. The courts fared a little more evenly, with two recommendations accepted and two rejected. These results offer only a simplistic numerical reading of the analysis. If the types of recommendations made by the independent reviewer, the JCHR and the courts are analysed, then a slightly different picture emerges. Lord Carlile typically made minor recommendations on narrow, practical details, or offered suggestions in line with existing government policy. The JCHR tended to recommend substantial changes to the law, including repealing the lengthy pre-charge detention provisions. Recommendations can then be broken down into two categories: those that proposed significant changes to the pre-charge detention regime;2 and those that recommended the status quo.3¶ Of Lord Carlile's eight recommendations, only one proposed change and seven advised maintaining the status quo. Those seven which recommended the status quo were the ones accepted by the government. In contrast, the JCHR made two recommendations advocating the status quo; both were accepted by the government. In contrast, the government rejected the JCHR's six recommendations that proposed changes to the regime. The government responded favourably to the two court recommendations that favoured the status quo, and unfavourably to the two that proposed change.¶ It appears that it is not necessarily the person reviewing the laws that is the most significant driver in the government's decision to accept a recommendation, but the content of that recommendation. If this is the case then it has serious ramifications for the UK's system of reviewing its anti-terrorism laws. If it is only recommendations that propose doing nothing, or very little, that receive positive responses from the government, then the actual positive impact of engaging an office of the independent reviewer of terrorism legislation becomes negligible. If the government is able to ignore proposals that recommend change, then there is only a limited utility to the critique offered by the JCHR and the courts. The end result is an independent reviewer who is listened to by the government when recommendations endorse government policy, but is ignored when change is promoted, and a parliamentary committee and court system that is ignored almost completely when it proposes substantial change to the laws. This cannot be considered a form of effective scrutiny and oversight.¶ 3. Conclusion¶ This article has assessed the review of the UK's pre-charge detention regime by Lord Carlile (the former independent reviewer of terrorism legislation), the JCHR and the courts. It has found that in general, the independent reviewer's recommendations were favoured by the government over those of the JCHR and the courts. However, it has also questioned the nature of those recommendations. The article has suggested that it has been the reports that have proposed recommendations in line with existing government counter-terrorism policy that have been accepted by the government, irrespective of who has suggested them. By direct contrast, recommendations that proposed significant (or even minor) change to the laws have been rejected.¶ In this case study of the review of the UK's pre-charge detention regime, it is clear that the government has not been particularly influenced by external reviewing bodies. There are other factors that play an important role in the government's decision to amend the laws, including legislative sunset clauses, manifesto pledges and changes in government. In fact, the most recent significant change to the UK's anti-terror pre-charge detention regime—its reduction to 14 days following the change in government in 2010—was brought about not because it was recommended by a reviewer, but because it was part of the new coalition government's counter-terrorism policy.¶ This particular case study of pre-charge detention offers a peculiarly pessimistic view of the influence of independent review of anti-terrorism legislation on government policy. However, it is just one case study. Further analysis of other aspects of the UK's anti-terrorism regime might reveal a different picture. For example, an analysis of the court's judgements in control order proceedings would reveal a much greater involvement in influencing change in the government's anti-terrorism policy in this particular area. More work therefore needs to be done to see whether this pessimism is endemic, or if the lack of influence of external review on the UK's pre-charge detention regime is an anomaly.

### K

#### Critical legal philosophy is non-empirical, cherry-picked garbage

John Stick 86, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

This Article examines the relationship between the critical legal nihilists and the philosophers they rely upon for support. The nihilists' use of philosophy is important, because their critique is at bottom conceptual and not empirical. Legal nihilists do not study the work of large numbers of practicing attorneys or judges to discover the extent of agreement about whether particular legal arguments are valid. Instead, they parse the words of theorists and appellate judges to discover contradictions and opposed values. This selective parsing of the language of a few theorists and judges (neglecting the hundreds of thousands of practicing attorneys) is itself far from adequate empirical technique. More important, the nihilists' leap from the general inconsistencies they discover to a claim that law does not follow standards of rationality is unconvincing without philosophical argument. Nihilists rarely attempt to supply that argument themselves; if they feel any need of further discussion they usually rely upon theorists outside the discipline of law.9 ¶ This Article demonstrates that the nihilists misuse much of the philosophy they attempt to appropriate. In order to focus the discussion, this Article concentrates on one comprehensive statement of nihilism and the major intellectual influences upon it. The best and most complete exposition of the nihilist critique of law was written by Joseph Singer in a recent article in the Yale Law Journal.10 His article is the most philosophically sophisticated and judicious work to date. Singer states that he relies heavily on the analysis of the philosophers Richard Bernstein, Michael Sandel, and Roberto Unger,11 but he acknowledges that he owes his greatest intellectual debt to Richard Rorty, 12 a scholar who identifies his own position with pragmatism. 13 I focus on the relationship between Singer and Rorty not only because Singer claims that Rorty has had the greatest influence on his thought, but also because Rorty is the closest in spirit to Singer.14 For example, Bernstein,15 Sandel,16 and Unger17 all allow rationality and shared values larger roles in political and moral argument than does Rorty. If Singer is too much of an irrationalist for Rorty, then a fortiori Singer is too much of an irrationalist for the others. 18

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

#### Critical legal studies’ wholesale rejection of politics fails---the system’s inevitable, we must use pragmatic policy change to reform it

John Stick 86, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

Singer suggests that we can throw away the way we talk about law and start again. We should do so, he claims, because the way judges usually describe the law in opinions distorts our vision and frustrates our purposes. If we begin to speak simply, we can end hunger, assuage loneliness, and deconstruct illegitimate hierarchies.¶ Singer wants to throw away the tradition not only for the intellec- tual reasons he gives, but also because he wants to replace the mod- erately liberal political theory underlying our legal tradition with a more radical political theory. Rather than argue that a more radical political theory flows from the best parts of the liberal tradition, Singer suggests that his radical theory is totally incompatible with liberalism and can be embraced only if liberalism is rejected root and branch. In advancing this proposal, Singer's discussion is typical of the nihilist strand of critical legal studies and the style of arguments it gives. Although my political values are similar to Singer's, I think it is a mistake to deny liberalism totally rather than to attempt to refine it, and I think the reasons that Singer's stance is a mistake are evident in his misuse of pragmatism. Pragmatism never suggested that it was so easy to begin again, or that it was necessary to throw out so much to avoid error.¶ Rorty cautions against the very step Singer makes. In the intro- duction to his book of essays,268 Rorty refers approvingly to an anal- ysis of language that sees language not as "a medium in which we try to form pictures of reality"269 but instead as a tool.270 Language as a medium conveys truth if the picture it conveys is the same as the real thing that is pictured: language as a tool conveys truth if it works. But Rorty warns that the view of language as a tool should not be taken to suggest that we can escape its influence, examine it separately from anything else, and ask if it is adequate to achieve our purposes. He writes:¶ But there is no way to think about either the world or our purposes except by using our language. One can use language to criticize and enlarge itself, as one can exercise one's body to develop and strengthen and enlarge it, but one cannot see language-as-a-whole in relation to something else to which it applies, or for which it is a means to an end.271¶ Singer argues that traditional legal discourse distorts our vision and frustrates our purposes and therefore should be totally rejected. This argument assumes the existence of independent measures both of the truth of legal and moral argument and of our real moral purposes.272 It assumes we can start again and see these things fresh. But the whole point of pragmatism and Rorty's argument is that we cannot start over, and we cannot see things fresh. We cannot escape our language, or our standards of rational thought, to judge them.¶ What we can do is judge one discourse by the standards of another, or in other words, use one part of our language to evaluate another part. In this way, Singer could try to persuade us to accept a different set of moral purposes and rational standards for law. He might have a socialist or anarchist vision of law, and he could try to convince us that his vision is a more attractive way of life judged by some of our own old values. If he wanted to succeed, he would try to show how his vision was a culmination of parts of our own tradition and avoided acknowledged problems in our own theories.273¶ But in his attempt to persuade, Singer either would be giving political arguments that his system was better, or would be giving rational arguments that his theory provided a better rational expla- nation of our experience of legal practice on our own terms. What he would not be doing is merely claiming that our standards of rationality were inherently wrong.¶ The nihilists consistently oversimplify and misrepresent the liberal tradition in legal theory. In particular, liberal theory is open to passionate moral and political discussion. The difference between the liberals and critical legal theorists is not fundamentally methodological. Nor is it that critical legal studies understands pragmatism, hermeneutics, deconstructionism, or other fancy intellectual tools while the liberals do not.274 The main difference is, after all, political. If liberal theory takes current institutional structures too much for granted, the contribution critical legal studies can make is to point out the dirty facts the liberal ignores or to dream new structures that even the liberals can see are more just. Methodological skirmishing is a diversion critical legal studies cannot afford, especially when it is wrong on the methodological issue.¶ The difference between Singer and the liberals is not that Singer is willing to open legal discourse to political discussion while the liberals are not. The difference is not even that Singer, or other critical legal theorists, wish to open discussion about the standards of legal rationality to political debate,275 because many liberals openly embrace such a political discussion.276 The difference between Singer and the liberals is that Singer does not think that political discussion, whether framed in moral or legal terms, leads anywhere,277 and most of the liberals do.278 Singer thinks we just choose our moral and political stands, and that rationality applied to morals can be only rationalization after the fact. Singer states that we should not expect or strive for agreement as a result of rational discussion.279 For the liberals, however, rational discussion is the most important noncoercive way of achieving agreement.¶ Singer and other critical legal scholars suggest that liberal legal theory's attachment to rationality is philosophically archaic and na- ive.280 They claim that developments in philosophy over the last few hundred years illustrate the death of reason.28' Such a claim appears plausible only if recent intellectual history and liberal legal theory are greatly distorted by ignoring the dominant tradition in Anglo-Ameri- can philosophy, as well as much of continental philosophy. A strong belief in the death of reason is present in some continental European thought, but strong rationalist traditions remain.282 Those American theorists whose positions are closest to the nihilists, such as Paul Feyerabend,283 are the mavericks of American philosophy. Many of the authors cited for the contemporary decline of rationalism, such as Richard Rorty and Thomas Kuhn, deny one form of rationalism only to preserve another.284 Critical legal scholars who attempt to support irrationalism by claiming the support of the bulk of contemporary philosophy fail to make their case. ¶ The other side of the irrationalists' misunderstanding is their simplified version of liberal legal rationality. As I have tried to show, some liberal legal and political theorists have a sophisticated account of rationality similar to that of the American and European theorists the irrationalists claim to follow. Singer's account of moral reasoning, which involves intuitive choice unconstrained by community standards concerning moral language, is not nearly as similar to the European hermeneutic tradition as are the accounts of moral language and rationality of such liberal theorists as John Rawls285 and Ronald Dworkin.286 Singer's view that we cannot expect to achieve agreement through rational conversation is more hermetic than hermeneutic- more reminiscent of life in a cloister than in a community. ¶ If I am right, critical legal studies should be spending its time arguing with traditional scholarship about politics, not about meth- odological issues.287 Mechanical jurisprudence has already been defeated. The liberals, if not the social choice theorists and law and economics scholars, have already admitted discussion of politics into traditional legal discourse. Recalcitrant theorists of neutrality and geometric legal reasoning are being challenged more effectively by liberals or critical legal rationalists than by critical legal nihilists.288 The standard critical methodological arguments against the more sophisticated liberals are consistently overstated and only demolish straw men. 289 ¶ The broad issue that truly divides critical legal scholars and liberals is politics. Most critical legal scholars believe that our society can become just only if transformed according to the insights of socialism, syndicalism, or radical feminism.290 Liberals disagree. Critical legal scholarship should elucidate ideals and point out how our present society falls short. The model of critical legal scholarship should be feminist scholarship or Richard Abel's series of articles on a socialist approach to risk and tort.29' The model should not be various examples of trashing.292 ¶ Critical legal studies should also develop a theory of social change. The nihilists defend trashing as a means of social change: they identify ideology as the main block to social change and propose trashing as the scholar's most effective weapon against entrenched ideology.293 What we need to do, they claim, is to jump entirely out of the old ideology into something new. The pragmatic account of rationality I have presented leads to a very different prescription for attempting large social change. The rules of rationality in a pragmatist account, although less definite and explicit than the rules of rationality presupposed by neoclassical jurisprudence and nihilism alike, are harder to do without. Like lexical rules of meaning or grammar, we need not have rules of rationality in mind to use them. Yet we cannot just set them aside and start over. We can consciously set aside particular rules only because we have many other common assumptions about meaning, rationality, and the way the world is. The result is that we can to some extent change our traditions, our standards, and our values. Indeed, they change constantly even without our reflective choice. But the changes are partial, much of the old tradition remains intact, and the new material is usually part of the old tradition transformed. ¶ My conclusion from these commonplace observations is that critical legal studies must claim to be the true heir of the liberal tradition, not its pallbearer. If critical legal studies cannot make the convincing argument, under (at least some of) the liberals' own standards, that critical legal studies is the fairest flower of the liberal tradition, it will not succeed. If critical legal studies listens to the nihilists, it will never even attempt the argument.

### Flex

#### War on terror fails- terrorists threat unaffected

Zoha Waseem 8/26/13, A freelance writer with a post-graduate degree from King's College London in MA Terrorism and Security, 8/26/13, "Is Alqeada Dead or Thriving," <http://blogs.thenews.com.pk/blogs/2013/08/is-alqeada-dead-or-thriving/>

Is Al Qaeda weakened already?¶ Obama is but one of many US officials who have argued with relentless zeal that al Qaeda has been globally weakened. Their narratives grossly exaggerated the negative impacts of bin Laden’s death on the organization; helped put Obama’s administration back in the White House a second time around; and justified on-going operations in Afghanistan and Iraq that were becoming increasingly unpopular within the American masses. Nothing could be more misleading if we consider the evolution of al Qaeda over the years.¶ ¶ On 11 August 2013, al Qaeda observed its silver jubilee. In its 25 years, al Qaeda has transformed from a hierarchically structured combatant group to a flexible, decentralised global ideology. Despite bin Laden’s death, it has now expanded exactly the way its founder had dreamed, a worldwide Islamic ‘revolution’ for which Zawahiri provides theological rhetoric and oversight.¶ ¶ AlQaeda’s new structure:¶ ¶ Its structure was dissolved ten years ago when US diverted focus from Kabul to Baghdad, allowing al Qaeda fighters to regroup, reorganize and rid themselves of their dependence on bin Laden. It was the most sensible and logical enhancement of networking, in line with globally evolving war fronts and the technological advancements introduced by the Internet. It was to be the most flabbergasting transformation of old terrorism to new terrorism.¶ ¶ And still, the US and President Obama appear to have learned so little about tackling ideological terrorism. Al Qaeda’s so-called transfer of terror to Yemen is not a new development. It also cannot imply that central al Qaeda is on the run. It simply provides the organization and the US a new battleground in the War on Terror, where the US has decided to implement another faulty counter-terrorism strategy: employing its beloved drones.¶ ¶ From Pakistan to Yemen:¶ ¶ Four years of bombings have killed over 600 people in Yemen, while al Qaeda in the Arabian Peninsula (AQAP), one of the organization’s several international affiliates, remains undeterred. This month’s unleashing of death by drones came shortly after the closure of 19 embassies in response to Zawahiri’s communication with Nasser al Wahayshi (AQAP’s head, now al Qaeda’s general manager). The conference call included eleven other ‘jihadis’, some from Pakistan. The interceptions paint an intimidating picture.¶ ¶ Firstly, Zawahiri’s continued presence in Pakistan implies no geographical shift in al Qaeda’s core to Yemen; it merely demonstrates the expansion of its core. Shifting this core from areas surrounding the Durand Line in current circumstances would be insensible. Should Afghanistan erupt into a civil war post-withdrawal, the region could continue providing the network the ideal environment and landscape necessary for survival and maneuver.

#### War on Terror structurally fails---empirics prove military force cannot defeat AQ

Dan Kovalik 8, USW Counsel, Workers Uniting Colombia Committee, "Rand Corp -- War On Terrorism Is A Failure", July 31, www.huffingtonpost.com/dan-kovalik/rand-corp----war-on-terro\_b\_116107.html

The Rand Corporation, a conservative think-tank originally started by the U.S. Air Force, has produced a new report entitled, "How Terrorist Groups End - Lessons for Countering al Qaida." This study is important, for it reaches conclusions which may be surprising to the Bush Administration and to both presidential candidates. To wit, the study concludes that the "war on terrorism" has been a failure, and that the efforts against terrorism should not be characterized as a "war" at all. Rather, Rand suggests that the U.S. efforts at battling terrorism be considered, "counterterrorism" instead.¶ And, why is this so? Because, Rand concludes, after studying 648 terrorist groups between 1968 and 2006, that military operations against such groups are among the least effective means of success, achieving the desired effect in only 7% of the cases. As Rand explains, "[a]gainst most terrorist groups . . . military force is usually too blunt an instrument." Moreover, "[t]he use of substantial U.S. military power against terror groups also runs a significant risk of turning the local population against the government by killing civilians."¶ In terms of this latter observation, there is no better case-in-point right now than Afghanistan - the war that both candidates for President seem to embrace as a "the right war" contrary to all evidence. In Afghanistan, the U.S. military forces should properly be known as, "The Wedding Crashers," with the U.S. successfully bombing its fourth (4th) wedding party just this month, killing 47 civilians. According to the UN, 700 civilians have died in the Afghan conflict just this year. Human Rights Watch reports that 1,633 Afghan civilians were killed in 2007 and 929 in 2006. And, those killed in U.S. bomb attacks are accounting for a greater and greater proportion of the civilian deaths as that war goes on. As the Rand Corporation predicts in such circumstances, this has only led to an increase in popular support for those resisting the U.S. military onslaught. In short, the war is counterproductive.¶ Consequently, as the Rand study reports, the U.S. "war on terrorism" has been a failure in combating al Qaida, and indeed, that "[a]l Qaida's resurgence should trigger a fundamental rethinking of U.S. counterterrorism strategy." In the end, Rand concludes that the U.S. should rely much more on local military forces to police their own countries, and that this "means a light U.S. military footprint or none at all." If the politicians take this study seriously, and they should, they should abandon current plans for an increase in U.S. troop involvement in Afghanistan. Indeed, the U.S. military should be pulled out of Afghanistan altogether, just as it should be pulled out of Iraq.¶ Interestingly, the current study from Rand, a group not considered to be very dovish, mirrors its much earlier study which also declared that the U.S.'s "war on drugs" - that is, the effort to eradicate drugs at the source (e.g., cocaine in Colombia and heroin in Afghanistan) thorugh military operations -- is a failure. Instead, Rand opined, the U.S. would do better to concentrate its resources at home on drug addiction treatment - a measure the Rand Corporation concluded is 20 times more effective than the "war on drugs." Sadly, the U.S. did not pay attention to that study then, and it remains to be seen whether it will pay attention to Rand's current study.¶ Again, (and if you read my posts you will see me quote this passage often) Senator Obama was correct, both as a matter of morality as well as practicality, in calling for an "end [to] the mindset which leads us to war." This is so because war has profoundly failed us. Unfortunately however, the United States, and those running for its highest office, appear unable to escape from this mindset.¶ Instead, they continue to search for military options for problems which have no military solutions. In the process, U.S. soldiers die and thousands upon thousands of civilians are killed abroad. Meanwhile, the stated objective of the U.S., whether it be fighting drugs or fighting terror, is only further undermined. One look no further than Al Qaida itself -- which evolved from the U.S.'s military support for the Afghan mujahideen in pursuit of its "war on communism" -- as proof of this fact.¶ In short, we continue to create and re-create our own enemies through our addiction to war and force. It is indeed high time to "end the mindset which leads us to war." However, we as citizens in this ostensible democracy will have to work hard to push our leaders toward this end, for they appear unwilling and/or unable to even begin the process of moving toward such an objective.

#### Indefinite detention hurts our ability to fight terrorism---bureaucratic confusion and wrecks intel sharing

WB 11 Washington's Blog, "Indefinite Detention Hurts Our National Security and Increases the Risk of Terrorism", December 15, www.washingtonsblog.com/2011/12/indefinite-detention-hurts-our-national-security-and-increases-the-risk-of-terrorism.html

Indefinite Detention Bill Hurts Our Ability to Fight Terrorism¶ Top counter-terrorism officials have said that indefinite detention increases terrorism.¶ A former Admiral and Judge Advocate General says that indefinite detention of Americans hands a big win to the terrorists.¶ And as Huffington Post notes today, indefinite detention is opposed by our own military and intelligence and police:¶ FBI Director Robert Mueller just this morning told the Senate that he fears the proposed law will create confusion over who has authority to investigate terrorism cases.¶ Defense Secretary Leon Panetta said the National Defense Authorization Act will restrain the Executive Branch’s ability to use “all the counterterrorism tools that are now legally available” and “needlessly complicate efforts by frontline law enforcement professionals to collect critical intelligence concerning operations and activities within the United States.”¶ Director of National Intelligence James Clapper has written that it “would introduce unnecessary rigidity at a time when our intelligence, military and law enforcement professionals are working more closely than ever to defend our nation effectively and quickly from terrorist attacks.”¶ Still, ignoring the advice from his most senior federal military and law enforcement professionals, President Obama is expected to sign the 2012 law, according to his senior advisors.¶ The concerns aren’t limited to federal officials. Earlier this week the 20,000-member International Association of Chiefs of Police wrote to Congress expressing concern that the law could “undermine the ability of our law enforcement counterterrorism experts, in particular those involved with Joint Terrorism Task Forces, to conduct effective investigations of suspected terrorists.”¶ A bipartisan group of 26 retired generals and admirals recently wrote that the legislation “both reduces the options available to our Commander-in-Chief to incapacitate terrorists and violates the rule of law” and “would seriously undermine the safety of the American people.”¶ The U.K. and Germany have said they won’t share intelligence or turn over suspected terrorists to the U.S. if they know they’ll be headed to indefinite military custody.¶ So not only will the bill allowing indefinite detention of Americans more or less create an overt police state, but it will also make us more vulnerable to terrorism.

#### Plan’s external oversight prevents executive overreach that radicalizes terrorists---squo hurts intel more

Matthew C Waxman 9, Professor of Law; Faculty Chair, Roger Hertog Program on Law and National Security, Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 59-61

Besides posing risks to liberty, administrative detention can also be counterproductive from the security standpoint. Again, the substantive criteria of detention law may help mitigate the risk. Historically, detention policies— especially those viewed as overbroad by the communities in which they were implemented— have sometimes proven ill-suited to combating terrorism and radicalization of individuals or communities. The British government learned painfully that internment of suspected Northern Ireland terrorists was viewed among some communities as a form of collective punishment that fueled violent nationalism and helped dry up the supply of community informants. 54 And in Iraq and Afghanistan, though the circumstances are exceptional because combat still rages there, detention has played an important role in neutralizing threats to coalition forces, but it has also contributed to anticoalition radicalization, especially when it is perceived as being used indiscriminately.¶ One role that well-crafted definitional criteria can play is in mitigating an executive’s propensity to overuse the power to detain. Observers from both the right and the left worry correctly that in the face of terrorist threats the executive is likely to push detention powers to or even past their outer bounds in order to prevent catastrophe as well as to head off any political backlash for having failed to take sufficient action. 56 Such overbroad use of detention risks further radicalizing and alienating communities from which terrorists are likely to emerge or whose assistance is vital in identifying or penetrating extremist groups. Moreover, several important studies of counterterrorism strategy have emphasized the need to target coercive policies, including military and law enforcement efforts, narrowly precisely to avoid playing into al Qaeda propaganda efforts to aggregate local grievances into a common global movement. 57 These are fundamentally policy, not legal, problems, and they will require sound executive judgment no matter what the legal regime looks like. But once the role of detention is firmly situated in a broader counterterrorism strategy that seeks to balance the many competing policy priorities, a carefully drawn administrative detention statute can help mitigate long-term strategic damage from the propensity to overreach in the short term. ¶ The danger that administrative detention poses to liberty and security points against emphasizing deterrence or information gathering as its primary strategic purpose. Virtually any very dangerous terrorist or supporter of terrorism that the government could hope to deter through detention would be deterred already by the threat of criminal prosecution or military attack or would be sufficiently committed to violent extremism to render the marginal deterrent threat of administrative detention negligible. 58 As for information gathering, an administrative detention law premised on detaining individuals with valuable knowledge regardless of whether they have engaged in nefarious activities sets a precedent that is too easily abused or overused at home or abroad. Information gathering, including through lawful interrogation, will undoubtedly be a strong motive for almost any administrative detention scheme, and an individual’s knowledge of terrorist planning or operations could be a reason not to release the person if he or she has been validly detained on other grounds. 59 But using a person’s suspected knowledge alone as the basis for detention, completely delinking detention from the individual’s voluntary and purposeful actions, cuts even deeper into traditional civil liberties principles and safeguards than most other reasons for administrative detention. 60 A detention law that allows incarceration based on knowledge could also perversely deter individuals with important information from coming forward voluntarily to the government.

No intel sharing now --- indefinite detention causes allies to backlash to intel cooperation and decline extradition treaties --- that’s Hathaway

#### CIPA solves---it’s never failed

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In many terrorism cases, the government seeks to rely on evidence that is probative of the defendant’s guilt but which implicates sensitive national security interests, particularly intelligence sources, means of intelligence gathering, and even the state of our intelligence on other subjects or intelligence priorities. Dealing with classified or sensitive evidence can be one of the most important challenges in terrorism cases. Over the years, however, courts have proved, again and again, that they are up to the task of balancing the defendant’s right to a fair trial, the government’s desire to offer relevant evidence, and the imperative of protecting national security.¶ The Foreign Intelligence Surveillance Act (“FISA”), provides a lawful means for the government to conduct wiretaps and physical searches within the United States in terrorism investigations without satisfying the normal Fourth Amendment requirement of probable cause that a crime was committed. Under FISA, the government must make an ex parte application to a special FISA court, composed of a select group of federal judges, and must satisfy a number of technical requirements before the FISA court can give authority to conduct a FISA wiretap or a FISA search. The FISA procedures are very differ ent from those used in normal criminal investigations.¶ In the years before 9/11, the Department of Justice (“DOJ”) imposed an internal “wall” that made it difficult for FISA evidence to be used in court. Under the “wall” procedures, the government erected barriers between intelligence gathering, on one hand, and criminal prosecution on the other. As a result, it was difficult for the government to use FISA evidence in court, since it was deemed to be the province of the intelligence community. FISA itself, however, did not require the “wall”; to the contrary, from its inception the statute envisioned that FISA evidence could be used in court. After 9/11, Congress amended FISA to make it clear that the “wall” should be dismantled and FISA evidence could be shared with criminal investigators and prosecutors. Courts have found the amendments constitutional, and in the years since 9/11, FISA evidence has been used without incident in many criminal terrorism cases. ¶ A separate statute, the Classified Information Procedures Act (“CIPA”), outlines a comprehensive process for dealing with instances in which either the defendant or the government seeks to use evidence that is classified. Before CIPA was adopted in 1980, some criminal defendants, mainly in espionage cases, sought to engage in “graymail,” the practice of threatening to disclose classified information in open court in an effort to force the government to dismiss the charges. CIPA was intended to eliminate this tactic and, more broadly, to establish regularized procedures and heavy involvement by the presiding judge, so that the defendant’s right to a fair trial would be protected while national security would not be jeopardized by the release of classified information.¶ Under CIPA’s detailed procedures, classified evidence need not be disclosed to the defense in discovery unless the court finds, based on an in camera review, that it is relevant under traditional evidentiary standards. If the government still objects to the disclosure after a finding that the information is relevant, then the court enters a non-disclosure order and determines an appropriate sanction for the government’s failure to disclose. Absent a non-disclosure order, the judge enters a protective order and the information is disclosed only to defense counsel, who must obtain a security clearance, but not to the defendant. Alternatively, the judge may find that the information can be provided directly to the defendant in a sanitized form—e.g., through a summary or redacted documents.¶ As trial draws near, if either the government or the defense seeks to use classified information at trial, a separate proceeding occurs, in private, in which the judge and the lawyers for both sides (but not the defendant himself) attempt to craft substitutions for the classified evidence— using pseudonyms, paraphrasing, and the like—which must afford the defendant substantially the same ability to make his defense as if the original evidence were used. If it proves impossible to craft an adequate substitution, then the court must consider an appropriate sanction against the government, ranging from the exclusion of evidence to findings against the government on particular issues to dismissal of the indictment in extreme cases. Under CIPA, all of these proceedings are conducted in secure facilities within the courthouse, and sensitive documents are carefully safeguarded pursuant to written security procedures.¶ CIPA repeatedly has been upheld as constitutional, and it has been used successfully in scores of terrorism prosecutions. We are aware of two reported incidents in which sensitive information was supposedly disclosed in terrorism cases, but we have not been able to confirm one of those incidents, and in the other it is our understanding that the government did not try to invoke non-disclosure protections. Based on our review of the case law, we are not aware of a single terrorism case in which CIPA procedures have failed and a serious security breach has occurred. This is not to say that CIPA is perfect, and in this White Paper we note some potentially problematic situations—e.g., where a defendant seeks to proceed pro se such as Zacarias Moussaoui—as well as some areas for possible improvement in the statute.

#### Long sentences incentivize cooperation from suspects---causes effective intelligence gathering

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

In all federal criminal cases, defendants who plead guilty prior to trial may be granted limited leniency under the Guidelines, and the harsh penalties meted out by federal courts following conviction on terrorism-related charges provide additional incentive for defendants to choose to plead guilty. Defendants who plead guilty in advance of trial are granted a two to three level reduction in their offense level guidelines in recognition of their acceptance of responsibility. See U.S.S.G. §3E1.1. In addition, the Guidelines provide an even greater incentive for defendants who agree to forego trial and cooperate with the government by providing information and intelligence to law enforcement. Under the Guidelines, the court may, on the motion of the government, depart from the Guidelines range for a defendant who has “provided substantial assistance in the investigation of another person who has committed an offense.” U.S.S.G. §5K1.1. 323 Moreover, a cooperating defendant may also avoid mandatory minimum sentences imposed by statute. See id. ; 18 U.S.C. § 3553(e). The prospect of lengthy sentences of incarceration often motivates defendants with valuable information about criminal conduct to cooperate with the government in hopes of leniency.¶ In practice, the government wields considerable control over the cooperation process. A defendant commences the cooperation process by meeting with the government in private—accompanied, of course, by his counsel. In this session, known as a “proffer,” the defendant typically must confess first to his own criminal conduct and provide the government with information about the criminal conduct of others. The government typically takes the information provided by the defendant in these proffer sessions and attempts through its own investigation to verify the defendant’s truthfulness and the utility of the information provided. ¶ Usually after multiple proffers, if the government is satisfied with the defendant’s truthfulness regarding his own criminal conduct and the conduct of others, the government enters into a written cooperation agreement with the defendant. The government requires the defendant to forego his right to trial and plead guilty to many or all of the crimes that he admitted during his proffer sessions. 324 The defendant is required as a part of this cooperation agreement to continue to cooperate with the government, truthfully respond to its inquiries and, if asked, testify truthfully in court against other defendants. In exchange, the government agrees to make a motion under Guidelines § 5K1.1 to inform the court of the defendant’s cooperation at sentencing, a motion that permits the court under the Guidelines to reduce the defendant’s sentence. 325 This letter is commonly known in criminal justice circles as a “5K1 Letter,” after the Guidelines section upon which it is based. 326 Armed with the 5K1 letter, the judge has absolute discretion to grant the defendant a sentence reduction if the judge deems it appropriate after measuring the defendant’s cooperation, irrespective of the Guidelines range normally applicable to the defendant’s criminal culpability.¶ The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence. In many instances, it is only through the narrative of a cooperating defendant—a true insider speaking with first-hand knowledge—that law enforcement can fully decode criminal conspiracies and effectively prosecute other wrongdoers. Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases. In a webpage devoted to “Waging the War on Terror,” the Department of Justice touts that it is “gathering information by leveraging criminal charges and long prison sentences.” Website, U.S. Dept’t of Justice, Waging the War on Terror. 327 According to the site, individuals pleading guilty in exchange for shorter sentences “have provided critical intelligence about al-Qaida and other terrorist groups, safehouses, training camps, recruitment, and tactics in the United States, and the operations of those terrorists who mean to do Americans harm.” Id.¶ Although opinions differ, some experienced lawyers believe that defendants in terrorism cases are no less likely to cooperate than other defendants charged with serious offenses. One widely publicized example is Yahya Goba, one of six defendants indicted in the Lackawanna Six case. Goba pled guilty in March 2003 to providing material support to al Qaeda, in violation of 18 U.S. C. § 2339B, in connection with his attendance at an al Qaeda training camp in Afghanistan. See Plea Agreement, United States v. Goba , No. 02-00214 (W.D.N.Y. Mar. 25, 2003) (Dkt . No. 113); Change of Plea, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 116); Press Release, U.S. Dep’t of Justice, Defendant Yahya Goba Pleads Guilty to Providing Material Support to Al Qaeda (March 25, 2003). 328 As part of the plea agreement, Goba pled to conduct, and agreed to a Guidelines calculation, that would have resulted in a sentence under the Guidelines of 188 to 235 months. See Plea Agreement at 6-8, Goba (W.D.N.Y. Mar. 25, 2003) (Dkt. No. 113). After pleading guilty to a violation of 18 U.S.C. § 2339B , Goba was sentenced to 120 months in prison. See id. at 1-2; Judgment as to Yahya Goba, Goba (W.D.N.Y. Dec. 22, 2003) (Dkt. No. 224). 329

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### Terrorists aren’t pursuing

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If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

### Politics

#### McConnell primary challenge will prevent a deal

FT 9/20, Stephanie Kirchgaessner- Financial Times, “Challenge to McConnell stymies deal on budget,” http://www.ft.com/cms/s/0/d2bb4f8c-21fd-11e3-9b55-00144feab7de.html#axzz2fUCcoopO

More significantly for the US economy and global markets, Mr McConnell’s political problems will make it more difficult for the White House to reach a deal to extend the nation’s debt limit. If no deal is reached by mid to late-October, it could lead to the first US debt default.¶ The high stakes were made clear on Friday when the Republican majority in the House of Representatives passed 230-189 a spending bill that would keep the government running until mid-December with one caveat: it would defund portions of the health reform law known as “Obamacare”.¶ The vote creates an impasse with no clear sign of a resolution given Democratic opposition to the defunding effort. Without a deal, the government will shut down on October 1.¶ The House proposal will be taken up next week by Democrats in the Senate, who are expected to send it back to the lower chamber after stripping out the defunding language. What happens next is unknown, and the uncertainty bodes badly for a separate fight over the debt ceiling increase. Conservative Republicans have said they will pass an increase only if it contains a one-year delay in a key provision of Obamacare. President Barack Obama has said he will not negotiate over the debt ceiling.¶ It is just the kind of quagmire that Mr McConnell has helped to defuse in the past.¶ The senator has never been an ally of Mr Obama. But his ultimately pragmatic nature, which reflects nearly three decades in the upper chamber of Congress, has made him an invaluable negotiating partner over the years.¶ It was Mr McConnell who clinched the deal with vice-president Joe Biden at the end of 2012 to avert the “fiscal cliff”. A year earlier, he was the senator who proposed the use of an arcane procedural mechanism to increase the debt ceiling without forcing Republicans to vote for it.¶ However, even as the lawmaker has touted his role in those deals and emphasised the important concessions he won on taxes and spending limits, he is nevertheless seen by conservative activists as a sellout.¶ “There is a conflict between his rhetoric and reality. He wants people to re-elect him because he has this power and the title, but he is not using it in a way that benefits them. These deals are very unpopular,” said Matt Hoskins, executive director of the Senate Conservatives Fund.¶ Now that the Kentucky lawmaker is engaged in a primary race against the largely unknown Matt Bevin – in which any co-operation with the White House will count against him among voters – it has put him “on the bench” for this round of fiscal fight.¶ “There was always a sense with McConnell of averting disaster. But you know now his focus is in Kentucky, not necessarily in pulling the Congress back from the brink the way he has in the last two big fights,” said Chris Krueger, an analyst at Guggenheim Securities.¶ Jennifer Duffy, of the Cook Political Report, added: “While McConnell may be inclined to be a dealmaker, I think getting a challenge from the right doesn’t give him a lot of incentive to be the dealmaker.”

#### Won’t pass---and Obama rhetoric makes the impact inevitable

Damian Paletta 9/18, WSJ reporter, “White House Shifts Debt-Ceiling Tone, Warning of Fiasco,” http://blogs.wsj.com/washwire/2013/09/18/white-house-shifts-debt-ceiling-tone-warning-of-fiasco/

In 2011, then-Treasury Secretary Timothy Geithner repeatedly brushed off questions about whether Congress would raise the debt ceiling. He wasn’t worried, he would tell audiences. Congress would raise it sooner or later.¶ This time, the White House and its allies are openly telling people they are worried.¶ On Tuesday morning, Treasury Secretary Jacob Lew told an audience in Washington that Congress’s lack of urgency on fiscal problems was making him “nervous” and “anxious.”¶ Mr. Lew has warned that if Congress doesn’t raise the debt ceiling by mid-October, the government would soon run out of cash to pay all of its bills. The government faced the same deadline pressure in August 2011 and narrowly averted blowing through the deadline.¶ Back then, Treasury was (publicly) denying at every opportunity that Congress wouldn’t raise the debt ceiling. Now, not so much.¶ Their strategy has shifted: instead of saying the government won’t pay its bills, they are saying if the government doesn’t pay its bills it will be the Republicans’ fault. (Republicans disagree, and say the White House needs to negotiate).¶ David Plouffe, a former top White House official who remains a close adviser to President Barack Obama, doubled down on the political messaging Tuesday night.¶ “Odds of shutdown and default rising as House GOP cowers to Team Cruz,” he tweeted, referring to Sen. Ted Cruz (R., Texas), who is pushing Republicans to band together and force the government to cut the funding of Mr. Obama’s health-care law. “Tanking the economy preferable to standing up to delusion. SOS.”¶ The White House, by playing offense, faces some immediate risks. By talking up the prospects of a Washington fiscal crisis, it could spook investors and lead to all sorts of volatility. But it’s clear the White House has thrown out the 2011 playbook and are trying something new.

#### Obama leadership tanked by Fed fumbling – new nominee will fuel flames

Kevin Rafferty 9/20, professor at the Institute for Academic Initiatives, Osaka University, South China Morning Post, 2013, www.scmp.com/comment/insight-opinion/article/1313981/lack-leadership-fed-chairman-syria-show-obama-has-lost-his

US President Barack Obama, who came to office on a wave of enthusiasm and energy - promising a 21st-century vision of a rapidly changing world - has hit the hard brick wall of realpolitik and his own limitations.¶ He behaves as if he is lost: not merely has his vision disappeared in the fog of war, but he has little clue where he is going, and neither the American system nor his fellow Americans are helping him.¶ This was seen this week as Professor Larry Summers, Obama's candidate to take over from Ben Bernanke as chairman of the Federal Reserve, was ignominiously forced to withdraw, and Obama clearly reluctantly accepted that decision.¶ Opposition to Summers had been brewing for months in Obama's own Democratic Party and among left-wing critics hostile to Summers for his closeness to Wall Street and the so-called big "banksters".¶ The president has had months to think about the job and yet pointedly refused to make a choice when he might have guided the debate and pre-empted criticism. It was only after newspaper reports that Obama was about to nominate Summers - which provoked a hostile reaction in the markets - that Summers withdrew.¶ Obama displayed not only a lack of leadership but tin ears to what people are saying openly about his policies, and lack of them. But he compounded even this failure by saying he will wait longer before deciding who to nominate for the Fed.¶ Rumours are that another former treasury secretary, Timothy Geithner, may be in Obama's sights, even though Geithner has said he does not want the job. Geithner would attract the hostility of the same critics, who regard him as a "Summers lite". He is also seen as part of the gang of Robert Rubin who moved from being co-chairman of Goldman Sachs into Bill Clinton's White House, then to treasury secretary and out to be a director of Citigroup.¶ Whispers from the White House are that Obama does not want to be railroaded into choosing Janet Yellen, currently Bernanke's deputy, or that he wants someone with whom he feels comfortable, and he does not know Yellen.¶ The Fed chief should be independent of politics with a term that extends beyond the president's. It should not be a matter for the president's comfort, but who is best for the country, and it is inexcusable that Obama has not made it his business to get to know Yellen.¶ Obama's failure to articulate a vision for the future of the US and a road map to get there is one of the distressing features of his presidency. It has also got him into a fight with Congress over spending, which is likely to flare up again soon with renewed confrontation over the US debt ceiling and the budget.

#### EPA regs cause firestorm against Obama

WT 9/20 -- Washington Times, EPA coal rules tighter than expected, will fuel backlash in Congress, 2013, Ben Wolfgang, www.washingtontimes.com/news/2013/sep/20/epa-coal-rules-tighter-expected-will-fuel-backlash/

The Environmental Protection Agency’s dramatic new power plant emissions standards already have touched off a firestorm within the coal industry and on Capitol Hill, with top Republicans promising to fight tooth-and-nail against President Obama’s climate-change agenda.¶ The EPA, the leading actor in the White House’s ambitious global-warming initiative, released the limits on Friday. Hopes that they’d be much less stringent than previous proposals proved to be misplaced.¶ Coal-state lawmakers from both parties are promising to push back.¶ “The president is leading a war on coal and what that really means for Kentucky families is a war on jobs. And the announcement by the EPA is another back door attempt by President Obama to fulfill his long-term commitment to shut down our nation’s coal mines,” said Senate Minority Leader Mitch McConnell, Kentucky Republican.

#### GOP ripping Obama for Putin diplomacy

FN 9/19 -- Fox News, Associated Press Contributed, Boehner blasts Obama for bargaining with Putin, not Congress ahead of budget vote, 2013, www.foxnews.com/politics/2013/09/19/white-house-threatens-to-veto-de-fund-obamacare-bill/

House Speaker John Boehner ripped President Obama for negotiating with Vladimir Putin while giving congressional Republicans the cold shoulder, as he and his rank-and-file prepared for a potentially bruising showdown over ObamaCare. ¶ The Capitol Hill air was filled with recriminations on Thursday, as Republican and Democratic leaders accused each other of flirting with a government shutdown. Boehner has teed up a vote for Friday on a bill that would condition a stopgap spending measure on support for de-funding ObamaCare. ¶ President Obama and his allies say this is a formula for a government shutdown, since Democrats will not support the ObamaCare measure; and without a stopgap spending bill, funding for the government runs out by Oct. 1. ¶ Boehner kept a stiff upper lip in advance of the vote. Speaking to reporters, he chided Obama for recently negotiating with the president of Russia over Syria's chemical weapons while allegedly employing less diplomacy with Congress. ¶ "While the president is happy to negotiate with Vladimir Putin he won't engage with the Congress on a plan that deals with the deficits that threaten our economy," Boehner said. ¶ The White House escalated the fight on Thursday, formally threatening to veto the bill.

#### Syria spills over -- tanks Obama’s debt ceiling negotiating power

Ruth Marcus 9/20, columnist for The Washington Post, 2013, Obama's fumbling on Syria diminishes his power, [www.columbian.com/news/2013/sep/20/obamas-fumbling-on-syria-diminishes-his-power/](http://www.columbian.com/news/2013/sep/20/obamas-fumbling-on-syria-diminishes-his-power/)

Style points? Seriously? Style points? That's what President Barack Obama thinks the criticism of his zigzag Syria policy amounts to? As presidential spin, this is insulting. As presidential conviction — if this is what he really believes — it's scary.¶ Obama's dismissive remarks came in response to a question by ABC's George Stephanopoulos, who asked the president about criticisms of his approach as ad hoc, improvised and unsteady.¶ "Folks here in Washington like to grade on style," Obama sniffed. "And so had we rolled out something that was very smooth and disciplined and linear, they would have graded it well, even if it was a disastrous policy. We know that, 'cause that's exactly how they graded the Iraq War until it ended up blowing (up) in our face."¶ Indeed, Obama portrayed capital insiders' scorn as a badge of honor. "What it says is that I'm less concerned about style points; I'm much more concerned about getting the policy right," he continued, taking credit for Syria's having acknowledged its possession of chemical weapons and agreed to put them under international control. "That's my goal. And if that goal is achieved, then it sounds to me like we did something right."¶ See? All's well that ends well. Let the judges carp about whether the administration stuck the landing.¶ Except that this self-serving account omits two important facts. First, we're a long way from knowing that this episode has ended well. No one can rely on Russian promises and Syrian good will. This may well be a bullet only temporarily dodged, a pause in the crisis rather than a signpost of its solution. Even a successful outcome of a chemical weapons deal risks the perverse impact of further entrenching a regime that has murdered tens of thousands of its own people.¶ Second, presidential actions have ripples beyond ripples. Obama may have lucked — or his secretary of state accidentally may have stumbled — into an approach that averted the Perils of Pauline moment. But the indecision, the mind-changing, the lurching — and, note, Obama did not dispute such characterizations so much as dismiss them — have consequences.¶ Crucial time for Obama¶ "Style," as the president would have it, matters. Adversaries and allies, foreign and domestic, take a measure of the president's steel. They judge whether he can be trusted, whether he will back down, whether he has what it takes to lead the country and the world. I have not encountered a single person outside the White House in the last few weeks, Republican or Democrat, who has kind words for Obama's performance.**¶** This attitude is especially important because it arrives at such a dangerous moment for the country, with looming deadlines on government funding and the debt ceiling, and because it is amplified by presidential mishandling of other matters.¶ So Obama enters yet another treacherous period in a weakened state, with his political allies distrustful and his political opponents caught up in their own dysfunctionality. Machiavelli advised that it is better to be feared than loved; at the moment, in Congress, Obama is neither.

#### No PC -- divided Dems backlashing – laundry list

Bloomberg 9/17 -- Mike Dorning and Kathleen Hunter, 2013, Obama Rifts with Allies on Summers-Syria Limit Debt Dealing, www.bloomberg.com/news/2013-09-17/obama-s-summers-syria-rifts-with-allies-limit-room-on-debt-…

The backlash President Barack Obama faced from Democrats on both Syria and the prospect of Lawrence Summers leading the Federal Reserve underscore intraparty rifts that threaten to limit his room to strike budget and debt deals.¶ “There’s a large and growing portion of the Democratic Party that’s not in a compromising mood,” said William Galston, a former domestic policy adviser to President Bill Clinton.¶ Summers, one of Obama’s top economic advisers during the first two years of his presidency, withdrew from consideration for Fed chairman after a campaign against him led by Democratic senators who criticized his role in deregulating the financial industry during the 1990s.¶ That came just days after the Senate postponed deliberation on a request by Obama to authorize U.S. force in Syria, amid opposition from Democratic and Republican lawmakers wary of a new military action in the Middle East.¶ The two controversies raised “central issues” that divide Democrats at a time when the president needs unity to confront Republicans, Galston said. “The White House better make sure it and congressional Democrats are on the same page” as lawmakers face deadlines on government spending and raising the debt limit, he said.¶ Party Divisions¶ Senator Richard Durbin of Illinois, the chamber’s second-ranking Democrat, said today that Democrats are united with Obama on the need for a “clean” debt-ceiling increase. The anti-Summers movement reflected “strong feelings that many of us have” about making the Fed more responsive on issues such as income inequality, he said.¶ Republican leaders are dealing with their own divisions. House Speaker John Boehner, an Ohio Republican, had to pull back a vote last week on a plan to avoid a partial government shutdown in October after it became clear it couldn’t win enough support from members of his own party.¶ Congress and the Obama administration are facing fiscal decisions that include funding the government by Sept. 30 to avoid a federal shutdown and raising the nation’s $16.7 trillion debt ceiling. Boehner said in July that his party wouldn’t increase the borrowing limit “without real cuts in spending” that would further reduce the deficit. The administration insists it won’t negotiate on the debt ceiling.¶ Building Dissent¶ For Obama, the dissent on the left was already brewing before the Syria and Summers debates.¶ Congressional Democrats and union leaders accused him of being too eager to compromise with Republican demands to cut entitlement spending after he released a budget proposal that called for lower annual Social Security cost-of-living adjustments.¶ Some early Obama supporters also were disappointed that the president, who has relied on drone strikes to kill suspected terrorists and failed to close the detention center at Guantanamo Bay, Cuba, hadn’t moved far enough from George W. Bush’s policies on civil liberties and national security. The complaints grew louder after the disclosure of National Security Agency surveillance practices this year.¶ Obama, who earlier this year watched his gun-control legislation fail in the Senate partly because of defections by Democrats from Republican-leaning states, also is limited in his capacity to enlist public support to win over lawmakers.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### Dems have abandoned Obama – tanks agenda

Michael Barone 9/20, Real Clear Politics, Democrats No Longer Following Obama's Agenda, 2013, www.realclearpolitics.com/articles/2013/09/20/democrats\_no\_longer\_following\_obamas\_agenda\_120006.html

Now, suddenly, we are seeing some signs of Democratic discontent. The revelations of National Security Agency surveillance disturbed many Democratic voters and a not-inconsiderable number of Democratic senators and congressmen.¶ This was not the change they were seeking.¶ In the past two weeks, congressional Democrats have done more than express dismay. They have stymied two presidential initiatives on important public policies.¶ After Obama called for a congressional authorization of the use of military force in Syria, Democrats did not line up in large numbers in support. The whip counts of various news organizations and blogs showed some Democrats opposed and many Senate Democrats and most House Democrats as uncommitted.¶ The White House might have lined up enough to pass a resolution in the Senate. But with most House Republicans opposed, that seemed impossible in the lower chamber.¶ Obama's policy turnaround might of made this academic. Perhaps the unwillingness of Democrats to accept this agenda item may have undermined the credibility of any presidential threat to use force in Syria or elsewhere.¶ Congressional Democrats also prevented Obama from nominating the person he evidently wanted for one of the most important jobs a president can fill, chairman of the Federal Reserve.¶ In a television interview in June, Obama signaled that current chairman Ben Bernanke would retire -- or at least not be renominated.¶ When attacks were launched on his former economic counselor and Clinton administration treasury secretary, Lawrence Summers, Obama responded with angry defenses. His body language suggested Summers was his choice.¶ Summers might have been confirmable in July. But there was a crescendo of opposition in left-wing blogs.¶ Many on the feminist left endorsed Janet Yellen, currently Fed vice chairman and like Summers, an economist of genuine intellectual heft.¶ Last week, four of the 14 Democrats on the Senate Banking Committee came out against Summers. That meant that confirmation would require the other 10 Democrats and at least a few of the 10 Republicans.¶ You don't have to be an economist of genuine intellectual heft to read those numbers. On Sunday, Summers withdrew -- or was persuaded to withdraw -- from consideration.¶ One reason for Democrats' discontent with Obama is that he doesn't schmooze with them. As Tip O'Neill used to say, people like to be asked. Obama doesn't like to ask.¶ Much more important, many Democrats have principled reasons for opposing Obama on NSA, Syria and Summers.¶ Critics of George W. Bush's war on terror have reason to oppose Obama on NSA and Syria. Economist populists have reason to block a Fed chairman with recent Wall Street ties who is associated with moderate Clinton policies.¶ The danger for Obama is that he may lose his party base, as Bush did after Katrina and the Supreme Court nomination of Harriet Miers. In which case, his job approval could plummet below the current 44 percent, as Bush's did.¶ A president with low approval still has executive powers. But he no longer sets the agenda for his party.

#### Global economy’s resilient---learned lessons from ‘08

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>

It is equally possible, however, that a renewed crisis would trigger a renewed surge in policy coordination. As John Ikenberry has observed, “the complex interdependence that is unleashed in an open and loosely rule-based order generates some expanding realms of exchange and investment that result in a growing array of firms, interest groups and other sorts of political stakeholders who seek to preserve the stability and openness of the system.”103 The post-2008 economic order has remained open, entrenching these interests even more across the globe. Despite uncertain times, the open economic system that has been in operation since 1945 does not appear to be closing anytime soon.

#### No econ decline war---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

#### Global economic institutions guarantee resiliency

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>

Prior to 2008, numerous foreign policy analysts had predicted a looming crisis in global economic governance. Analysts only reinforced this perception since the financial crisis, declaring that we live in a “G-Zero” world. This paper takes a closer look at the global response to the financial crisis. It reveals a more optimistic picture. Despite initial shocks that were actually more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by economic outcomes, policy outputs, or institutional flexibility, global economic governance has displayed surprising resiliency since 2008. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies – and because the efficiency of past periods of global economic governance has been badly overestimated. Why the system has worked better than expected remains an open question. The rest of this paper explores the possible role that the distribution of power, the robustness of international regimes, and the resilience of economic ideas might have played.

#### Err aff---their authors exaggerate

Tom Raum 11, AP, “Record $14 trillion-plus debt weighs on Congress”, Jan 15, <http://www.mercurynews.com/news/ci_17108333?source=rss&nclick_check=1>

Democrats have use doomsday rhetoric about a looming government shutdown and comparing the U.S. plight to financial crises in Greece and Portugal. It's all a bit of a stretch. "We can't do as the Gingrich crowd did a few years ago, close the government," said Senate Majority Leader Harry Reid (D-Nev.), referring to government shutdowns in 1995 when Georgia Republican Newt Gingrich was House speaker. But those shutdowns had nothing to do with the debt limit. They were caused by failure of Congress to appropriate funds to keep federal agencies running. And there are many temporary ways around the debt limit. Hitting it does not automatically mean a default on existing debt. It only stops the government from new borrowing, forcing it to rely on other ways to finance its activities. In a 1995 debt-limit crisis, Treasury Secretary Robert Rubin borrowed $60 billion from federal pension funds to keep the government going. It wasn't popular, but it helped get the job done. A decade earlier, James Baker, President Ronald Reagan's treasury secretary, delayed payments to the Civil Service and Social Security trust funds and used other bookkeeping tricks to keep money in the federal till. Baker and Rubin "found money in pockets no one knew existed before," said former congressional budget analyst Stanley Collender. Collender, author of "Guide to the Federal Budget," cites a slew of other things the government can do to delay a crisis. They include leasing out government-owned properties, "the federal equivalent of renting out a room in your home," or slowing down payments to government contractors. Now partner-director of Qorvis Communications, a Washington consulting firm, Collender said such stopgap measures buy the White House time to resist GOP pressure for concessions. "My guess is they can go months after the debt ceiling is not raised and still be able to come up with the cash they need.

## 1AR

### Case

#### Closing Gitmo doesn’t solve- its symbolism will be rebuilt elsewhere

Benjamin Wittes 10, editor in chief of Lawfare and a Senior Fellow in Governance Studies at Brookings, "Is Gitmo Really an Important Recruiting Tool or Do We All Just Say That?", September 11, www.lawfareblog.com/2010/09/is-gitmo-really-an-important-recruiting-tool-or-do-we-all-just-say-that/

I do not pretend to know the answer to this question. But I have never seen especially compelling evidence that Guantanamo is driving Al Qaeda recruitment. It will not do to cite the occasional, or even frequent, appearance of Guantanamo in Al Qaeda recruitment videos. That just means that Guantanamo is currently the most visible symbol of U.S. detention policy. Close it and rebuild it somewhere else, and that somewhere else will be the most visible symbol of U.S. detention policy.¶ I have no doubt that Guantanamo stokes a great deal of anti-U.S. feeling among European and Middle Eastern elites. The obsessive attention paid to it by European media never ceases to astonish me. And the word “Guantanamo” and its associated images certainly show up as part of the all-t00-familiar litany of U.S. misdeeds invoked by critics of American policy in the Arab and Muslim worlds. But members of the European media, let’s face it, are not prime targets of Al Qaeda recruiting. And I somehow doubt that Guantanamo is really that much higher up on the list of genuine worldwide Muslim grievances against America than its replacement facility would be? In other words, I’m skeptical that we would really reduce Guantanamo’s salience if we closed it without freeing the people we are holding there?¶ Yes, symbols are important, but closing Guantanamo is not simply eliminating a symbol. It is replacing one symbol with another. And what would our new symbol be? Well, as Ackerman acknowledges, it would be a lot like Guantanamo only without some unpleasant history and with an added element: The idea that we’re fooling people into thinking we’re out of the detention business, when we are, in fact, just moving the operation northwards. It would be the same symbol laced with the insinuation that we think the world is made up of morons who won’t notice or care if a president not named Bush conducts indefinite detentions at a facility not named Guantanamo Bay.

### Politics

#### OOThers fills in---causing debt to decline now

Peter Lefkin 13, Senior Vice President of Government and External Affairs for Allianz of North America, “Round 2 of the Debt-Ceiling Debate,” Allianz Global, 5/21, <http://us.allianzgi.com/Commentary/MarketInsights/Pages/5QuestionswithPeterLefkin.aspx>

The May 19 debt-ceiling deadline wasn’t all that eventful because, true to form, Congress once again kicked the can down the road. We’re probably not going to see any movement until after the summer. For now, the national debt is declining: The Congressional Budget Office has estimated that the deficit this year will be $642 billion, more than $200 billion less than it expected three months ago. With higher revenue, the United States will be able to take steps to stave off the $16.4 trillion debt limit until September, and maybe even later if Freddie Mac and Fannie Mae continue to make money and bring the Treasury additional revenue. The Treasury Department is using some of the traditional tools in its arsenal to meet liabilities such as postponing pension-reserve payments, suspending government bond sales and deploying an array of accounting gimmicks It’s also tapping Fannie Mae and Freddie Mac bailout reimbursements. There’s new revenue coming in from higher taxes, Fannie and Freddie and the spending cuts triggered by the sequester. But it isn’t that much money in the grand scheme of things. Half of the $85 billion under sequestration was never going to be spent. And the $60 billion in tax revenue from upper-income individuals under the fiscal-cliff legislation was equal to the amount earmarked for Superstorm Sandy relief efforts. It’s relatively insignificant in the context of the bigger deficit problem.

### Flex

#### **Al Qaeda strong- war on terror ineffective**

David Rothkopf 8/6/13 , CEO and Editor at Large at Foreign Policy, a visiting scholar at the Carnegie Endowment for International Peace where he chairs the Carnegie Economic Strategy Roundtable, and has taught international affairs and national security studies at Columbia and Georgetown, 8/6/13, “The Real Risks,” Foreign Policy, <http://www.foreignpolicy.com/articles/2013/08/06/the_real_risks_>

war\_on\_terror

With each passing day, it becomes even clearer that despite what appears to be a very serious current terrorist threat, the greatest risks facing America come from our own misplaced priorities and mistaken assumptions. As recently as late last week, I spoke with a very senior administration official -- one of the White House's best and brightest -- who forcefully described the significance of America's successful destruction of "core" al Qaeda. White House spokesman Jay Carney reiterated this point in comments to the press on Monday. But two errors in that assessment have now become abundantly apparent. The first is obvious given that the current alert is reportedly due in part to communications between a still-active core al Qaeda led by Ayman al-Zawahiri and lieutenants in al Qaeda in the Arabian Peninsula (AQAP). The second and perhaps more important revelation is the enduring notion that al Qaeda could effectively be defeated (or the risks associated with it could be contained) by targeting its so-called core.¶ A large part of the threat associated with al Qaeda has to do with the fact that it is not a traditional hierarchic organization, operating with a structure that allows it to recover from even heavy blows, move to new locations, as well as reform and resume operations. Further, of course, as we see the by-product of the upheaval throughout the Arab world (in particular in places like Syria), extremists come in many forms with many allegiances, so targeting any one organization doesn't necessarily reduce the threat. On top of which, the spread of weak regimes and chaos in the region actually accelerates the recruitment of new fighters, the development of new organizations (such as al-Nusra in Syria), and a diffusion of risks that makes managing them even tougher.¶ The confluence of these last two factors is well illustrated by the fact that the alleged Zawahiri communication was with al Qaeda's new "No. 2" -- its leader in the Arabian Peninsula, Nasser al-Wuhayshi. Formerly Osama bin Laden's personal secretary, Wuhayshi was imprisoned but escaped and moved to Yemen, one of the region's weakest states. He has since taken the reins of a steadily strengthening local operation with global aspirations. (Ibrahim al-Asiri, the 31-year-old Saudi master bomb maker who was behind recent plots like the underwear bombing and printer cartridge explosive device is reportedly also in Yemen and part of AQAP.)¶ Wuhayshi's escape from prison also happens to underscore yet another of our misplaced priorities. While America has engaged in an overly politicized and overly loud debate over the tragedy of last September 11 in Benghazi, there has been precious little discussion over a much more worrisome set of failures: the series of prison breaks at facilities housing dangerous extremists. This list most recently includes Abu Ghraib, a prison in Pakistan, and one outside of Benghazi. As a result of just these last three breaks, reports say nearly 2,000 extremists have been freed.

Plan= better intel

Kenneth Roth 8, former federal prosecutor in New York and Washington, D.C., is Executive Director of Human Rights Watch, Foreign Affairs, “After Guantánamo”, May/June, Vol. 87 Issue 3, p. 9-16, EBSCO

But a policy of preventive detention poses greater dangers. One lesson of Guantánamo is that when the United States begins detaining suspected terrorists on the basis of thin and untested evidence, it inevitably ends up detaining some innocent people. Particularly when combined with the government's insistence on using harsh interrogation techniques, such wrongful imprisonment generates resentment and a justified sense of victimization. As the British government discovered from its detention of IRA suspects in the 1970s, the resulting animosity is a boon to terrorist recruiters and arguably generates more terrorists than the detentions are stopping.¶ Preventive detention also discourages citizens from cooperating with counter-terrorist investigations, a crucial factor in uncovering terrorist plots. Counter-terrorism experts report that information gleaned from interrogating detainees is far less important than information delivered by members of the general public who see something suspicious and report it. For example, information given by relatives of the perpetrators and the general public was key to the arrest of those responsible for the attempted bombings in London on July 21, 2005. Similarly, a British Muslim who found an acquaintance's behavior suspicious led the police to discover the plot to bomb several transatlantic flights using liquid explosives in August 2006. Because sympathy for the victims of abusive counterterrorism policies tends to be greatest in the communities that give rise to terrorists, policies such as preventive detention jeopardize this vitally important source of intelligence.¶ Finally, detaining suspects without trial as part of the "global war on terrorism" allows them to glorify themselves as combatants without facing the stigma of a criminal conviction. Khalid Sheik Mohammad's comments before the Combatant Status Review Tribunal reveal that he craved the "combatant" label. In broken English, he declared, "We consider we and George Washington doing same thing…. So when we say we are enemy combatant, that right. We are." By detaining such suspects as warriors rather than stigmatizing them as criminals, the Bush administration is effectively reading from al Qaeda's playbook. It would be far better for a convicted suspect to face the likes of U.S. District Court Judge William Young. On sentencing Reid, the "shoe bomber," Young berated him for being not "a soldier in any war" but "a terrorist"--a "species of criminal guilty of multiple attempted murders."

CIPA solves- mandated Court procedures guarantee info protection- empirics prove foreign intel agencies are still willing to share info and leaks don't happen- that's Zabel and Benjamin

#### CIPA solves the link

Richard B. Zabel and James J. Benjamin, Jr. 08, Deputy U.S. Attorney for the Southern District of New York AND partner in the New York office of Akin Gump Strause Hauer & Feld LLP, May, "In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts," Human Rights First, https://www.humanrightsfirst.org/wp-content/uploads/pdf/080521-USLS-pursuit-justice.pdf

As a result of CIPA’s effectiveness, the government has been able to use information obtained from foreign law- enforcement and intelligence sources without compromising the integrity of those sources. For example, in the Embassy Bombings case, the government offered the testimony of L’Houssaine Kherchtou, a former al Qaeda member. See Turner & Schulhofer, The Secrecy Problem in Terrorism Trials , at 24. Prior to Kherchtou becoming a cooperating witness, he had been questioned by a foreign intelligence service for five days concerning his knowledge of al Qaeda. That questioning was taped, provided to the United States, and contained information relevant to the case, but the foreign intelligence service insisted that its involv ement not be disclosed. “CIPA effectively resolved the issue: in discovery, a transcript of the debriefing was provided to defense counsel with references to the foreign intelligence service blacked out; at trial, defense counsel’s questioning of Kherchtou on the witness stand was monitored to ensure that the foreign intelligence service was not identified.” Id. It is our understanding that foreign intelligence agencies have become more willing to share information with the United States over time, as CIPA has proved to be effective in a number of cases. Even in cases where CIPA’s procedures have not been involved, Courts have permitted the government to maintain the secrecy of sensitive law-enforcement information. For example, in United States v. al-Moayad , Judge Sterling Johnson granted motions in limine to preclude defense cross-examination of German law- enforcement witnesses on sensitive, technical aspects of electronic surveillance that had been employed in Germany. See Motion in Limine, United States v. al-Moayad , No. 03-cr- 01322 (E.D.N.Y. Dec. 22, 2004) (Dkt. No. 100); Interview with Kelly Anne Moore, former Assistant U.S. Att’y in the E.D.N.Y. (Oct. 8, 2007).¶ As those who have worked with it can attest, however, CIPA is not particularly efficient. “Crafting substitutions that are both fair and effective can be a time-consuming, labor-intensive process, as can be the task of monitoring trial proceedings to ensure that classified information is not released through witness testimony.” Turner & Schulhofer, The Secrecy Problem in Terrorism Trials, at 25. According to a former CIA general counsel, “CIPA is awkward and cumbersome, but it works.” Id. (citing Consultation with Jeffrey Smith (Sept. 21, 2004)). Nevertheless, courts and counsel have repeatedly exhibited the patience and care that is necessary to use the CIPA procedures effectively.