# 2AC

## NSA

#### NSA scandal won’t taint relations---even if it’s never ending

David Francis 11/4, The Fiscal Times, "Why Europe Won't Punish the U.S. over NSA Scandal", 2013, www.thefiscaltimes.com/Articles/2013/11/04/Why-Europe-Won-t-Punish-US-over-NSA-Scandal

At this point, the National Security Agency spying scandal seems never-ending. It’s been ongoing since June, when the first of Edward Snowden’s stolen documents was made public. Each time it appears to be dying, another round of documents appear and the scandal lives on.¶ The latest series of leaks is perhaps the most serious. Less than two weeks ago, on the eve of a European Union summit in Brussels, reports emerged that the NSA had been spying on European leaders, including German Chancellor Angela Merkel.¶ The outcry from the German public and politicians continues to this day. German officials have demanded and been granted meetings with high-level Obama administration officials to complain about the spying and Merkel called President Obama to voice her displeasure with the practice.¶ Hans-Christian Stroebele, a legislator for the Germany's opposition Greens party, said that Snowden might be called to testify in a German investigation into NSA practices.¶ "He made it clear he knows a lot and that as long as the National Security Agency blocks investigations, he is essentially prepared to come to Germany and give testimony, but the conditions must be discussed," Stroebele, who met with Snowden in Russia last week, said.¶ Similar anger has been expressed around the European continent. Some are saying that irreparable damage has been done to the relationship between the United States and its European partners.¶ But is this truly the case? Expressing anger over NSA practices is one thing; actually making policy changes because of the behavior is entirely another. A close examination of statements made by European officials shows their tone softening.¶ There is not likely to be any long-term fallout in two key areas: economic negotiations over a $287 billion EU/U.S. trade pact are going to continue, and intelligence is still likely to pass back and forth across the Atlantic. The only real damage has been to the standing of the United States with the European public and fringe lawmakers.

## Solvency

#### Prez will adhere - S.C. decisions are supported by public and congress who check.

Bradley and Morrison ‘13

[Curtis A., William Van Alstyne Professor of Law, Duke Law School. Trevor W., Liviu Librescu Professor of Law, Columbia Law School. Columbia Law Review 113. <http://www.columbialawreview.org/wp-content/uploads/2013/05/Bradley-Morrison.pdf> ETB]

In addition to the constraining influence arising from the internalization of legal norms by executive branch lawyers and other officials, law ¶ could constrain the President if there are “external” sanctions for ¶ violating it. The core idea here is a familiar one, often associated with ¶ Holmes’s “bad man”139: One who obeys the law only because he ¶ concludes that the cost of noncompliance exceeds the benefits is still ¶ subject to legal constraint if the cost of noncompliance is affected by the ¶ legal status of the norm. This is true even though the law is likely to ¶ impose less of a constraint on such “bad men” than on those who have ¶ internalized legal norms, and even though it is likely to be difficult in ¶ practice to disentangle internal and external constraints. ¶ Importantly, external sanctions for noncompliance need not be ¶ formal. If the existence or intensity of an informal sanction is affected by ¶ the legal status of the norm in question, compliance with the norm in ¶ order to avoid the sanction should be understood as an instance of law ¶ having a constraining effect. In the context of presidential compliance ¶ with the law, one can plausibly posit a number of such informal ¶ sanctions. One operates on the level of professional reputation, and may ¶ be especially salient for lawyers in the executive branch. If a lawyer’s own ¶ internalization of the relevant set of legal norms is insufficient to prevent ¶ him from defending as lawful actions that he knows are obviously beyond ¶ the pale, he might respond differently if he believed his legal analysis ¶ would or could be disclosed to the broader legal community in a way that ¶ would threaten his reputation and professional prospects after he leaves ¶ government.140 (This concern might help further explain the OLC and other Justice Department officials’ resistance to the White House in the ¶ warrantless surveillance example discussed above.) ¶ Although fear of harm to their professional reputations may indeed ¶ help constrain government lawyers, if that were the only operative ¶ external sanction in this context it would be fair to ask whether it ¶ translated into a real constraint on the President in high-stakes contexts. ¶ But it is not the only potential sanction. A related and perhaps more ¶ significant sanction may operate directly on political leaders within the ¶ government, including the President himself: partisan politics. If being ¶ perceived to act lawlessly is politically costly, a President’s political rivals ¶ will have an incentive to invoke the law to oppose him. Put another way, ¶ legal argumentation might have a salience with the media, the public at ¶ large, and influential elites that could provide presidential opponents in ¶ Congress and elsewhere with an incentive to criticize executive actions in ¶ legal terms. If such criticism gains traction in a given context, it could ¶ enable the President’s congressional opponents to impose even greater ¶ costs on him through a variety of means, ranging from oversight hearings ¶ to, in the extreme case, threats of impeachment. Thus, so long as the ¶ threat of such sanctions is credible, law will impose an external ¶ constraint—whether or not the President himself or those responsible ¶ for carrying out his policies have internalized the law as a normative ¶ matter. The prospect of political sanctions might help explain, for ¶ example, why modern Presidents do not seem to seriously contemplate ¶ disregarding Supreme Court decisions.141 And if Presidents are constrained to follow the practice-based norm of judicial supremacy, they ¶ may be constrained to follow other normative practices that do not ¶ involve the courts. ¶ Work by political scientists concerning the use of military force is at ¶ least suggestive of how a connection between public sanctions and law ¶ compliance might work. As this work shows, the opposition party in ¶ Congress, especially during times of divided government, will have both ¶ an incentive and the means to use the media to criticize unsuccessful ¶ presidential uses of force. The additional political costs that the ¶ opposition party is able to impose in this way will in turn make it less ¶ likely that Presidents will engage in large-scale military operations.142 It is ¶ at least conceivable, as the legal theorist Fred Schauer has suggested, that ¶ the political cost of pursuing an ultimately unpopular policy initiative ¶ (such as engaging in a war) goes up with the perceived illegality of the initiative.143 If that is correct, then actors will require more assurance of ¶ policy success before potentially violating the law. This should count as a ¶ legal constraint on policymaking even if the relevant actors themselves ¶ do not see any normative significance in the legal rule in question.

## AT Defference

#### End to ERP solves terrorism – intel sharing and recruitment

Biden ‘7 (Speaking for US Senate Committee on Foreign Relations) “EXTRAORDINARY RENDITION, EXTRATERRITORIAL DETENTION, AND TREATMENT OF DETAINEES: RESTORING OUR MORAL CREDIBILITY AND STRENGTHENING OUR DIPLOMATIC STANDING” http://www.gpo.gov/fdsys/pkg/CHRG-110shrg40379/html/CHRG-110shrg40379.htm

Rendition is the practice of detaining a terrorist operative in a foreign country and transferring him or her to the United States or to another foreign country. It has proved to be an effective way to take terrorists off the street and collect, on occasion, some valuable information. But the U.S. Government's use of rendition has been extremely controversial. Foreign governments have criticized the practice because it operates outside the rule of law and has allegedly been used to transfer suspects to countries that torture or mistreat them or to seek extraterritorial prisons, in countries where we have listed the countries as abusing the human rights of their fellow citizens. As a result, the current rendition program has taken a toll on the relationships with some of our closest foreign partners. Consider the following: Italy has indicted 26 Americans for their alleged role in a rendition. Germany has issued arrest warrants for an additional 13 United States intelligence officers. The Canadian Government Commission has censured the United States for rendering a Canadian-Syrian dual-citizen to Syria, where he was allegedly tortured. The Counsel of Europe and the European Union have each issued reports critical of the United States Government's rendition program and the European countries' involvement in, or complicity with, that program. Sweden and Switzerland have each initiated investigations of us, as well. Just yesterday, the United Kingdom issued a report on the United States rendition program, concluding that it would have, ``serious implications,'' for future intelligence relationships between the United States and the United Kingdom, one of our most important partners. Rendition as currently practiced, in my view, is undermining our moral credibility and standing abroad and, more importantly, I guess in the minds of the real politik crowd of which I occasionally consider myself one, weakening, weakening the coalition with foreign governments, the very governments that we need if we're going to be able to combat international terrorism. We also put our intelligence officers at risk by not providing them with clear guidelines to govern their conduct. As one of the witnesses today recently wrote, ``Successful counterterrorism depends in part on convincing the world that there is no moral equivalency between the terrorist and the government they oppose. When the United States muddies those waters, this distinction begins to blur.'' More ominous, the controversial aspects of the U.S. Government use of renditions have been used by propagandists and recruiters to fuel and sustain international terrorist organizations with a constant stream of new recruits. That's not my judgment, that's the judgment of many in the intelligence community. Allegations of U.S. lawlessness and mistreatment make their job easier--that is the recruiters--adding a refrain to the recruitment pitch, and increasing the receptivity of their target audience. Our counterterrorism authorities have not only--our counterterrorism authorities should not only thwart attacks, take dangerous terrorists off the street, and bring them to justice--these authorities should also strengthen international coalitions, win the hearts and minds of Muslim populations that are--would otherwise be prepared to cooperate with us and help diminish, if not deprive, recruitment, the narrative that they now have. In our long-term effort to stem the tide of international terrorism, our commitments to the rule of law and individual rights and civil liberties are among our most formidable weapons, in my view. They are what unite foreign governments behind us in effective antiterrorism coalitions. They are what unite public opinion in this country in support of our counterterrorism efforts. They are what prevent the recruitment of the next generation of international terrorists, or at least slow it up. If we continue to pursue a rendition program ungoverned by law, without sufficient safeguards and oversight, we will take individual terrorists off the streets at the expense of foreign coalitions that are significantly more consequential long term and essential to our efforts to combat international terrorism at the expense of facilitating the recruitment of a new generation of terrorists who are just as dangerous--and what we know from the intelligence report--far more numerous. There is not a tradeoff--this is not a tradeoff I believe we have to make. We can have a robust and agile rendition capacity governed by the rule of law and subject to sufficient safeguards and oversight. In this way, we can take terrorists off the streets, while at the same time strengthening our standing and credibility among foreign governments and the global community and diminishing the recruitment efforts of tomorrow's--for tomorrow's terrorist.

#### Plan solves EU relations – key to solve WOT

Smith 7 (JULIANNE, DIRECTOR AND SENIOR FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, April 17, “EXTRAORDINARY RENDITION IN U.S. COUNTERTERRORISM POLICY: THE IMPACT ON TRANSATLANTIC RELATIONS”, http://archives.republicans.foreignaffairs.house.gov/110/34712.pdf)

As a European analyst, who spends a considerable amount of time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons in Europe, have cast a rather dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation does continue, European political leaders are coming under increasing pressure to distance themselves from the United States. Over time, I do believe that this could pose a threat to joint intelligence activity with our European allies. Now it is well known that America’s image in Europe has declined quite steadily over the last couple of years, and some of the reasons for that were cited earlier this afternoon, in part due to the decision of the United States to go to Iraq, human rights abuses at Abu Ghraib and allegations of torture at Guantanamo bay. But we seemed to move away from some of these dark days in the transatlantic relationship as we moved into 2005, as both sides of the Atlantic I think, both Europe and the United States, made a conscious effort to renew transatlantic ties. When it was alleged, however, later in 2005—at the end of 2005 that the United States was detaining top terror suspects in socalled ‘‘black sites’’ in eight countries and that the CIA was flying terror suspects between secret prisons and countries in the Middle East that have been known to torture detainees, the United States image in Europe took another dive. On the particular issues of rendition, as we have heard earlier, Europeans appear to have two primary concerns, one, Washington’s unwillingness to grant due process to terror suspects and, two, violation of suspects’ human rights during interrogation. Now the allegations that have been submitted and the resulting investigation by the European Parliament have in many ways in my mind confirmed Europeans’ worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United States stated policies and U.S. action. As a result, U.S. promises not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible. The question is, does any of this matter? President Bush has noted on several occasions that making policy is not a popularity contest, and he is right about that. But when political leads in other countries start to feel that standing shoulder to shoulder with the United States is a political liability, I think that low favorability ratings can indeed hinder America’s ability to solve global challenges with its many partners and allies around the world; and I would cite a couple of reasons for this. First, as we have seen with the tensions over the issue of rendition, this particular issue has put unnecessary strain, in my mind, on what has been, in many cases, a very positive relationship. In fact, it is distracting the two sides from the core task at hand; and that is, of course, combating terrorism. Second, as I mentioned earlier, European political leaders are under pressure from their publics to keep the United States at arm’s length. I don’t know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly not in the near term, but there are signs that negative public opinion is making it more difficult for our European allies to cooperate with the United States. One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example. Finally, I would point out that the United States and Europe are facing a long list of challenges above and beyond terrorism, things like energy security, nonproliferation, brewing regional crises, Darfur; and the list goes on and on. In many of these areas, the United States are asking—we are asking Europe to do more. But differences in our counterterrorism relationship with Europe have affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking for greater European support in other areas that much more challenging. Just to conclude, I would point out—and I feel very strongly— that Europe is one of America’s most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together, particularly over the past 6 years in this area. But I do feel—again based on my experience traveling back and forth to Europe on a regular basis—that this relationship that we share is currently played with mistrust and divisions over strategy and tactics.

#### Deference to the executive encourages whisteblowers, the media, and other countries to backlash – causes volatile restrictions of policy and worse intel leaks and even more judicial restrictions

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### Preserving the judicial right to due process enhances productive executive flex—unrestrained flex is worse for decision making

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

In the face of an unprecedented national-security threat, individual rights, far from invariably interfering with the effectiveness of the executive branch, may sometimes serve a vitally pragmatic function. Those who deny this possibility, in principle, misunderstand due process as a rigid restraint. Laws that discipline executive decision making should not be understood as laying down sharp lines between the permitted and the forbidden. Besides being a personal liberty, a suspect's right to challenge the evidence against him is simultaneously a duty of the government to provide a plausible rationale for its requests to apply coercive force. A right that is enforceable against the government is best understood not as a rigid limit, therefore, but as a rebuttable presumption. In this framework, rights demarcate provisional no-go zones into which government entry is prohibited unless and until an adequate justification can be given for government action. If the executive branch violates a right that it is usually required to respect, it has to give a reason why.¶ This is how legal rights contribute to a democratic culture of justification. A private right is neither a non-negotiable value nor an insurmountable barrier, but rather a trip-wire and a demand for government explanation of its actions. The rights of the accused are therefore the obligations of the prosecution. Before criminally punishing an individual, the executive must give reasons why such punishment is deserved before a judicial tribunal that can refuse consent. Here lies the difference between a constitutional executive and an absolute monarch: the former must give reasons for his actions, while the latter can simply announce tel est mon plaisir. n72¶ For analogous reasons, it is one-sided and even obscurantist to describe habeas corpus, on balance, as a gratuitous hindrance to effectiveness in counterterrorism. It can occasionally involve risks, but habeas does not "tie the government's hands." Like the traditional charge-or-release rule, habeas simply forces the executive to give plausible reasons for its actions. Such a right is a spur, therefore, not a rein. It may sometimes appear to be a roadblock, [\*333] obstructing effective action, but it is also an incentive to take reasonable care, aimed at increasing the likelihood of intelligent decision making even under enormous pressure and time constraints. Abolishing such incentives will not guarantee intelligent, focused, and effective government action.¶ Advocates of executive discretion in the war on terror are perfectly right to point out that legal restrictions on the executive can occasionally impede effective action. But their analysis is one-sided and too narrowly focused; they need to add that the absence of legal restrictions on the executive, in turn, can encourage irresponsible, profligate, and self-defeating choices. The genuine challenge of counterterrorism is to balance the two symmetrical risks, not to pretend that following rules is risky while circumventing rules is not.¶ An administration that is legally exempted from providing reasons for its actions also has a weak incentive to develop and implement a coherent overall policy. One reason why the United States was able to treat various terrorist suspects in its custody (Salim Ahmed Hamdan, Yaser Hamdi, David Hicks, John Walker Lindh, Khaled al-Masri, Zacarias Moussaoui, Jose Padilla, and Mohammad al-Qahtani) in incomprehensibly erratic and inconsistent ways may have been that it was never forced to explain publicly, or perhaps even behind closed doors, exactly what it was doing. The Bush administration also allocated scarce resources behind a veil of national-security secrecy - that is, without having to explain the security-security tradeoffs it was making. The outcomes, as they have gradually come to light, do not look even vaguely pragmatic.¶ That violations of personal liberty can, under some conditions, severely damage national security is also relevant to the dispute about trying terrorist suspects before Article III courts (or before ordinary military courts-martial). That national security could be damaged by open trials has been frequently alleged. And the possibility cannot be ruled out. But advocates of executive discretion rarely mention the potential damage to national security of closed or partially closed trials and the potential strategic benefits of open and visibly fair trials. This is unfortunate because a fully public trial of mass murdering zealots, using visibly fair procedures, would provide an exceptional opportunity to rivet the attention of the world on the heinous acts and twisted mentality of the jihadists; this is something that no procedure that looks rigged, where Muslim defendants appear in any way railroaded, can possibly do.¶ Transparent judicial procedures, although they may be costly along some dimensions, can also help convince domestic and foreign onlookers that decisions of guilt and innocence are being made responsibly, not arbitrarily. They can vindicate tough counterterrorism policies and refute the allegation that authorities are exaggerating the threat to national security. Public willingness to cooperate with counterterrorism efforts depends on public confidence in the essential fairness of law-enforcement authorities. n73 Such [\*334] confidence is especially vital for managing a threat, such as Islamist terrorists with access to WMD, that is likely to endure for decades, if not longer.¶ Even more, the transcripts of past public trials of Islamic terrorists have provided a trove of open-source and relatively reliable information that independent scholars and analysts have used to help the country make sense of the motives and operational techniques of the enemy. Many dots will remain unconnected if such information is reserved for the exclusive perusal of a few individuals with high security clearances operating in isolation from outside criticism.¶ Yes, wholly public trials may possibly expose the sources and methods of U.S. counterterrorism agencies. n74 But the alternative, trials conducted on the basis of undisclosed information, will likely cause equivalent damage, due to the perverse incentives that they engender. Once again, the tacit tradeoff here involves security versus security. One predictable motive for reluctance to hold a trial in open court might be the embarrassing untrustworthiness of sources and shoddiness of investigative methods. Expecting a closed trial, in effect, investigators and prosecutors have a much weaker incentive to take reasonable care to ferret out reliable information and to use dependable techniques for ascertaining the facts. This is how executive discretion can erode executive professionalism. If terrorism investigators and prosecutors fail to take reasonable care, they will then need secrecy not for the respectable reason that secrecy protects security, but for the discreditable reason that secrecy conceals the illicit shortcuts of investigators who are subjectively convinced, on no compelling grounds, that their guesses and hunches are always totally right. Those who imagine the possible security benefits of such deviations from ordinary standards of due process are not completely mistaken. They have simply over-generalized a partial perspective, unjustifiably ignoring the equally likely possibility of security losses.¶ Subjectively, without any doubt, a president and his entourage can experience congressional and judicial oversight as an annoying hindrance to free and "flexible" action, just as a prosecutor can experience independent trial judges, discovery rules, defense attorneys, and public trials as obstacles to putting away "obviously guilty" suspects. But rules can be subjectively experienced as disabling restraints when, on balance, they actually serve to facilitate adaptation to reality. That is how shield laws and whistleblower laws ideally function, for example. n75 Double-blind tests, as mentioned earlier, work [\*335] in a similar way, allowing the system of scientific research to make progress and adapt to reality, even if individual researchers feel to some extent hemmed in by the system's constraints.¶ The executive branch's obligation to give reasons for its actions is built into the American legal system, both at the micro-level of criminal trials and at the macro-level of checks and balances. To hinder the fatal slide from flexibility to arbitrariness, from expediency to recklessness, the U.S. legal and constitutional system requires the executive branch to test the factual premises of the use of force in some sort of adversarial process. This is the most important way in which due process can enhance governmental performance.¶ To illustrate how some form of adversarial process might have been useful in the war on terror, we need only consider the possibility that either a serious congressional inquiry before going to war in Iraq or a semi-public trial of Khalid Sheikh Mohammed would have discredited the myth of an Osama-Saddam connection, one of the principal delusions that pumped up public support for a misbegotten war.¶ And what were the consequences of brushing aside the presumption of innocence and worries about mistaken identity at Guantanamo Bay, where hundreds of detainees have now spent seven years in administrative detention without the detaining authority having to explain why? By failing to provide even perfunctory individualized hearings, that is, by failing to select with minimal care among individuals delivered for a fee to the American authorities in Afghanistan and elsewhere, the U.S. government (I exaggerate to make my point) sent the first 700 "stunt doubles" who came into its custody to the detention-and-interrogation center in Cuba, thereby misspending our scarce interrogation capacities on individuals of minimal or no intelligence value. n76 And Guantanamo is not the only situation in which jettisoning traditional rules for presumed tactical gains has proved strategically self-defeating.¶ As Shakespeare's Iago and Othello memorably illustrate, pre-constitutional and therefore legally unconstrained power wielders are notoriously vulnerable to being manipulated by disinformation. Today's advocates of a "monarchical" swelling of presidential discretion tend to underestimate this particular cost of acting with excessive secrecy and [\*336] dispatch. n77 Besides contracting individual rights, a loosening of evidentiary standards can simultaneously harm national security by encouraging liars to clog the system with disinformation and false leads and discouraging honest people from reporting what they observe. If authorities begin shipping suspects to prison camps, where they are held incommunicado, without double-checking the alleged evidence, they unwittingly create incentives for malicious or self-serving witnesses to swarm out of the woodwork. (Call this "the elasticity of supply" of informants with hidden agendas.) Contrariwise, well-intentioned people will hesitate to communicate their observations of suspicious activity next door, lest an innocent neighbor be incarcerated for years on the basis of misperceptions that could easily have been dispelled in court.

## AT OLC

#### 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

#### CP gets overruled and circumvented---data goes aff

Bruce Ackerman 11, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

The problem is confirmed by Morrison’s very useful data analysis, which shows that only thirteen percent of OLC opinions have provided a more- or- less clear “no” to the White House during the past generation.34 Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.35 And remember, quantitative data can’t take into account the occasions on which the White House is especially exigent in its telephonic demands.36 ¶ \*\*\*TO FOOTNOTES\*\*\*¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that the OLC overrules (or substantially modifies) its own decisions in more than five percent of the opinions in his sample. See Alarmism, supra note P, at NTOP n.NPN. This is a significant percentage, given my focus on the likely way the OLC will function in high-stress situations. It indicates that stare decisis is by no means a rigid rule, and that the OLC cannot credibly claim that its hands are tied when the White House is pressuring it to overrule existing case- law to vindicate a high-priority presidential initiative. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But on high-priority initiatives, the White House won’t easily take an informal “no” for an answer — it will either push the OLC to write a formal opinion saying “yes” or it will withdraw the issue from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

## AT Minimalism

#### Boumediene ruling disproves the DA

OW Blog ‘8 [Law blog run by various attorneys and professors of law and philosophy] “Boumediene: When Justices Stop Being Polite, and Start Getting Realist” http://obsidianwings.blogs.com/obsidian\_wings/2008/06/boumediene-when.html

In addition, I think policy considerations heavily informed their analysis (even their textual analysis). For instance, the majority apparently thought the suspension clause should be construed narrowly in light of the broader textual context. Suspension, remember, is an exceedingly narrow exception to an expansive right, and it should be read that way. For the same reason, the opinion implied that efforts to evade habeas (executive efforts) should be met with heightened scrutiny. I mean, the whole purpose of moving the detainees to Gitmo was to evade the Constitution. The Court’s analysis wasn’t blind to these realities.¶ Admittedly, today’s decision was not compelled by text or precedent. But the mere fact that policy and pragmatism played a role today doesn’t make the case wrongly-decided. Courts do this stuff all the time — if parties are playing games in litigation, courts take steps to limit it. It’s exactly what happened in the Warren Court’s race cases — the Court refused to play the role of useful idiot by ignoring the outside world any longer.¶ And today, the outside world mattered. Rather than ignoring the obvious fact that most constitutional decisions are determined in such ways, let’s instead stipulate to the obvious and have a old-fashioned political debate about it. Personally, I think it’s ok to construe habeas rights broadly given that the entire point of habeas is to limit unlawful executive detention. Likewise, I think it’s ok for judges — after seeing parties drag things out for years and ignore the spirit of their rulings — to step in more assertively.

#### The Court decides each case on the facts, not based on political calculations.

Rosen 12 (Jeffrey, legal affairs editor of The New Republic, “Welcome to the Roberts Court: How the Chief Justice Used Obamacare to Reveal His True Identity,” June 29, http://www.newrepublic.com/blog/plank/104493/welcome-the-roberts-court-who-the-chief-justice-was-all-along#)

Of course, it didn’t all come down to judicial temperament. In the most divisive constitutional cases, the substance of legal arguments will always play a part. Arguments by liberal scholars who care about constitutional text and history, such as Neil Siegel of Duke Law School, were reflected in Chief Justice Roberts’s opinion about the taxing power. Justice Ginsburg’s defense of Congress’s power to pass the mandate under the commerce clause adopted New Textualists arguments by Jack Balkin of Yale Law School about how the framers of Article VI of the Virginia Plan during the Constitutional Convention would have wanted Congress to coordinate economic action in areas where the states were powerless to act on their own. The majority opinion also vindicated Solicitor General Don Verrilli’s decision to emphasize the breadth of Congress’s taxing power. But in the end, there are good arguments on both sides of any constitutional question, and justices have broad discretion to pick and choose among competing legal arguments based on a range of factors—including concerns about text, history, precedent, or institutional legitimacy. The fact that Roberts chose to place institutional legitimacy front and center is the mark of a successful Chief. As Roberts recognized, faith in the neutrality of the law and the impartiality of judges is a fragile thing. When I teach constitutional law, I begin by telling students that they can’t assume that it’s all politics. To do so misses everything that is constraining and meaningful and inspiring about the Constitution as a framework for government. There will be many polarizing decisions from the Roberts Court in the future, and John Roberts will be on the conservative side of many of them. But with his canny performance in the health care case, Roberts has given the country a memorable example of what it means to be a successful Chief Justice.

## AT: Minimum wage

#### Obama will use exec action on economic issues

Washington Times, 1/11/14, http://www.washingtontimes.com/news/2014/jan/11/year-action-obama-vows-act-his-own-when-necessary/

President Obama called Saturday for a “year of action,” and he acknowledged those plans include more executive action. “I’ll keep doing everything I can to create new jobs and new opportunities for American families — with Congress, on my own, and with everyone willing to play their part,” Mr. Obama said in his weekly address. Entering a year of midterm elections, with much of the president’s agenda stalled in Congress, some observers expect Mr. Obama to bypass the legislative branch with executive actions even more frequently than he has in the past.

#### No focus now

Fox News 1/6/14, http://www.foxnews.com/politics/2014/01/06/white-house-resets-to-income-inequality-amid-obamacare-problems/

The Obama administration has set the stage for a push that could rekindle cries of class warfare -- calling for renewed long-term unemployment benefits, a minimum wage increase and a campaign against what Democrats call "income inequality."

#### Exec action possible and immigration push disproves focus link

Daily Beast 1/7/14, http://www.thedailybeast.com/articles/2014/01/07/can-obama-do-anything-to-fight-inequality-without-congress.html

President Obama says he’s going to focus for the rest of his tenure on what he calls “the defining challenge of our time”—a cluster of issues including income inequality, stalled upward mobility, long-term unemployment, and wage stagnation. It’s an admirable pledge and, 50 years after Lyndon Johnson urged Congress to declare war on poverty and unemployment, a timely one. But even if his attention doesn’t wander, the odds of Obama having significant impact are long. In contrast to other issues, like the environment and even gun control, presidents armed with nothing but executive powers can’t do much to affect the economy. They need Congress to act—and how often does that happen these days?¶ The cupboard isn’t entirely bare as Obama looks for ways to increase jobs and decrease inequality on his own. But no one should mistake a marginal nudge with a substantial achievement. Consider that in September 2011, in his American Jobs Act, Obama proposed spending $50 billion on job-generating infrastructure projects, and creating a National Infrastructure Bank capitalized with $10 billion. The plan went nowhere thanks to Senate Republicans who blocked it, and Obama eventually fell back on executive action on a much smaller scale—speeding up the federal review and permit process for major infrastructure projects. But he’s still hoping for real money and went on the road last summer to beg Congress to step up.¶ Obama and his team can’t afford to go into the next three years with a defeatist attitude.¶ Immigration reform, another Obama priority, is also a prospective economic boon. The non-partisan Congressional Budget Office has found that the sweeping bill passed by the Senate last year and languishing in the House would reduce the deficit, grow the economy and bolster Social Security. “Immigration is as close a thing to a win-win-win as we have in public policy these days,” says Jason Furman, chairman of the White House Council of Economic Advisers.

#### Obama not focused on the bill- has landmark NSA speech and review he’s focusing all his attention on the January 17 review

NAKAMURA 1/10 DAVID NAKAMURA, columnist for washington post, ¶ January 10, 2014¶ Obama to speak on NSA reforms Jan. 17, White House says¶ http://www.washingtonpost.com/blogs/post-politics/wp/2014/01/10/obama-to-speak-on-nsa-reforms-jan-17-white-house-says/

President Obama will deliver his highly anticipated speech on reforms to the National Security Agency on Jan 17, White House press secretary Jay Carney said.¶ Carney did not elaborate on what the president will say when he lays out his vision for changes to the NSA's vast surveillance activities, in the wake of the disclosures from documents stolen by former government contractor Edward Snowden.¶ As the Washington Post reported Friday, Obama and his aides have been focused behind-the-scenes this week on finishing its review of the spy programs and preparing for the president's address to the nation. Privacy and civil liberty activists, along with top tech company executives, are calling on the president to adopt sweeping reforms to curb the NSA's collection of phone call metadata and other personal information of online users.¶ But U.S. defense and intelligence agencies have argued fiercely that such information is necessary to keep the public safe, even though a White House advisory board found in a December report no evidence that such data prevented a terrorist attack.

#### Plan is an olive branch

McLaughlin 8/9 (Seth- Washington Times Staff Writer, 2013, “Rand Paul: GOP can grow base by opposing indefinite detention”, http://www.washingtontimes.com/news/2013/aug/9/rand-paul-gop-can-grow-base-opposing-indefinite-de/)

Sen. Rand Paul says that one of the ways he can bring more minority and younger voters into the party is to push back against indefinite detention.¶ Speaking with Bloomberg Businessweek, Mr. Paul, a likely 2016 presidential candidate, said this week that young blacks and Hispanics have a sense of justice and often mistrust government.¶ “So one of the big issues that I’ve fought here is getting rid of the provision called indefinite detention,” the Kentucky Republican said. “This is the idea that an American citizen could be accused of a crime, held indefinitely without charge, and actually sent from America to Guantanamo Bay and kept forever. I think there is something in that message of justice and a right to a trial by jury and a right to a lawyer that resonate beyond the traditional Republican Party and will help us to grow the Republican Party with the youth.”¶ Mr. Paul has argued that his libertarian brand of politics can help the GOP reach out to young voters and minorities who have supported Democrats in recent elections.

#### Court shields and prevent backlash—star this card

Stimson 9 [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover

and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

# 1AR

Turns global warming.

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

Use them in U.S cities

Gormley 9 – Dennis Gormley, Senior Fellow in the James Martin Center for Nonproliferation Studies at the Monterey Institute for International Studies, Fall 2009, “The Path to Deep Nuclear Reductions: Dealing with American Conventional Superiority,” online: http://www.ifri.org/files/Securite\_defense/PP29\_Gormley.pdf

Attacking strategic underground targets seems superficially to be the role for which nuclear weapons are most indispensable. According to the U.S. Intelligence Community, there are roughly 2,000 of these targets of interest to U.S. military planners. Due to their burial depth, a good number of these facilities are beyond the reach of existing conventional earth-penetrator weapons.24 Many are susceptible to destruction by one or more nuclear earth penetrators, but not without unwanted consequences. Because more than half of these strategic underground targets are located near or in urban areas, a nuclear attack could produce significant civilian casualties (depending on yield, between thousands and more than a million, according to the U.S. National Academy of Sciences); even in more remote areas, casualties could range between a few hundred to hundreds of thousands, depending on yield and wind conditions.25 A new nuclear earthpenetrator weapon, which the Bush administration favored studying and their NPR endorsed but Congress rejected, would effectively capture a few hundred of these strategic underground targets but some uncertain number would presumably remain beyond reach, and such weapons would still produce unwanted collateral effects.26

**Most probable impact**

Kenneth C. **Brill 12**, is a former U.S. ambassador to the I.A.E.A. Kenneth N. Luongo is president of the Partnership for Global Security. Both are members of the Fissile Material Working Group, a nonpartisan nongovernmental organization. Nuclear Terrorism: A Clear Danger, www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html?\_r=0

Terrorists exploit gaps in security. The current global regime for protecting the nuclear materials that terrorists desire for their ultimate weapon is far from seamless. It is based largely on unaccountable, voluntary arrangements that are inconsistent across borders. Its weak links make it dangerous and inadequate to prevent nuclear terrorism.¶ Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism.¶ There is a consensus among international leaders that the threat of nuclear terrorism is real, not a Hollywood confection. President Obama, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, and numerous experts have called nuclear terrorism one of the most serious threats to global security and stability. It is also preventable with more aggressive action.¶ At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes. And there is a black market in such material. There have been 18 confirmed thefts or loss of weapons-usable nuclear material. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material.

### ptx

#### PC failing now –

Josh Rogin, Daily Beast, 1/11/14, http://www.thedailybeast.com/articles/2014/01/11/inside-the-white-house-war-on-dems.html

The White House is now openly declaring that Senate Democrats who support new sanctions against Iran are idling for war, but their campaign to pressure their own party members has been going on for months and has done little to dissuade Democrats from supporting sanctions. The White House brought their fight with Congressional Democrats out in the open Thursday evening when National Security Staff member Bernadette Meehan sent an incendiary statement lashing out at pro-sanctions Democrats to a select group of reporters, accusing them of being in favor of a strike on Iran.

#### Pol cap with dems alienate them.

Josh Rogin, Daily Beast, 1/11/14, http://www.thedailybeast.com/articles/2014/01/11/inside-the-white-house-war-on-dems.html

That explanation glosses over the fact that the Obama administration worked against several sanctions measures Congress has passed in recent years, despite claiming credit for those sanctions after the fact.¶ Regardless, both Democrats who support the administration and those who support Menendez told The Daily Beast that the White House’s tactic of going after their own party’s legislators is over-the-top and ineffective, alienating allies, creating bad will on Capitol Hill, and wasting political capital the administration may need on this issue down the road.¶ “The White House has clearly overreached in calling Democratic supporters of the Menendez-Kirk bill warmongers,” one senior Democratic Congressional aide said. “These are Democrats, some who have been in public service for decades and have long supported increasing sanctions against Iran. It’s just not credible and not helpful for them to use such extreme language when it’s clearly not true.”

#### Obama spending pol cap on Gitmo now - should trigger all their weakness args bc it makes him look light on nat security.

Klaidman 13 - (Daniel, http://www.thedailybeast.com/articles/2013/12/12/congress-cooperates-obama-pushes-hard-and-closing-gitmo-has-a-chance.htmlhttp://www.thedailybeast.com/articles/2013/12/12/congress-cooperates-obama-pushes-hard-and-closing-gitmo-has-a-chance.html, Congress Cooperates, Obama Pushes Hard, and Closing Gitmo Has a Chance, 12-12-13)

But it is also the case that the Guantanamo stalemate began to give way to progress because of a resolute push by Obama as well as a willingness to spend political capital that was not always present during the president’s first term. Obama drove his advisers hard and pushed them to regularly update him on progress. And crucially, he made sure that his team engaged Congress, both to win the cooperation of lawmakers but also to signal that closing Guantanamo was one of the highest priorities of his second term. Obama first signaled his re-commitment to closing Gitmo last April during a press conference when he was asked about a hunger strike at the prison that had spread to about 100 inmates. Speaking with intensity, the president pledged to rededicate himself to the challenge of shuttering the prison. “Guantanamo is not necessary to keep us safe,” he said, tapping at the lectern. “It is expensive. It is inefficient . . . It is a recruitment tool for extremists. It needs to be closed. I’m going to back at this,” he said.

### CP

#### 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.

#### Obama ignores OLC

Posner 11 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

In the early years of the Bush Administration, the Office of Legal Counsel (OLC), an office within the Department of Jus‐ tice, issued a series of memoranda arguing that certain counter‐ terrorism practices—including surveillance of U.S. citizens and coercive interrogation—did not violate the law. 37 These memos were later leaked to the public, causing an outcry. 38 In 2011, the head of the OLC told President Obama that continued U.S. military presence in Libya would violate the War Powers Act. The President disregarded this advice, relying in part on contrary advice offered by other officials in the government.  These two events neatly encapsulate the dilemma for the OLC, and indeed all the President’s legal advisers. If the OLC tries to block the President from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If the OLC gives the President the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public. Many scholars, most notably Professor Jack Goldsmith, argue that the OLC can constrain the executive. 39 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Professor Bruce Ackerman, is that the OLC is a rubber stamp. 40 I advocate a third view: The OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that the OLC enables rather than constrains.