

SNOWPOCALYPSE AND OBAMA'S DRONE TALK

As I've said a few times, I suspect one reason the Administration may be acting so ridiculously with respect to drones is because the families of Anwar and Abdulrahman al-Awlaki and Samir Khan are suing for wrongful death. The ace in the hole the Administration would use to dismiss that suit would normally be state secrets. But as more and more officials discuss aspects of the drone program, it will be harder to sustain any state secrets invocation if they need one (though that didn't help the Jeppesen plaintiffs). And if the suit goes forward, there might be really interesting claims exposed, more so with Samir Khan (who no one has accused of being operational) and Abdulrahman than Anwar al-Awlaki.

That is, recent events have made it more likely that wrongful death suit will turn into precisely what Steve Vladeck has proposed for targeted killings of Americans, a real review of the killings.

And that may be more true after the President makes some kind of public statement on drones, as Eric Holder suggested yesterday he would (see 53:00 and following).

What you will hear from the President in a relatively short period of time is, uh—I don't want to preempt this, but we talked about a need for greater transparency, in what we share, what we talk about. Because I am really confident that if the American people had access, for example—some of this stuff cannot be shared. I understand that. But at least the representatives of the American people had the ability—as members of the Intelligence Committee have been able to see—some of those OLC opinions, there would be a

greater degree of comfort that people would have to understand that this government does these things reluctantly, but also we do it in conformity with international law, with domestic law, and with our values as of the American people.

And so I think there is going to be a greater effort at transparency, a number of steps are going to be taken—I expect you are going to hear the President speaking, about this.

Which is why I find it interesting that DOJ used the overblown snowpocalypse to request a two-day delay in its reply to ACLU's response to the government's motion to dismiss the wrongful death suit. Judge Rosemary Collyer granted the request, giving DOJ the weekend to write its brief. After all, DOJ has had a full month to write their brief, and it can be filed remotely. They didn't ask for a delay because of not-snow. I suspect they asked for a delay because the Administration is in the middle of changing its approach to targeted killing transparency.

That doesn't mean they're about to let a judge review their legal case for killing Awlaki and friends. But it likely does mean they need to account for how a Presidential speech acknowledging drone killing will affect this suit.