

CROWD OF UNILATERAL LAWYERS APPLAUD UNILATERAL OPERATOR

Sarah Cleveland? Not a judge. Greg Craig? Not a judge. William Dodge? Not a judge. Jeh Johnson? Not a judge. David Kris? Not a judge. David Martin? Not a judge. Daniel Meltzer? Not a judge. And Trevor Morrison?

Also not a judge.

Nevertheless, these eight lawyers—all of whom served the function of interpreting the law for the Executive Branch within the Executive Branch for Obama (and, in Kris' case, for Bush)—assure you that John Brennan will uphold our laws.

Throughout his tenure as Assistant to the President for Homeland Security and Counterterrorism in the Obama Administration, John Brennan has been a persistent and determined leader in support of adherence to the rule of law, a principled commitment to civil liberties and humanitarian protection, and transparency. On a broad range of issues, he has endeavored to ensure that the national security practices of the United States Government are based on sound long-term policy goals and are consistent with our domestic and international legal obligations, as well as with broader principles of democratic accountability. John Brennan has been a steadfast champion of the President's commitment to closing the detention facility at Guantánamo, and has urged that our Article III courts remain a vital tool in our counterterrorism toolbox. He has stood firmly with the President's efforts to ensure that interrogations are conducted in accord with the law and our values. And he has worked to ensure that the responsible

and effective pursuit of our counterterrorism objectives will not depend simply on the good instincts of officials, but will instead be institutionalized in durable frameworks with a sound legal basis and broad interagency oversight.

[snip]

John Brennan understands that adherence to the Constitution and the rule of law serve, rather than undermine, our national security interests. Time and again, he has demonstrated seasoned wisdom and judgment in responding to our nation's greatest national security threats, and he has consistently reaffirmed his core commitment to conducting our national security and counterterrorism policy in a fashion that comports with our deepest values.
[my emphasis]

Sure, there are a few tells—such as the boast that his pursuit of counterterrorism objectives will be institutionalized in a broad interagency—not interbranch—oversight. Or, on the reverse, the claim that John Brennan—whose solution to the National Counterterrorism Center's failure to fulfill minimization requirements was just to open up all Federal databases to NCTC without that minimization—has a “principled commitment to civil liberties.”

But mostly, it's the structural problem here. Regardless of what John Brennan himself believes—and all the public evidence suggests these lawyers are too close to judge and perhaps just a little seduced by the old spook—this Administration doesn't stand for any of these things.

More importantly, this Administration has refused just about every opportunity to have someone else—lawyers and judges who hadn't counseled these policies from the start—weigh

these issues. The Administration has shown great disdain for both democratic accountability and Article III courts. It has ensured that interrogations—both those conducted under Bush and those conducted in dark prisons under Obama—never be tested for whether they accord with the law. Indeed, Obama’s Administration has gone to great lengths to hide our torture from international oversight and even from litigants in our own courts.

So even assuming John Brennan is the nice guy these lawyers say he is—an assumption that defies the evidence—they’re still damning Brennan with the same illegitimate argument the Obama Administration has always relied on:

Trust us.

They are emphasizing precisely why John Brennan’s success in an Administration that has refused even basic oversight should not be sufficient for confirmation to lead a secretive agency.

And while in any other week I might be inclined to grant David Kris’ word great weight, not this week. After all, Kris warned we might get into trouble with Hamdan’s material support for terrorism conviction years ago. Nevertheless, the Obama Administration is treating Gitmo with the same Kangaroo arrogance that Bush did, refusing to take the DC Circuit’s ruling on Hamdan as law, overriding their own prosecutor at Gitmo. This Administration—Brennan’s Administration—is defiant of even the warnings Kris offered years ago. So when Kris and other lawyers boast that Brennan will be a great leader consistent with Obama’s policies...

He is also exceptionally qualified to provide leadership and direction to the Agency, consistent with President Obama’s national security objectives.

... It’s shouldn’t exactly count as a glowing endorsement.

Sure, this letter to Dianne Feinstein in support of Brennan's nomination will work. It'll provide cover for all the evidence that Brennan is none of these things. At the very least, it'll force a few Democrats on the Senate Intelligence Committee to consider whether they're prepared to admit that Obama's policies exhibit none of this respect for rule of law. Which they aren't, yet. So it'll serve its purpose.

The last actual judge who got a glimpse at the Obama Administration's claim to abide by the rule of law had this to say:

I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping reasons for their conclusion a secret.

John Brennan is the knave of this Alice in Wonderland system of legal justice.

I take that as a far better read of Brennan's fitness to be CIA Director than the word of the Queen of Hearts' other cards up her sleeve.

Update: Conor Friedersdorf does more fact-checking of the claims in the letter.