

ANOTHER REPUBLICAN LAWYER WARNS OBAMA ABOUT LEGAL PROBLEMS

I know it's probably easy for Obama supporters, if not members of the Administration, to dismiss the warnings of lawyers who fought within the Bush Administration to cloak our counterterrorism policy in legal sanction as trolling.

But you'd think that as Jack Goldsmith and now John Bellinger raise the same kind of warnings they did with Bush, they'd be treated with the same kind of alarm among the pundit class.

I have been warning for several years about the international legal risks posed by the Obama Administration's heavy reliance on drone strikes, including my Post op-ed in October 2011 entitled "Will Drone Strikes Become Obama's Guantanamo?" This article was not intended as partisan criticism but rather as a cautionary note, based on my own eight years of experience explaining US counter-terrorism policies.

At the time I wrote it, I thought there was perhaps only a 25% chance that Obama's drone strikes would become as internationally maligned as Guantanamo, given the preference of human rights groups and European governments to avoid criticising the Obama Administration. But over the last eighteen months, I have seen a crescendo in international criticism, resulting in lawsuits in the US, Britain, and Pakistan, and a potential decrease in intelligence cooperation. This has echoes of the rapid decline in European

governmental support for US counterterrorism efforts after 9-11 as national parliaments pressed their governments to distance themselves from unpopular US policies. I would not be surprised if, in the next year, war crimes charges are brought against senior Obama officials in a European country with a universal jurisdiction law. The Administration is increasingly on the back foot internationally in explaining and defending the legal aspects of the drone program. It needs to step up its efforts.

These are not starry-eyed hippies. They're solidly conservative lawyers. And yet it seems their warnings are being treated with the seriousness they would if I had made them.

One more point. As I traced last year, the White House's unusual efforts to keep all mention of the "Gloves Come Off" Memorandum of Notification that authorizes many of these counterterrorism programs mapped closely to the exposure of Binyam Mohammed's torture through an effort very nearly parallel to the suit Bellinger discusses in his post: Noor Khan's suit against the UK for cooperating in the drone strike that killed his father.

The UK has used various strategies to try to hide its role in US covert operations: effectively a Glomar in this case, and a larger effort to create a secret court to hide our counterterrorism programs.

Maybe these British efforts will work. Maybe this particular ally will succeed in hiding the things we work hard to hide.

But not all of them will be.

The Administration seems increasingly committed to claiming all of this was a covert op, immune even from full disclosure to the Intelligence Committees, to say nothing of ordinary citizens.

Perhaps it is so committed in an effort to avoid embarrassing our allies like this.

But it's not fooling anyone.