

SQUABBLE IN ADMINISTRATION OVER RULE OF WAR, KHADR, DRONES

Steven Edwards, one of the four journalists banned from Gitmo for reporting publicly available information, has an important story on squabbles within the Obama Administration about what should be in the recently updated Gitmo military tribunal manual. At issue is whether actions like Khadr's alleged crime—throwing a grenade during active warfare—should be included.

The officials sought to strip a new commissions manual of a law-of-war murder definition that is central to Khadr's prosecution in the mortal wounding of Special Forces Sgt. First Class Chris Speer during a 2002 firefight in Afghanistan, insiders say.

Omission of the segment could have also obliged prosecutors to trim or abandon "up to one-third" of its cases, according to one inside estimate.

In a turf battle familiar from the Bush Administration, the dispute pits State—Harold Koh—against DOD—General Counsel Jeh Johnson.

U.S. Defence Secretary Robert Gates signed off on the manual with the contested "comment" intact after Jeh Johnson, his legal adviser, went head-to-head with Koh, one official recounted.

"Harold Koh doesn't have any authority over the defence department," said this official. "The general counsel of DOD was fighting Koh on it; he advises Secretary Gates . . . who is going to

follow his own lawyer.”

Of particular interest, Koh appears to have shared the concerns laid out here—that if we treated Khadr’s alleged attack as a war crimes violation, it would put our own use of drones in the same category (though I imagine it is in that category in any case).

Along with Koh, two OLC attorneys opposed the inclusion of murder in the manual. From the sounds of things, others in the Obama Administration overrode these two OLC attorneys. Which I guess is a lot easier to do when there’s no Assistant Attorney General at OLC to champion such battles. One more benefit to the unilateralists of scotching Dawn Johnsen’s nomination, I guess. But it does raise questions about whether OLC under Obama has gotten even **more** politicized than under Bush?

One more note before I send you off to read the whole thing. This article doesn’t mention Daniel Meltzer, the Deputy White House Counsel who resigned earlier this month to spend more time with his law students. But the timing of it would certainly line up.

Updated: Corrected reference to specific OLC lawyers—my post went beyond what Edwards wrote in his story.