

WITH DAVID KRIS GONE, OBAMA ROLLS OUT “NEW AND IMPROVED” MILITARY COMMISSIONS

I think I'll do a series of posts over the next few days all starting with the phrase, "with David Kris gone," showing how Obama has finally gone off the deep end (the "Dark Side") in his War on Terror and the Constitution.

This edition has to do with Obama's announcement that he's in the business of Military Commissions, new and expanded.

From the beginning of my Administration, the United States has worked to bring terrorists to justice consistent with our commitment to protect the American people and uphold our values. Today, I am announcing several steps that broaden our ability to bring terrorists to justice, provide oversight for our actions, and ensure the humane treatment of detainees. I strongly believe that the American system of justice is a key part of our arsenal in the war against al Qaeda and its affiliates, and we will continue to draw on all aspects of our justice system – including Article III Courts – to ensure that our security and our values are strengthened. Going forward, all branches of government have a responsibility to come together to forge a strong and durable approach to defend our nation and the values that define who we are as a nation.

The new and improved Military Detention Regime has two parts.

First, the long-promised indefinite detention by fiat.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force of September 2001 (AUMF), Public Law 107-40, and in order to ensure that military detention of individuals now held at the U.S. Naval Station, Guantánamo Bay, Cuba (Guantánamo), who were subject to the interagency review under section 4 of Executive Order 13492 of January 22, 2009, continues to be carefully evaluated and justified, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

One detail of it that sticks out is the standard for continued detention:

Continued law of war detention is warranted for a detainee subject to the periodic review in section 3 of this order if it is necessary to protect against a significant threat to the security of the United States.

Note, this doesn't appear to tie to any wrongdoing on the detainee's part. "It" here appears to refer to "continued law of war detention," suggesting that "it" may be necessary regardless of any threat posed by the detainee himself.

Also note that the standard "significant threat to the security of the United States" doesn't invoke the war (ostensibly, the war against Afghanistan) itself. This seems very very wrong. It also seems designed to authorized the continued detention of the Yemeni detainees who we admit aren't themselves a threat, but must be detained, our government says, because they come from a dangerous country.

The second part of the New and Improved Military

Detention Regime is more and more military commissions.

The Secretary of Defense will issue an order rescinding his prior suspension on the swearing and referring of new charges in the military commissions. New charges in military commissions have been suspended since the President announced his review of detainee policy, shortly after taking office.

The Administration, working on a bipartisan basis with members of Congress, has successfully enacted key reforms, such as a ban on the use of statements taken as a result of cruel, inhuman or degrading treatment, and a better system for handling classified information. With these and other reforms, military commissions, along with prosecutions of suspected terrorists in civilian courts, are an available and important tool in combating international terrorists that fall within their jurisdiction while upholding the rule of law.

Mind you, the “ban” on using tortured statements is no such thing, as it comes with a nice loophole.

But it all makes for a nice announcement for the shiny new military detention regime.