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#### Restrictions are prohibitions on action --- the aff is oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions like NEPA

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Neg ground and limits---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference---there are an infinite number of potential conditions

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

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#### Judges will get pay raises now, but Congress still has the ability to wreck salaries – key to judicial independence

Lyle Denniston, SCOTUSblog badass, covered the court for 54 years, National Constitution Center’s Adviser on Constitutional Literacy, 10-8-2012, “Major gain for judges’ independence,” Constitution Daily, http://blog.constitutioncenter.org/2012/10/major-gain-for-judges%E2%80%99-independence/

That has been, from the beginning, one of the ways the Founders guaranteed the independence of the federal judiciary (another was a promise of life tenure “during good behavior”). But for the past 34 years, federal judges have been pursuing a series of lawsuits, claiming that Congress has frequently acted in ways that – in real-dollar terms – reduced their pay, in violation of the Compensation Clause. The theory was that, if a federal judges’ pay remains constant, it will be eroded over time by the effects of inflation in money’s value. Last Friday, that legal struggle finally resulted in a historic constitutional victory for the judges – a victory that is likely to be tested in the Supreme Court before it could take final effect. The U.S. Court of Appeals for the Federal Circuit – a specialized court that decides claims for money from the federal government – ruled by a 10-2 vote that Congress has several times violated a promise made in 1989 to give federal judges an annual cost-of-living increase in their pay level. The decision does not mean that Congress has lost the power to set federal judges’ salary levels, or that it has a constitutional duty to give them a period, inflation-countering raise. But it does mean that Congress cannot promise a raise, and then break that promise, and that the lawmakers cannot take steps that reduce the value of a sitting judge’s salary scale. The judges’ fight has been a long-running labor for them and their lawyers, and the issue raises such fundamental constitutional questions that it has gone to the Supreme Court, in one form or another, three times. It almost certainly will return there again, because the Justice Department does not believe the judges have a valid claim that the Compensation Clause has been violated, and the Department has the authority to seek Supreme Court review. The Federal Circuit Court’s ruling in the judges’ favor (in the case of Beer v. U.S.) is a strong statement of support for judicial independence, and for the role that a secure salary plays in helping to protect that independence. In the Declaration of Independence, the court recalled, America’s revolutionary generation protested that the King of England had made judges depend upon his grace for their tenure and for their pay. Alexander Hamilton wrote in The Federalist Papers: “Next to permanence in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.”

#### Congress will backlash against the plan and cut judicial pay

Philip A. Talmadge, Justice, Washington State Supreme Court, Winter 1999, Seattle University Law Review, 22 Seattle Univ. L. R. 695, p. 701-704

The doctrine of judicial restraint has been encrusted in recent years with considerable ideological cant of both the left and the right. 17 The ideological discussion highlights particular political issues of the day. Many conservatives decry judicial activism with respect to the courts' role in racial desegregation in America or [\*702] reproductive rights issues. 18 Liberals complain today of judicial activism in property and economic issues. 19 But this doctrine need not be the captive of the left or the right. The doctrine itself has become "political" largely because it is not susceptible to rigorous and predictable definition. That the courts are not entirely trusted by the partisan branches of government to announce constitutional principles is illustrated by recent Washington legislation. In 1997, a bill was introduced in the Washington State House of Representatives with thirty-three sponsors. The bill challenged the doctrine of judicial review: "The doctrine of judicial review that the courts have the sole and final say in interpreting the Constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for almost two hundred years." 20 The legislation's apparent intent was to undercut the finality and authority of judicial review of constitutional questions by permitting the legislature to disagree with a judicial interpretation of the Washington Constitution and to submit the issue to the voters in a statewide referendum. 21 [\*703] The sense that the courts are too powerful sometimes conflicts with direction to judges from the partisan branches to state their views more publicly. In 1997, twenty-two sponsors introduced in the Washington State House of Representatives a measure urging the Supreme Court to amend Canon 7 of the Code of Judicial Conduct to afford judges and judicial candidates the right to "speak freely and without fear of governmental retaliation, on issues that are not then before the court." 22 The United States Congress has also raised serious questions about judicial performance through a different methodology. The United States Senate's recent glacial pace in confirming nominees to judicial vacancies increases judicial workloads and instills trepidation in the minds of the nominees. 23 In recent legislation, 24 Congress [\*704] sought to restrain "judicial activism" by denying judges cost-of-living salary adjustments and limiting federal court jurisdiction. Various versions of the legislation would deny federal courts the power to release federal prisoners because of bad prison conditions and establish special procedures to hear challenges to state initiative measures. In summary, these issues illustrate the need for the courts continually to revisit and review the core constitutional functions of the judiciary. 25 Within the constitutional sphere, however, the courts should be active and the other branches of government constrained not to act unconstitutionally. The judiciary cannot "restrain" itself from declaring the enactments of legislative bodies violative of constitutional norms. The courts must vigorously protect individuals, particularly minorities, from majoritarian tyranny. But this protective role does not allow the courts to "constitutionalize" every controversy. Judicial self-restraint lends support to the legitimacy of judicial independence. In our system of separation of powers, achievement of the necessary balance between a judiciary vigorous within its constitutional sphere and independent of the partisan branches of government, and a judiciary restrained in its inclination to right every wrong, is no easy task. That necessary balance is, however, the essence of ordered liberty in the American constitutional system. Likewise, the other branches of government must regard the authority and independence of the judiciary by respecting judicial review, properly funding the courts, and avoiding the imposition of nonjudicial duties or ever-escalating caseloads. The fulfillment of separation of powers is found in the principles of restraint employed in the federal and state court systems.

#### Adequate funding for the judiciary is key to the rule of law – it’s watched internationally

Testimony of Associate Justice Anthony M. Kennedy before the United States Senate Committee on the Judiciary Judicial Security and Independence February 14, 2007 http://judiciary.senate.gov/testimony.cfm?id=2526&wit\_id=6070

The provision of judicial resources by Congress over the years is admirable in most respects. Your expeditious consideration of the pending court-security bill is just one example of your understanding of our needs. Our facilities have been, and are, the envy of the judiciaries of the several States and, indeed, of judges throughout the world. Our staff, our libraries, our electronic data systems, and our courthouses are excellent. These resources have been the special concern of Congress. Your interest, your oversight, and your understanding of our needs set a standard for our own States and for nations around the world. Just one example is the Federal Judicial Center. When visitors come to Washington, we recommend they observe it to learn how a successful judicial-education center functions. Those visitors are awed by what they see. As you know, the Center produces an elaborate series of programs for judicial education, under a small budget emphasizing turn-key projects. Around the world, the allocation of scarce resources to judiciaries is, to be candid, a tough sell. There are urgent demands for funds for defense; for roads and schools; for hospitals, doctors, and health care; and for basic utilities and necessities such as clean water. Even rich countries like our own find it hard to marshal the necessary resources for all these endeavors. What, then, is the reception an elected representative receives when he or she tells constituents the legislature has increased funding for judicial resources? The report, to be frank, is not likely to generate much excitement. Perhaps this is an educational failure on our part, for there is a proper response to this predictable public reaction. It is this: An efficient, highly qualified judiciary is part of the infrastructure necessary in any society that seeks to safeguard its freedom. A judiciary committed to excellence secures the Rule of Law; and the Rule of Law is a building block no less important to the advance of freedom and prosperity than infrastructure systems such as roads and utilities. Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people. The Committee knows that judges throughout the United States are increasingly concerned about the persisting low salary levels Congress authorizes for judicial service. Members of the federal judiciary consider the problem so acute that it has become a threat to judicial independence. This subject is a most delicate one and, indeed, is difficult for me to address. It is, however, an urgent matter requiring frank and open exchange of views. Please permit me to make some remarks on the subject.

#### That causes nuclear war [gender paraphrased].

Charles S. Rhyne, Founder and Senior Partner of Rhyne & Rhyne law firm. “Law Day Speech for Voice of America.” May 1, 1958. American Bar Association. http://www.abanet.org/publiced/lawday/rhyne58.html

In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that [hu]mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people.

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#### The aff sets a dangerous precedent that breaks judicial defense --- leads to escalating checks on war powers

Craig Green 9, Associate Professor, Temple Law School; University Fellowship, Princeton History Department; J.D., Yale Law School, “Ending the Korematsu Era: A Modern Approach ,” http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=roger\_craig\_green

Another lesson from sixty years of wartime cases concerns the role of precedent itself in guiding presidential action. Two viewpoints merit special notice, with each having roots in opinions by Justice Jackson. On one hand is his explanation in Korematsu that courts must not approve illegal executive action: A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion . . . show[s] that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image.270 This “loaded weapon” idea is orthodox in analysis of Korematsu as a racist morality play. The passage is cited as evidence that Supreme Court precedents really matter, and that tragically racist errors retain their menacing power throughout the decades.271 Students are reminded that Korematsu has never been directly overruled, thereby inviting imagination that Korematsu itself is a loaded weapon just waiting for a President to grasp and fire.272 This conventional approach is incomplete. As we have seen, the first and decisive precedent supporting World War II’s racist policies was not Korematsu but Hirabayashi; thus, Jackson himself helped to “load” the doctrinal “weapon” over which he worried just a year later.273 Jackson’s willingness to eviscerate Hirabayashi in Korematsu only exemplifies (as if anyone could doubt it) that no Supreme Court decision can fiat a legal principle “for all time.”274 Past cases can be overruled, disfavored, ignored, or reinterpreted if the Court finds reason to do so, and this is effectively what has happened to Korematsu and Hirabayashi themselves in the wake of Brown, the civil rights era, and other modern history.275 Korematsu was a direct “repetition” of Hirabayshi’s racism for “expand[ed]” purposes, yet it only launched these two cases farther toward their current pariah status.276 A second perspective on war-power precedents is Jackson’s Youngstown concurrence, which rejected President Truman’s effort to seize steel mills and maintain output for the Korean War.277 Jackson’s opinion ends with selfreferential pessimism about judicial authority itself: I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. . . . If not good law, there was worldly wisdom in the maxim attributed to Napoleon that “The tools belong to the man who can use them.” We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.278 This “no illusion” realism about presidential authority views judicial limitations on the President as contingent on Congress’s political wisdom and responsiveness — without any bold talk about precedents as “loaded weapons” or stalwart shields. On the contrary, if taken seriously, Jackson’s opinion almost suggests that judicial decisions about presidential wartime activities are epiphenomenal: When Congress asserts its institutional prerogatives and uses them wisely, the executive might be restrained, but the Court cannot do much to swing that political balance of power. Jackson’s hardnosed analysis may seem intellectually bracing, but it understates the real-world power **of judicial precedent to shape what is politically possible**.279 Although Presidents occasionally assert their willingness to disobey Supreme Court rulings, actual disobedience of this sort is vanishingly rare and would carry grave political consequences.280 Even President Bush’s repeated losses in the GWOT did not spur serious consideration of noncompliance, despite strong and obvious support from a Republican Congress.281 Likewise, from the perspective of strengthening presidential power, Korematsu-era precedents clearly emboldened President Bush in his twenty-first-century choices about Guantanamo and military commissions.282 The modern historical record thus shows that judicial precedent can both expand and limit the operative sphere of presidential action. Indeed, the influence of judicial precedent is stronger than a court-focused record might suggest. The past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive government.283 From the White House Counsel, to the Pentagon, to other entities addressing intelligence and national security issues, lawyers have risen to such high levels of governmental administration that almost no significant policy is determined without multiple layers of internal legal review.284 And these executive lawyers are predominantly trained to think — whatever else they may believe — that Supreme Court precedent is authoritative and binding.285 Some middle ground seems therefore necessary between the “loaded weapon” and “no illusion” theories of precedent. Although Supreme Court decisions almost certainly influence the scope of presidential war powers, such practical influence is neither inexorable nor timeless. A more accurate theory of war-power precedents will help explain why it matters that American case law includes a reservoir of Korematsu-era decisions supporting excessive executive war power, and will also suggest how lawyers, judges, and scholars might eviscerate such rulings’ force. Korematsu is the kind of iconic negative precedent that few modern lawyers would cite for its legal holding. Yet even as Korematsu’s negative valence is beyond cavil, the breadth and scope of that negativity are not clear. Everyone knows that Korematsu is wrong, yet like other legal icons — Marbury, Dred Scott, Lochner, Erie, and Brown — its operative meaning is debatable. Just as Korematsu was once an authoritative precedent and is now discredited, this Article has sought to revise Korematsu’s cultural meaning even further, transforming it from an isolated and irrelevant precedent about racial oppression to a broadly illuminating case about how courts supervise presidential war powers.

#### That decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Causes nuclear war and bioterror---exec flex is key to successful fourth-gen warfare

Zheyao Li 9, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 1NC DA

#### Court environmental restrictions wreck readiness

Major Charles Gartland 12, J.D., United States Air Force judge advocate currently serving as the Environmental Liaison Officer for the Air Force Materiel Command, “AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE,” 68 A.F. L. Rev. 27

The preceding cases illustrate, at best, inconsistent application of injunction analyses and the political question doctrine. n375 At worst they illustrate no injunction analysis and total disregard of the political question doctrine. n376 A lasting solution to this problem calls for more than merely advocating that the policy preference [\*67] that happened to be imposed by five Justices in Winter be universally applied. Over forty years of NEPA case law shows that when it collides with national defense, not all judges will agree with how the scales tipped in Winter; indeed, many judges will not agree that the factual scenario in Winter presents a Constitutional issue at all. n377 Consequently, the most manageable solution is one that removes the grounds for a disagreement over all the foregoing issues: amending NEPA to create a national defense exception. The remainder of this article will further expound on the necessity of this solution, the form this solution might take, and finally show that it is consistent with both the Constitutionally prescribed role for national defense and the statutorily prescribed role for NEPA.¶ A. The Basis for a National Defense Exemption¶ Entertaining political questions in the courtroom has consequences, both legal and practical. The argument for a national defense exemption to NEPA can be reduced to three bases: (1) the impracticality of hearing national defense political questions in the courtroom; (2) the real-world impact that results; and (3) that the very nature of injunction law causes the first two bases to blend in a manner that is particularly virulent to national defense.¶ 1. Policy and Politics in the Courtroom¶ Trident, Weinberger v. Wisconsin, and Callaway amply illustrate the issues that trial courts are unequipped to resolve, as tactical, strategic, and foreign policy elements figure into national defense undertakings. n378 One District Court judge hearing a NEPA case with foreign policy implications remarked on the oddity of the testimony given in his courtroom, more akin to a "legislative hearing" than a trial. n379 As noted in McQueary v. Laird, national security does not blend well with evidentiary hearings. n380¶ 2. Real-World Adverse Impact to the National Defense¶ The consequences of judicial intervention in national defense can be more than academic: Army units n381 and naval fleets not training adequately or at all, n382 [\*68] nuclear tests jeopardized, n383 and diplomatic missions put at risk. n384 Winter is but the most recent and highest profile example of unwieldy judicial process outcomes: uniformed personnel devoted to being lookouts with binoculars and adjusting sonar decibel levels as whales approach and disperse--in the middle of a warfighting exercise. n385¶ 3. The Nature of Injunction Law Forces Judicial Policy-Making¶ The law surrounding injunctions guarantees unsatisfactory results because the third and fourth prongs of the injunction test in essence require the courts to make a policy choice that, in the national defense context at least, involves the constitutional separation of powers. Some courts have simply avoided the dilemma by ignoring the portion of the injunction test corresponding to the agency's equity and the public interest in national defense, n386 while others have plainly considered the former to be more important. n387 Either way, the NEPA injunction often decides a question that the Constitution and statute intended to be handled differently.

#### Global nuke war

Felzenberg and Gray 11 — Alvin S. Felzenberg, Professorial Lecturer at The Elliott School of International Affairs at George Washington University, Presidential Historian and Adjunct Faculty Member at the Annenberg School for Communication at the University of Pennsylvania, former Fellow at the Institute of Politics at the John F. Kennedy School of Government at Harvard University, served as Principal Spokesman for the 9/11 Commission, holds a Ph.D. in Politics from Princeton University, and Alexander B. Gray, Student at the Elliott School of International Affairs at George Washington University and the War Studies Department of King’s College, London, 2011 (“The New Isolationism,” *The National Review*, January 3rd, Available Online at http://www.nationalreview.com/articles/print/256150, Accessed 01-03-2011)

Anything Reps. Ron Paul (R., Tex.) and Barney Frank (D., Mass.) both support should give the rest of us pause. Their proposal to slash defense spending by $1 trillion over a decade — only the most recent joint effort by the new isolationists on the Left and Right to curtail American military strength around the world — is as foolhardy as it is unrealistic. Were such a policy enacted, the nation and the world would be set on a path not toward peace, but toward instability, conflict, and a lessening of freedom in many corners of the world. As the deteriorating situation on the Korean peninsula reminds us, the security concerns of the United States do not disappear in times of economic distress. America’s interests, whether economic, strategic, diplomatic, or moral, cannot be set aside when Congress tires of them. The United States and the world paid a severe price for the ostrich-like behavior too many democratic nations exhibited during the 1920s and 1930s. Reps. Paul and Frank appear determined to repeat this mistake. The United States continues to face an array of global challenges that require a modern, technologically superior military. It is very much in the interests of the United States to uphold the territorial integrity and economic independence of much of Asia, maintain the security of critical waterways such as the Strait of Hormuz, and protect American trade from pirates and terrorists worldwide. Rather than regard the nation’s defenses as a ready source of money available for diversion to domestic concerns, Congress and the president should identify the challenges America faces and assure that its military is able to meet them. At its core, the Frank-Paul effort appears to be an attempt to prevent repetitions of wars the two congressmen regard as either unnecessary or faultily executed. But the United States has broader and more important long-run national-security concerns than Iraq and Afghanistan. As the U.S. became bogged down in those two countries, it began feeling strains elsewhere, precipitated by China, Russia, and potentially toxic menaces such as Iran and Venezuela. Counterinsurgency warfare and Predator-drone strikes against transnational terrorists certainly defined much of the last decade. But the next decade will witness increasing competition among nation-states for control of valuable resources and the exertion of influence worldwide. Russia, through its control of vital energy pipelines, seeks to draw Western Europe more closely into its orbit, thereby weakening the latter’s historical ties to the United States. By taking a similar approach to Ukraine, Kyrgyzstan, Georgia, the Baltics, and Moldova, Russia is on the verge of re-colonizing economically many of its former satellites. China, while continuing to upgrade its naval capabilities, grows increasingly assertive. In pursuit of its own Monroe Doctrine for East Asia, Beijing has proclaimed its sovereignty over the entire South China Sea, menaced neighbors from India to Vietnam, used its economic muscle to intimidate Japan, and increased its threats against Taiwan. China’s leaders have been studying the writings of the 19th-century American naval theorist Alfred Thayer Mahan, who demonstrated the connection between sea power and economic strength. At the turn of the last century, Theodore Roosevelt found in Mahan the blueprint for achieving unprecedented American influence in world affairs. His efforts to build both a strong navy and a sound economy ushered in the “American century,” the period in which the United States became a force for good throughout the world and a beacon of hope for those yearning to breathe free. In pursuing a “blue-water” ocean-going navy capable of supporting their expanding global economic ambitions, the Chinese are acting from a desire to defend their nation’s trade and access to world markets, with a focus on energy supplies. It is critical that the Chinese — who are closely studying both Mahan’s writings and the history of the Monroe Doctrine — and Americans who see Chinese hegemony over Asia as either inevitable or a price they are willing to pay in exchange for slashing defense spending not draw the wrong lessons from history. Both sides should understand that it was not American might that gave the Monroe Doctrine force, but the then all-powerful British navy. For much of the 19th century, Great Britain had reasons of its own for keeping other nations out of the Western Hemisphere and for wanting to see the United States develop internally. If appropriately funded, the United States Navy has the capacity to play a similar role in China’s rise — perhaps, in the process, influencing how China develops. Should China conclude that the United States intends to remain a visible and active presence in the region, it will respond accordingly. Acting together, the two nations might embark on a series of cooperative ventures designed to help assure a steady flow of trade and an unimpeded exchange of people, goods, and ideas. They can also work together to combat a rise in piracy and terrorism in Asia and elsewhere and to respond to humanitarian crises, like the 2004 Indian Ocean tsunami. For its part, China, should it continue to hold North Korea in check, will achieve some of the status it seeks as a rising world power, with commensurate influence on the world stage. Should China conclude, on the other hand, that the United States intends to turn inward, it may grow even more ambitious and assertive in its region and beyond, potentially menacing world peace. Its smaller neighbors nervously wait to see how the United States will respond to China’s growing assertiveness. Should they come to believe that the U.S. is in retreat, they will make their own accommodations with Beijing. That result would wreak irreparable damage both to America’s economy and to its security. Messrs. Frank and Paul and their supporters have taken it into their minds that a reduced American presence in world affairs, particularly where the military is involved, would be a good thing. They had better think again: World politics, like nature, is hardly prone to respect vacuums. Iran and Venezuela remain as bellicose and destabilizing as ever, in spite of two years of Obama “engagement.” Iran squats beside the Strait of Hormuz, through which much of the world’s energy supply travels. Iran has also, the original Monroe Doctrine be damned, extended its military cooperation with Hugo Chávez’s authoritarian regime. Evidence is strong that Venezuela is providing sanctuary for Hezbollah terrorists in South America. The alliance of these two anti-American and increasingly menacing states could pose a threat to the United States of a kind that would make us nostalgic for the Cuban Missile Crisis. Faced with such challenges, the United States can ill afford military retrenchment as advocated by the new isolationists. While waste in the Pentagon’s budget can and should be cut, the new isolationists want to do it with a chainsaw when a scalpel is needed. In the last decade, the U.S. Navy’s fleet has shrunk to its smallest size since the 19th century, just as potential rivals such as China have not only expanded theirs but have begun to target perceived American maritime vulnerabilities. The U.S. Air Force is fielding an aging and shrinking force, while China is developing an advanced fighter for sale to adversaries of America, including Iran. A world in which the United States willingly ceded power and influence would both be more dangerous and prove less receptive to values that most Americans share, such as respect for human rights, the need to restrain governments through the rule of law, and the sanctity of contracts. By reducing its military strength to alarmingly low levels, the United States would create dangerous power vacuums around the world that other nations, with entirely different values, would be only too happy to fill. That, as history shows, would make war more, rather than less, likely. Congress and the president would do well to reflect on those lessons and remember their duty to provide a dominant American military presence on land, at sea, and in the air.

### 1NC CP

#### The United States Congress should substantially increase environmental restrictions on the President of the United States’ authority to introduce armed forces into hostilities. The United States Congress should create a standing risk assessment council to determine whether a waiver provision should be granted to the President on the basis of National Security.

#### Congressional oversight solves the aff

Rachel Jones 09, J.D. Candidate, University of California, Berkeley, School of Law, “Annual Review of Environmental and Natural Resources Law: Note: Risky Business: Barriers to Rationality in Congress,” 36 Ecology L.Q. 467

IV. INCREASING RATIONALITY IN CONGRESS¶ Given the military's vast landholdings, the role that land often plays as a haven for wildlife, and the ecosystem services provided by that land, there are a multitude of opportunities for national security and environmental concerns to clash with one another. n173 Although tension between the military and environmentalists is certainly not new, the 9/11 attacks and the government's response to those attacks rekindled the longstanding clash between these old foes. n174 Because of the effects of availability and probability neglect on the valuation of environmental and national security risks, "elected officers ordinarily face strong incentives to respond to excessive fear, perhaps by enacting legislation that cannot be justified by any kind of rational accounting." n175 While resolution of environmental/national security conflicts may result in sacrificing the environment in some instances, it need not happen in every instance. To avoid continual subordination of environmental concerns, Congress must use the legislative process to attempt to identify a "workable balance" between environmental protection and providing for our national defense. n176 Commentators have noted a few possible strategies that might result in proper valuation of environmental and national security risks.¶ A. The Precautionary Principle ¶ Professor Marcilynn Burke discusses the possibility that Congress might effectively balance national security and environmental concerns by applying [\*492] the precautionary principle. n177 Burke distinguishes between "stronger" and "weaker" forms of the principle. n178 According to Burke, the strongest form of the precautionary principle mandates that "when a government is balancing and integrating scientific, economic, political, and social values for the purpose of risk management, environmental protection is to be paramount." n179 In its weaker form, the precautionary principle provides that legislators should "take account of the consequences, good and bad, of right or wrong decisions on all key variables where the actual value is known" and ask both what will happen if they guess wrong about all the unknowns, and what will happen if they guess correctly about all of the unknowns. n180¶ Use of the precautionary principle when balancing environmental and national security concerns is ultimately untenable for a number of reasons. Although it might encourage more weighty consideration of environmental concerns, it will not negate weighty consideration of national security concerns. n181 In fact, use of the precautionary principle arguably led to passage of section 102 and the post-9/11 amendments to the ESA, MMPA, and MBTA. n182¶ Because of the uncertainty inherent in any analysis of environmental and national security risks, the precautionary principle cannot identify a "workable balance" between the two. Rather, use of the principle would dictate maximizing both objectives, but maximizing one will inevitably lead to sacrificing the other, to some degree. Accordingly, any attempt to employ the precautionary principle when both environmental and national security concerns are involved would likely lead to legislative paralysis. n183 As noted by Professor Sunstein, "it stands as an obstacle to regulation and nonregulation, and to everything in between." n184¶ When evaluating environmental and national security concerns, where risks are often uncertain, the heightened level of certainty required under the precautionary principle would act to magnify the already uncertain nature of the risks involved and thus increase the likelihood the legislators would use [\*493] heuristics and biases when evaluating those risks. n185 Aware of the uncertainty surrounding environmental and national security concerns, yet forced to make a trade-off decision between two very different types of risks, legislators would be forced to resort to heuristics and biases to manufacture the certainty required to support legislation under the precautionary principle. Because of the increased availability of national security concerns, resorting to heuristics and biases would likely favor those concerns over environmental integrity. n186¶ B. Risk Oversight Committee¶ ¶ Professors Timur Kuran and Cass Sunstein suggest a few strategies aimed at minimizing the effects of the availability heuristic on Congress. First, they suggest that Congress create a risk oversight committee that would compile information and prioritize risks. n187 This committee would operate as a check on short-term pressures, and its goals would be to rank risks, publicize misallocations, and initiate legislative corrections. n188¶ While a congressional risk oversight committee might reduce uncertainty and increase accountability in some ways, this committee would still be subject to the same pressures other congressional committees experience. Without expertise in risk evaluation, committee members could easily fall prey to availability cascades created by interest groups. Kuran and Sunstein argue that the effect of special interest groups would be minimized because the committee would rank risks relative to one another. n189 According to this idea, the relative ranking of risks would incentivize other interest groups to organize around neutralizing the availability cascades created by the groups that are perceived to dominate the committee. n190¶ However, this argument fails on three grounds. First, it relies on interest group pressure to maintain a neutral balance, but this approach cannot stand where disparately situated interest groups fall on either side of an issue. Where national security and environmental interests are pitted against one another, environmental groups will likely fail to counteract pressure exerted by the executive branch because environmental groups lack the resources and access available to entities like DOD or DHS. If anything, relying on interest groups to maintain a neutral balance in the committee would merely preserve the current status quo.¶ [\*494] Second, it relies on an implicit assumption that the committee would be able to gather enough information so that it can accurately rank risks relative to one another. However, if risks are difficult to characterize, as environmental and national security risks are, there will likely be substantial ambiguity in how those risks might be characterized relative to one another. Through the use of availability cascades, interest groups could capitalize on this ambiguity to obtain favorable risk assessments, thus defeating the risk committee's purpose.¶ Finally, if risk oversight committee members were also members of other congressional committees subject to interest group pressure, those committee members could be under extreme pressure to sway risk judgments in favor of those interest groups. This possibility, in concert with the other ways in which a risk oversight committee could fall capture to interest group politics, illustrates a key weakness in Kuran and Sunstein's proposal: because of their political vulnerability, members of Congress are not well-positioned to objectively assess and rank risks relative to one another.¶ C. Cost-Benefit Analysis¶ ¶ Professors Kuran and Sunstein also see cost-benefit analysis ("CBA") as a valuable tool to neutralize the effects of availability on risk valuation. n191 According to Kuran and Sunstein, CBA is "an instrument for producing relevant information and a common-sensical brake on measures that would do little good and possibly considerable harm." n192 Like a risk oversight committee, CBA might help reduce uncertainty, but it is also subject to several problems. For example, as Professor Sunstein acknowledges, CBA can easily be manipulated because of uncertainty in the valuation of variables frequently used in the analyses. n193 When risks involving a high degree of uncertainty are involved, such as environmental and national security risks, the potential for manipulation would increase. Furthermore, in subject areas with a high potential for manipulation like environmental and national security risks, CBA could insulate Congress from criticism by providing seemingly empirical reasons for action that may be quite arbitrary.¶ Beyond its potential for manipulation, CBA is also criticized for its reliance on questionable valuations of human life and its use of "willingness to pay" to estimate risk severity. n194 Human life valuation has obvious implications in the context of analyzing national security risks, and using willingness to pay to estimate risk severity also invites reliance on heuristics and biases. As noted by Professor Sunstein, willingness to pay to reduce a risk does not track the probability of occurrence of that risk. n195 The nature of both environmental and [\*495] national security risks increases the chance that heuristics and biases would influence willingness to pay estimates. n196 Accordingly, if heuristics and biases permeate the CBA process, then any cost-benefit estimates Congress might use to evaluate national security and environmental risks would appear objective yet still be based on highly subjective risk valuations. Thus, CBA cannot escape the pitfalls of heuristics and biases, but it can create the false appearance of objectivity and rational risk assessment.¶ While the three approaches reviewed above might encourage information gathering and focused consideration of risks, they do little to minimize the role of heuristics and biases in the legislative process. Kuran and Sunstein's suggestion of creating a risk oversight committee is most promising because of its focus on information generation and risk prioritization, but their envisioned structure of the committee could severely restrict its usefulness. Alternatively, the effect of heuristics and biases on the legislative process could be reduced either by increasing objectivity in congressional risk assessment or by legislating under the presumption that waiver provisions should include certain checks on unrestrained executive power, such as time limits and reporting requirements.¶ D. Potential Heuristic and Bias-Reducing Mechanisms¶ 1. Standing Risk Assessment Council ¶ Congress should create a standing risk assessment council in the National Academy of Sciences that would collect information and characterize risks. The council should be composed primarily of experts in risk assessment, but it should also draw on the Academy's members with expertise in particular fields, depending on the nature of the risks being assessed. Either Congress or the council itself could identify risks requiring council assessment. Information and risk assessments produced by the council should be made available to both Congress and the general public.¶ Creating a standing risk assessment council in this way would build on the positive aspects of Kuran and Sunstein's risk oversight committee model, yet avoid potential pitfalls caused by its reliance on the political process to control committee capture. Although the council could experience interest group pressure, the members' status as risk assessment experts and scientists could partially combat this problem. While it may be necessary to institute certain "abstention" rules to ensure that council members do not participate in risk assessment when it would present a conflict of interest, the council's permanent nature and lack of political accountability should leave it relatively insulated from interest group pressure.¶ [\*496] The effectiveness of the risk assessment council as a check on heuristics and biases largely depends on the role information access plays in determining when we rely on heuristics and biases. While the information and risk assessments produced by the council would provide no guarantee against the use of heuristics and biases in Congress, it could minimize the frequency of their use. Because the information and risk assessments produced by the council would also be available to the public, reputational pressure felt by legislators might also be reduced.¶ 2. Role of Traditional Waiver Provision Elements¶ Congress should look to previous delegations of waiver authority to the executive branch for guidance on how waiver provisions should be structured. Although they certainly do not ensure rationality, waiver provision elements like time limits and reporting requirements act as a functional safeguard against the effects of potentially irrational legislative behavior. Thus, in the face of doubt, waiver provisions should be drafted to include time limits and recording or reporting requirements in order to guard against executive abuse of the delegated power. Congress should only consider omission of time limits and reporting or recording requirements when it can clearly characterize a grave threat posed by inclusion of these characteristics.¶ 3. Accurate Characterization of Risks to be Considered¶ In instances where the executive branch officer charged with waiver authority is being asked to consider certain risks, those risks should be explicitly identified in the waiver provision. For example, in section 102, the Secretary of Homeland Security is given the authority to "waive all legal requirements [he] determines necessary to ensure expeditious construction of the barriers and roads" along the United States' border with Mexico. n197 Although Congress was actually concerned with the threat of illegal terrorist entry via the Mexican border, section 102 is phrased so that the Secretary must consider a risk one step removed from the threat of illegal terrorist entry: failure to expeditiously construct the border fence. Phrasing the provision to acknowledge Congress's ultimate concern could lessen the probability that the waiver would be invoked unnecessarily. Recording and reporting requirements should also be crafted so that the waiver-invoking authority must explain how her decision to invoke the waiver relates to the risk Congress hoped to avoid. This reporting requirement can encourage accurate characterization of risks, which in turn could act as a functional safeguard against potentially irrational legislative action.

#### Warfighting is a net benefit

Aaron Riggio 09, J.D. Candidate, Seattle University School of Law, Fall 2009, “Whale Watching from 200 Feet Below: A New Approach to Resolving Operational Encroachment Issues,” 33 Seattle Univ. L. R. 229

"The only way in which a navy can ever be made efficient is by practice at sea, under all the conditions which would have to be met if war existed." n1 The men and women of the Navy who serve on seagoing warships understand this maxim all too well. They experience the hardships of going to sea, primarily leaving family and home for extended periods of time, just as Roosevelt's Great White Fleet did a century ago. Family separation is even more difficult to withstand when it is endured not to fulfill the Navy's primary mission of maritime dominance through force, but to prepare for the time when such force may be required. Indeed, considering that today's Navy has seen little in the way of traditional maritime warfare, it is fitting that Chief Justice Roberts incorporated President Roosevelt's quotation in an important decision concerning the balance between military training and environmental protection. n2¶ Military training objectives and environmental protection have been at odds for years. n3 One can argue, not unconvincingly, that military training by land, air, or sea is inherently antithetical to environmental protection. n4 The essential goal of the armed forces-to protect the sovereign [\*230] territories of the United States--requires each uniformed service to be ready to engage hostile enemies in any locale with destructive impact. This need for readiness does not mean that the military necessarily and institutionally disregards potential environmental impacts when planning training operations. However, the emergence of strong national environmental protection laws presents a fundamental conflict for military leadership. How does the Department of Defense (DOD) reconcile the laudable goals of these environmental protection laws with the need for realistic military training?¶ The term "operational encroachment" has been used to encapsulate the description of this often abrasive relationship. n5 Operational encroachment occurs when the court system issues injunctive relief against the DOD in the interest of promoting compliance with environmental laws. n6 The armed forces have repeatedly encountered the issue of operational encroachment when conducting training scenarios; from California to North Carolina, Hawaii and Puerto Rico, the Army, Air Force, Navy, and Marine Corps have been forced to significantly alter or altogether cease the manner in which they had previously trained. n7¶ Most recently, the Navy was embroiled in a legal battle while attempting to carry out extensive battle group training exercises off the coast of southern California. n8 The primary dispute concerned the use of mid-frequency active (MFA) sonar and the potential deleterious effects that MFA sonar has on marine mammals. n9 The plaintiffs successfully obtained a preliminary injunction requiring the Navy to implement several restrictive mitigation measures. The case reached the U.S. Supreme Court in October of 2008 for final adjudication. n10¶ What could have sparked a genuine factual investigation--of whether the Navy's use of MFA sonar posed a threat to marine life and what depth of MFA sonar training was required by the Navy--instead [\*231] sparked a legal shell game that did not effectively resolve the underlying issue of balancing these conflicting priorities. The Legislature's failure to create a system that adequately balances these priorities has resulted in unpredictable and costly lawsuits.¶ Most environmental laws contain provisions to allow for exemptions in the interest of national security, but it is difficult to state a definitive policy regarding these exemptions because the legal requirements are inconsistent. n11 There is no clear statutory scheme to dictate who grants an exemption, under what circumstances an exemption is appropriate, or what the military needs to do to obtain an exemption. To promote efficiency and predictability, and more importantly to clearly define the license of the armed forces in carrying out daily training exercises, Congress should resolve these inconsistencies. By reforming current environmental laws to establish a uniform standard and by creating a new commission to apply that standard, a balance between national security and protecting the environment can be attained.

### 1NC CP

#### The United States Federal Judiciary should:

#### substantially increase National Environmental Policy Act restrictions on biodefense and bioweapons labs

#### Overturn the “national security” exemption to the National Environmental Policy Act in all instances other than the introduction of Armed Forces into Hostilities

#### Allow citizen suits for environmental damage, including global warming, excluding against the Armed Forces during Hostilities

#### Mandate the political branches enforce substantial global warming emissions reductions

#### The United State Federal Judiciary should clarify that none of these rulings restrict presidential authority to introduce Armed Forces into hostilities.

## Warming

### General---1NC

#### No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

### No Extinction---1NC

No extinction from climate change

NIPCC 11 – the Nongovernmental International Panel on Climate Change, an international panel of nongovernment scientists and scholars, March 8, 2011, “Surviving the Unprecedented Climate Change of the IPCC,” online: http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2 will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)."

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos et al., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records."

Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world."

In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."

### Adaptation---1NC

#### Sustained economic growth will vastly outpace warming---ensures even poor countries can adapt easily

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

It is frequently asserted that climate change could have devastating consequences for poor countries. Indeed, this assertion is used by the UN Intergovernmental Panel on Climate Change (IPCC) and other organizations as one of the primary justifications for imposing restrictions on human emissions of greenhouse gases.

But there is an internal contradiction in the IPCC’s own claims. Indeed, the same highly influential report from the IPCC claims both that poor countries will fare terribly and that they will be much better off than they are today. So, which is it?

The apparent contradiction arises because of inconsistencies in the way the IPCC assesses impacts. The process begins with various scenarios of future emissions. These scenarios are themselves predicated on certain assumptions about the rate of economic growth and related technological change.

Under the IPCC’s highest growth scenario, by 2100 GDP per capita in poor countries will be double the U.S.’s 2006 level, even taking into account any negative impact of climate change. (By 2200, it will be triple.) Yet that very same scenario is also the one that leads to the greatest rise in temperature—and is the one that has been used to justify all sorts of scare stories about the impact of climate change on the poor.

Under this highest growth scenario (known as A1FI), the poor will logically have adopted, adapted and innovated all manner of new technololgies, making them far better able to adapt to the future climate. But these improvements in adaptive capacity are virtually ignored by most global warming impact assessments. Consequently, the IPCC’s “impacts” assessments systematically overestimate the negative impact of global warming, while underestimating the positive impact.

#### This eliminates negative impacts of warming

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

These figures also indicate that the compound effect of economic development and technological change can result in quite dramatic improvements even over the relatively short period for which these figures were developed. Figure 5, for instance, covered 26 years. By contrast, climate change impacts analyses frequently look 50 to 100 years into the future. Over such long periods, the compounded effect could well be spectacular. Longer term analyses of climate-sensitive indicators of human well-being show that the combination of economic growth and technological change can, over decades, reduce negative impacts on human beings by an order of magnitude, that is, a factor of ten, or more. In some instances, this combination has virtually eliminated such negative impacts.

For instance, during the 20th century, deaths from various climate-sensitive waterborne diseases were all but eliminated in the U.S. From 1900 to 1970, U.S. GDP per capita nearly quadrupled, while deaths from malaria were eliminated, and death rates for gastrointestinal disease fell by 99.8%. 11 From 1900 to 1997 GDP per capita rose seven-fold, while deaths rate from typhoid and paratyphoid were eliminated and from 1900 to 1998 the death rate for dysentery fell by 99.6%. 12 This suggests a need to be highly skeptical of global warming impacts analyses that extend two or more decades into the future if they do not properly account for the compounded effect on adaptive capacity from (a) economic growth built into emission scenarios and (b) secular technological change.

### No Solvency---Hang Time

Can’t solve – CO2stays in the atmosphere for hundreds of years

Mayer Hillman, Senior Fellow at the Policy Studies Institute, 2007

*The Suicidal Planet: How To Prevent Global Climate Catastrophe*, p. 25-6

The effects of climate change cannot quickly be reversed by reducing or even eliminating future emissions of greenhouse gases. There are two reasons for this. First, greenhouse gases released into the atmosphere linger for decades (in the case of relatively short-lived gases like methane), or hundreds of years (for carbon dioxide), or even thousands of years (for the long-lived gases like per-fluorocarbons). Carbon dioxide and methane concentrations in the atmosphere are respectively one-third and more than twice as high as those at any time over the last 650,000 years. Even if no additional carbon dioxide were emitted from now on, atmospheric concentrations would take centuries to decline to pre-Industrial Revolution levels. While elevated levels of greenhouse gases remain in the atmosphere, additional warming will occur.

### Alt Cause---China

#### China dooms climate change efforts – even if they agree to GHG caps

Yvonne Chan 9 in Hong Kong, BusinessGreen, 9/17/09, China's rapid growth imperils global climate change goal, says study, http://www.businessgreen.com/business-green/news/2249644/china-rapid-growth-imperils

China's booming economic growth imperils a global target to limit global warming to two degrees, according to a major new report from an influential government think-tank.

Released yesterday by the Energy Research Institute, China's Low Carbon Development Pathways by 2050 says that even if the nation were to embark on an aggressive strategy to cut greenhouse gas emissions, halting CO2 growth would be difficult given the country's current stage of rapid economic development.

"There is a huge number of cities to be built," study co-author He Jiankun told reporters. "They will consume a large amount of steel and cement. This means that **emissions will not be reduced for some time."**

The problem with the global target, according to the report, was that the two-degree limit – which was formally adopted by G8 nations in July – does not make adequate concessions for the industrialisation of developing countries.

The report said that in order to even get close to the target, it was up to wealthy nations to make carbon emission cuts of at least 90 per cent on 1990 levels by 2050. Otherwise, global temperatures will rise between 2.8 and 3.2 degrees above the pre-industrial average, estimated the report, which was conducted over a two-year period and had involved 10 independent institutes, including WWF and the US-based Energy Foundation.

### Solvency---Emissions Reductions

#### There will never be political will for sufficient emissions reductions

Jerry Taylor 8-31, and Peter Van Doren, both Senior Fellows at the CATO Institute, August 31, 2012, “President Obama's Alleged "War On Coal" - Climate Change Edition,” online: http://www.forbes.com/sites/powerlunch/2012/08/31/president-obamas-alleged-war-on-coal-climate-change-edition/print/

We have long suspected that the never-ending sturm und drang surrounding climate change would have little real impact on public policy or energy markets because no politician ever got elected by promising to impose – or defending the imposition of – significant, observable costs on the present for the well-being of the future … in any policy arena. Believe what you like about the science, but the inescapable political fact is that voters – and in particular, swing voters – have the time horizons of newborn babes. Any serious policy response to climate change would, by force, require a rather steep increase in fossil fuel prices and American voters have demonstrated time-and-time-again a deep aversion to exactly that. Good luck finding the pol-on-the-make willing to put his or her head into that political wood chipper.

## Bio

### No Impact

#### The worst case scenario happened – no extinction

Dove 12 [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### They don’t cause mass destruction

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

#### Diseases can’t cause extinction --- burnout Intervening actors check

Zakaria 9**—**Editor of Newsweek, BA from Yale, PhD in pol sci, Harvard. He serves on the board of Yale University, The Council on Foreign Relations, The Trilateral Commission, and Shakespeare and Company. Named "one of the 21 most important people of the 21st Century" (Fareed, “The Capitalist Manifesto: Greed Is Good,” 13 June 2009, http://www.newsweek.com/id/201935)

Note—Laurie Garrett=science and health writer, winner of the Pulitzer, Polk, and Peabody Prize

It certainly looks like another example of crying wolf. After bracing ourselves for a global pandemic, we've suffered something more like the usual seasonal influenza. Three weeks ago the World Health Organization declared a health emergency, warning countries to "prepare for a pandemic" and said that the only question was the extent of worldwide damage. Senior officials prophesied that millions could be infected by the disease. But as of last week, the WHO had confirmed only 4,800 cases of swine flu, with 61 people having died of it. Obviously, these low numbers are a pleasant surprise, but it does make one wonder, what did we get wrong? Why did the predictions of a pandemic turn out to be so exaggerated? Some people blame an overheated media, but it would have been difficult to ignore major international health organizations and governments when they were warning of catastrophe. I think there is a broader mistake in the way we look at the world. Once we see a problem, we can describe it in great detail, extrapolating all its possible consequences. But we can rarely anticipate the human response to that crisis. Take swine flu. The virus had crucial characteristics that led researchers to worry that it could spread far and fast. They described—and the media reported—what would happen if it went unchecked. But it did not go unchecked. In fact, swine flu was met by an extremely vigorous response at its epicenter, Mexico. The Mexican government reacted quickly and massively, quarantining the infected population, testing others, providing medication to those who needed it. The noted expert on this subject, Laurie Garrett, says, "We should all stand up and scream, 'Gracias, Mexico!' because the Mexican people and the Mexican government have sacrificed on a level that I'm not sure as Americans we would be prepared to do in the exact same circumstances. They shut down their schools. They shut down businesses, restaurants, churches, sporting events. They basically paralyzed their own economy. They've suffered billions of dollars in financial losses still being tallied up, and thereby really brought transmission to a halt." Every time one of these viruses is detected, writers and officials bring up the Spanish influenza epidemic of 1918 in which millions of people died. Indeed, during the last pandemic scare, in 2005, President George W. Bush claimed that he had been reading a history of the Spanish flu to help him understand how to respond. But the world we live in today looks nothing like 1918. Public health-care systems are far better and more widespread than anything that existed during the First World War. Even Mexico, a developing country, has a first-rate public-health system—far better than anything Britain or France had in the early 20th century.

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.

# 2NC

## Salaries

### LA Impact

#### 1NC Kennedy evidence says judicial salaries are modeled globally – we’re the envy of the world

#### Latin American salaries are key to judicial independence and checking the executive

World Bank Fechnical Paper Number 319 9 1996The Judicial Sector in Latin America and the Caribbean http://72.14.253.104/search?q=cache:wW7QdZw3Eb4J:www.bancomundial.org.br/content/\_downloadblob.php%3Fcod\_blob%3D546+%22latin+america%22+%22judicial+salaries%22&hl=en&ct=clnk&cd=7&gl=us&client=firefox-a

It is also important that the individual judges have personal independence. Personal independence refers to the fact that judges have secure judicial terms and salaries, and the judiciary controls case assignments, court scheduling and judicial transfers to a different court. 37 Forced-reassignments can be particularly inimical to judge's personal independence.38 Personal independence for judges can be achieved through appropriate methods of appointment, removal and supervision. 39 In addition to reinforcing personal judicial independence, these measures also assist in assuring judicial accountability. Judges are public service providers and should not only be independent 40 and impartial but also accountable to the population they serve. Although many Latin American and Caribbean judiciaries lack independence, it has been argued that this lack of independence may be necessary for economic development. Currently, there is a tension between democracy and economic reform and between economic reform and social policy exists. 4 ' For example, during recent reforms in Latin America some countries have benefited from a strong executive that can act in an efficient manner. The dilemma is then how to, at the same time, provide for the institutional checks that guarantee accountability and oversight.42 This experience occurs most often when the executive has the power to issue decrees while underdeveloped or delegitimized judicial systems are not able to prevent executive abuse of power through effective judicial control or legislative oversight. 4 3 In several cases of stalemate between the legislative and executive, the executive has been able to bypass confrontations through decrees in order to achieve economic policy with little to nonexistent scrutiny from the judiciary. The Argentine and Peruvian experiences demonstrate such behavior. However, judicial review could be a key component of economic reforms. Moreover, without this oversight and consultation, economic reforms may be unstable and subject to reversal

#### Failure of Latin American democratization cause regional proliferation and nuclear conflict

Donald **Schulz**, Chairman of the Political Science Department at Cleveland State University, March 20**00**, The United States and Latin America: Shaping an Elusive Future, p. 3&26-28, http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA375197&Location=U2&doc=GetTRDoc.pdf

In short, democracy and economic integration are not simply value preferences, but are increasingly bound up with hemispheric security. To take just one example: The restoration of democracy in Brazil and Argentina and their increasingly strong and profitable relationship in Mercosur have contributed in no small degree to their decisions to forsake the development of nuclear weapons. Perceptions of threat have declined, and perceptions of the benefits of cooperation have grown, and this has permitted progress on a range of security issues from border disputes, to peacekeeping, environmental protection, counternarcotics, and the combat of organized crime. Argentina has also developed a strong bilateral defense relationship with the United States, and is now considered a non-NATO ally.

<Schulz continues>

Until recently, the primary U.S. concern about Brazil has been that it might acquire nuclear weapons and delivery systems. In the 1970s, the Brazilian military embarked on a secret program to develop an atom bomb. By the late 1980s, both Brazil and Argentina were aggressively pursuing nuclear development programs that had clear military spin-offs.54 There were powerful military and civilian advocates of developing nuclear weapons and ballistic missiles within both countries. Today, however, the situation has changed. As a result of political leadership transitions in both countries, Brazil and Argentina now appear firmly committed to restricting their nuclear programs to peaceful purposes. They have entered into various nuclear-related agreements with each other—most notably the quadripartite comprehensive safeguards agreement (1991), which permits the inspection of all their nuclear installations by the International Atomic Energy Agency—and have joined the Missile Technology Control Regime. Even so, no one can be certain about the future. As Scott Tollefson has observed: • . . the military application of Brazil’s nuclear and space programs depends less on technological considerations than on political will. While technological constraints present a formidable barrier to achieving nuclear bombs and ballistic missiles, that barrier is not insurmountable. The critical element, therefore, in determining the applications of Brazil’s nuclear and space technologies will be primarily political.55 Put simply, if changes in political leadership were instrumental in redirecting Brazil’s nuclear program towards peaceful purposes, future political upheavals could still produce a reversion to previous orientations. Civilian supremacy is not so strong that it could not be swept away by a coup, especially if the legitimacy of the current democratic experiment were to be undermined by economic crisis and growing poverty/inequality. Nor are civilian leaders necessarily less militaristic or more committed to democracy than the military. The example of Peru’s Fujimori comes immediately to mind. How serious a threat might Brazil potentially be? It has been estimated that if the nuclear plant at Angra dos Reis (Angra I) were only producing at 30 percent capacity, it could produce five 20-kiloton weapons a year. If production from other plants were included, Brazil would have a capability three times greater than India or Pakistan. Furthermore, its defense industry already has a substantial missile producing capability. On the other hand, the country has a very limited capacity to project its military power via air and sealift or to sustain its forces over long distances. And though a 1983 law authorizes significant military manpower increases (which could place Brazil at a numerical level slightly higher than France, Iran and Pakistan), such growth will be restricted by a lack of economic resources. Indeed, the development of all these military potentials has been, and will continue to be, severely constrained by a lack of money. (Which is one reason Brazil decided to engage in arms control with Argentina in the first p1ace.) In short, a restoration of Brazilian militarism, imbued with nationalistic ambitions for great power status, is not unthinkable, and such a regime could present some fairly serious problems. That government would probably need foreign as well as domestic enemies to help justify it’s existence. One obvious candidate would be the United States, which would presumably be critical of any return to dictatorial rule. Beyond this, moreover, the spectre of a predatory international community, covetous of the riches of the Amazon, could help rally political support to the regime. For years, some Brazilian military officers have been warning of “foreign intervention.” Indeed, as far back as 1991 General Antenor de Santa Cruz Abreu, then chief of the Military Command of the Amazon, threatened to transform the region into a “new Vietnam” if developed countries tried to “internationalize” the Amazon. Subsequently, in 1993, U.S.-Guyanese combined military exercises near the Brazilian border provoked an angry response from many high-ranking Brazilian officers.57 Since then, of course, U.S.-Brazilian relations have improved considerably. Nevertheless, the basic U.S./ international concerns over the Amaazon—the threat to the region’s ecology through burning and deforestation, the presence of narcotrafficking activities, the Indian question, etc.—have not disappeared, and some may very well intensify in the years ahead. At the same time, if the growing trend towards subregional economic groupings—in particular, MERCOSUR—continues, it is likely to increase competition between Southern Cone and NAFTA countries. Economic conflicts, in turn, may be expected to intensify political differences, and could lead to heightened politico-military rivalry between different blocs or coalitions in the hemisphere.

### 2NC Link Wall

#### Congress perceives plan as activist, that means they’ll cut pay, the impact is judicial independence and terrorism

HARLINGTON WOOD Judge, United States Court of Appeals for the Seventh Circuit. New York University Annual Survey of American Law 2001

Since the federal judges are protected from unjustified removal, is it nevertheless possible to discipline judges by cutting their salary, even if for only a short period? No, it is not. The Constitution provides that a federal judge's salary may not be reduced during the judge's tenure. 12 Congress can, however, increase the salaries of federal judges to keep up with the general level of legal compensation in the marketplace. Congress can also grant a cost of living increase to keep up with inflation. Most federal employees receive cost of living increases, but some in Congress for their own, reasons including political, have in the past voted "no" on extending this increase to federal judges. Some of us have thought Congress misunderstood and believed the Constitution prohibited not only a reduction in judicial salaries, but also a fair salary increase. [\*264] Often citing the low salaries of federal judges as a reason, sixty Article III judges retired or resigned from the bench between 1991 and 2002, marking it as the largest number of departures in federal judiciary history for any ten-year period. 13 Indeed, judges often see their law clerks recruited to leading private firms at starting salaries comparable to those of judges. 14 Not only is a reasonable judicial salary fair treatment of judges for their work, but it is also an important factor in judicial independence. A well-paid judge is less susceptible to deserting the bench for the more lucrative private practice or, in the very rarest of circumstances, succumbing to the temptation to do judicial favors for a fee. Judges who have accepted bribes may not only be subject to impeachment as judges, but also find themselves as defendants in front of the bench of another judge and possibly on their way to the penitentiary. 15 Reasonable judicial salaries also serve another very important purpose because fair compensation helps attract the most qualified lawyers to the bench. If serving as a judge were to mean a financial sacrifice impacting prospective judges and their families, only the rich would become federal judges. That should not be. In 2001, Congress did not forget the Third Branch entirely and gave the judges a cost-of-living increase, not a pay raise, for which the judges are grateful. However, since 1993, the judges have received only four of nine annual cost-of-living adjustments. 16 Judges have always been at some personal risk from disgruntled litigants and anti-government groups. 17 For example, an ordinary-looking [\*265] letter was delivered to me one February at the office, but its contents were not ordinary. It was a very mean and vicious threat about what would soon happen to me. The sender from the Chicago area got so enthusiastic about sending me his "valentine" that he forgot and conveniently put his name and return address on the envelope. Since we are now in a war with terrorists, the risks are much greater for everyone. Congress has the responsibility to look after the welfare of the judiciary because the judiciary cannot financially care for itself. The judicial structure must be kept healthy and safe, especially in times of national crises, or the terrorists will have achieved some part of their goal.

#### Best studies prove congress will cut pay and the judiciary will respond by not adhering to your precedent

Frank B. Cross\*, Herbert D. Kelleher Centennial Professor of Business Law at the McCombs School, University of Texas, and Professor of Law at the University of Texas Law School. Blake J. Nelson\*\* Assistant Professor of Political Science, Pennsylvania State University, Harrisburg. Article: Strategic Institutional Effects On Supreme Court Decisionmaking Northwestern University Law Review Summer, 2001

There is empirical evidence that Congress pays attention to Supreme Court decisions and punishes undesirable decisions with budget cuts, and that the Justices respond with decisions more amenable to congressional policy goals. Eugenia Toma hypothesized that the relationship between Congress and the Supreme Court was a contractual one in which budgetary favors are linked to politically acceptable decisions. 205 She empirically analyzed the Court's budget and its decisions. The greater the ideological distance between a term's decisions and the congressional average of the relevant House and Senate committees, the less money was appropriated for the Court's budget. 206 She also found that the Court responded to these signals and modified its decisions accordingly. 207 The effect was not an enormous one and not entirely consistent over the years, 208 but it was clearly [\*1469] present, enough to meet rigorous standards of statistical significance. 209 Congress may achieve indirectly through appropriations what it cannot do directly. 210

### Yes Angry

#### Court involvement in national security causes massive blowback that crushes judicial legitimacy

Robert M. Chesney 9, Professor, University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, 95 Va. L. Rev. 1361

Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception - on the part of the public, the government, or judges themselves - of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response.

## Congress

### 2NC Conditionality Good – C/I Dispositionality

#### We should get \_\_ conditional advocacies

#### A) They destroy cost benefit analysis ---Limiting the neg to 1 advocacy artificially insulates the aff from defending against multiple competitive options when constructing policies.

#### B) Key to tactical choices---forces the 2ac to recognize and respond to strategic interactions---critical skill for practical advocacy defense because of the inevitability of strategic opponents---solves time and strat skew

#### C) Advocacy construction---makes the aff consider all opportunity-costs to a proposal-- inability to simultaneously defend against a variety of proposals props up bad affs that should lose in the free market of ideas

#### D) Err neg---2ar persuasion, aff picks the focus of the debate, the topic is huge, and the 2nr has to answer theory and substance while the 2ar can pick

#### E) Don’t vote on theory---causes substance crowd-out and incentivizes cheap-shot theory args based on marginal differentials---just because debate could be better doesn’t mean we should lose.

#### Dispo doesn’t solve---the neg can add uncompetitive planks to force permutation. It also doesn’t solve any of our standards.

### 2NC---AT: PICs Bad

#### PICs are good---first our offense:

#### Strategic costs and benefits---the aff chose to have the plan affect both ocean and lake-based wind and gained a strategic benefit from doing so---they should have to defend the costs of that choice

#### Advocacy skills---PICs incentivize finely crafting proposals and thinking through all decisions---most real-world---excluding them encourages sloppiness---solves their offense

#### Education---encourages in-depth debate and research about fine details---anyone can learn to give the same generic 2NR on ASPEC---uniquely key for policymakers and academics

#### Now our defense:

#### Net benefit checks abuse---they can impact turn it

#### Literature checks---prove they should be able to research answers

#### Err neg---aff speaks first and last and has infinite prep so they should be able to defend their full aff

#### Reject the argument, not the team

### Addon

#### No CCP collapse---resilience, meritocracy, and legitimacy check---and they’ll adapt, not lash-out, if threatened

Li 13 Eric X. Li is a Henry Crown Fellow at the Aspen Institute. He is also a venture capitalist in Shanghai who serves on the board of directors of China Europe International Business School (CEIBS) and is vice chairman of its publishing arm CEIBS Publishing Group. “The Life of the Party,” Foreign Affairs, Jan/Feb, 92.1, EBSCO

In November 2012, the Chinese Communist Party (CCP) held its 18th National Congress, setting in motion a once-in-a-decade transfer of power to a new generation of leaders. As expected, Xi Jinping took over as general secretary and will become the president of the People's Republic this March. The turnover was a smooth and well-orchestrated demonstration by a confidently rising superpower. That didn't stop international media and even some Chinese intellectuals, however, from portraying it as a moment of crisis. In an issue that was published before the beginning of the congress, for example, The Economist quoted unnamed scholars at a recent conference as saying that China is "unstable at the grass roots, dejected at the middle strata and out of control at the top." To be sure, months before the handover, the scandal surrounding Bo Xilai, the former party boss of the Chongqing municipality, had shattered the CCP'S long-held facade of unity, which had underwritten domestic political stability since the Tiananmen Square upheavals in 1989. To make matters worse, the Chinese economy, which had sustained double-digit GDP growth for two decades, slowed, decelerating for seven straight quarters. China's economic model of rapid industrialization, labor-intensive manufacturing, large-scale government investments in infrastructure, and export growth seemed to have nearly run its course. Some in China and the West have gone so far as to predict the demise of the one-party state, which they allege cannot survive if leading politicians stop delivering economic miracles.¶ Such pessimism, however, is misplaced. There is no doubt that daunting challenges await Xi. But those who suggest that the CCP will not be able to deal with them fundamentally misread China's politics and the resilience of its governing institutions. Beijing will be able to meet the country's ills with dynamism and resilience, thanks to the CCP'S adaptability, system of meritocracy, and legitimacy with the Chinese people. In the next decade, China will continue to rise, not fade. The country's leaders will consolidate the one-party model and, in the process, challenge the West's conventional wisdom about political development and the inevitable march toward electoral democracy. In the capital of the Middle Kingdom, the world might witness the birth of a post-democratic future.¶ ON-THE-JOB LEARNING¶ The assertion that one-party rule is inherently incapable of self-correction does not reflect the historical record. During its 63 years in power, the CCP has shown extraordinary adaptability. Since its founding in 1949, the People's Republic has pursued a broad range of economic policies. First, the CCP initiated radical land collectivization in the early 1950s. This was followed by the policies of the Great Leap Forward in the late 1950s and the Cultural Revolution in the late 1960s to mid-1970s. After them came the quasi-privatization of farmland in the early 1960s, Deng Xiaoping's market reforms in the late 1970s, and Jiang Zemin's opening up of the CCP'S membership to private businesspeople in the 1990s. The underlying goal has always been economic health, and when a policy did not work -- for example, the disastrous Great Leap Forward and Cultural Revolution -- China was able to find something that did: for example, Deng's reforms, which catapulted the Chinese economy into the position of second largest in the world.¶ On the institutional front as well, the CCP has not shied away from reform. One example is the introduction in the 1980s and 1990s of term limits for most political positions (and even of age limits, of 68-70, for the party's most senior leadership). Before this, political leaders had been able to use their positions to accumulate power and perpetuate their rules. Mao Zedong was a case in point. He had ended the civil wars that had plagued China and repelled foreign invasions to become the father of modern China. Yet his prolonged rule led to disastrous mistakes, such as the Cultural Revolution. Now, it is nearly impossible for the few at the top to consolidate long-term power. Upward mobility within the party has also increased.¶ In terms of foreign policy, China has also changed course many times to achieve national greatness. It moved from a close alliance with Moscow in the 1950s to a virtual alliance with the United States in the 1970s and 1980s as it sought to contain the Soviet Union. Today, its pursuit of a more independent foreign policy has once more put it at odds with the United States. But in its ongoing quest for greatness, China is seeking to defy recent historical precedents and rise peacefully, avoiding the militarism that plagued Germany and Japan in the first half of the last century.¶ As China undergoes its ten-year transition, calls at home and abroad for another round of political reform have increased. One radical camp in China and abroad is urging the party to allow multiparty elections or at least accept formal intraparty factions. In this view, only full-scale adversarial politics can ensure that China gets the leadership it needs. However sincere, these demands all miss a basic fact: the CCP has arguably been one of the most self-reforming political organizations in recent world history. There is no doubt that Chinas new leaders face a different world than Hu Jintao did when he took over in 2002, but chances are good that Xi's CCP will be able to adapt to and meet whatever new challenges the rapidly changing domestic and international environments pose. In part, that is because the CCP is heavily meritocratic and promotes those with proven experience and capabilities.

### AT Lashout

#### No lashout---CCP would fear retaliation AND even if the order was issues the PLA would not obey

Gilley 5 (Bruce, Professor of International Affairs @ New School University and Former Contributing Editor @ the Far Eastern Economic Review, “China’s Democratic Future,”)

More ominous as a piece of "last ditchism" would be an attack on Taiwan. U.S. officials and many overseas democrats believe that there is a significant chance of an attack on Taiwan if the CCP is embattled at home. Indeed, China's strategic journals make frequent reference to this contingency: "The need for military preparations against Taiwan is all the more pressing in light of China's growing social tensions and unstable factors which some people, including the U.S. might take advantage of under the flag of 'humanism' to paralyze the Chinese government," one wrote. Such a move would allow the government to impose martial law on the country as part of war preparations, making the crushing of protest easier. It would also offer the possibility, if successful, of CCP survival through enhanced nationalist legitimacy. Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logistical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use ofnuclear weapons against Japan or the U. S. At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside Countries .41 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

## CP

### 1NC

The United States Federal Judiciary should:

* substantially increase National Environmental Policy Act restrictions on biodefense and bioweapons labs
* Overturn the “national security” exemption to the National Environmental Policy Act in all instances other than the introduction of Armed Forces into Hostilities
* Allow citizen suits for environmental damage, including global warming, excluding against the Armed Forces during Hostilities
* Mandate the political branches enforce substantial global warming emissions reductions

The United State Federal Judiciary should clarify that none of these rulings restrict presidential authority to introduce Armed Forces into hostilities.

## Warming

### No Extinction---2NC

#### No data supports mass extinction theories---their models are flawed

David Stockwell 11, Researcher at the San Diego Supercomputer Center, Ph.D. in Ecosystem Dynamics from the Australian National University, developed the Genetic Algorithm for Rule-set Production system making contributions modeling of invasive species, epidemiology of human diseases, the discovery of new species, and effects on species of climate change, April 21, 2011, “Errors of Global Warming Effects Modeling,” online: <http://landshape.org/enm/errors-of-global-warming-effects-modeling/>

Predictions of massive species extinctions due to AGW came into prominence with a January 2004 paper in Nature called Extinction Risk from Climate Change by Chris Thomas et al.. They made the following predictions:

“we predict, on the basis of mid-range climate-warming scenarios for 2050, that 15â€“37% of species in our sample of regions and taxa will be â€˜committed to extinctionâ€™.

Subsequently, three communications appeared in Nature in July 2004. Two raised technical problems, including one by the eminent ecologist Joan Roughgarden. Opinions raged from “Dangers of Crying Wolf over Risk of Extinctions” concerned with damage to conservationism by alarmism, through poorly written press releases by the scientists themselves, and Extinction risk [press] coverage is worth the inaccuracies stating “we believe the benefits of the wide release greatly outweighed the negative effects of errors in reporting”.

Among those believing gross scientific inaccuracies are not justified, and such attitudes diminish the standing of scientists, I was invited to a meeting of a multidisciplinary group of 19 scientists, including Dan Bodkin from UC Santa Barbara, mathematician Matt Sobel, Craig Loehle and others at the Copenhagen base of BjÃ¸rn Lomborg, author of The Skeptical Environmentalist. This resulted in Forecasting the Effects of Global Warming on Biodiversity published in 2007 BioScience. We were particularly concerned by the cavalier attitude to model validations in the Thomas paper, and the field in general:

Of the modeling papers we have reviewed, only a few were validated. Commonly, these papers simply correlate present distribution of species with climate variables, then replot the climate for the future from a climate model and, finally, use one-to-one mapping to replot the future distribution of the species, without any validation using independent data. Although some are clear about some of their assumptions (mainly equilibrium assumptions), readers who are not experts in modeling can easily misinterpret the results as valid and validated. For example, Hitz and Smith (2004) discuss many possible effects of global warming on the basis of a review of modeling papers, and in this kind of analysis the unvalidated assumptions of models would most likely be ignored.

The paper observed that few mass extinctions have been seen over recent rapid climate changes, suggesting something must be wrong with the models to get such high rates of extinctions. They speculated that species may survive in refugia, suitable habitats below the spatial scale of the models.

Another example of an unvalidated assumptions that could bias results in the direction of extinctions, was described in chapter 7 of my book Niche Modeling.

When climate change shifts a species’ niche over a landscape (dashed to solid circle) the response of that species can be described in three ways: dispersing to the new range (migration), local extirpation (intersection), or expansion (union). Given the probability of extinction is correlated with range size, there will either be no change, an increase (intersection), or decrease (union) in extinctions depending on the dispersal type. Thomas et al. failed to consider range expansion (union), a behavior that predominates in many groups. Consequently, the methodology was inherently biased towards extinctions.

One of the many errors in this work was a failure to evaluate the impact of such assumptions.

The prevailing view now, according to Stephen Williams, coauthor of the Thomas paper and Director for the Center for Tropical Biodiversity and Climate Change, and author of such classics as “Climate change in Australian tropical rainforests: an impending environmental catastrophe”, may be here.

Many unknowns remain in projecting extinctions, and the values provided in Thomas et al. (2004) should not be taken as precise predictions. … Despite these uncertainties, Thomas et al. (2004) believe that the consistent overall conclusions across analyses establish that anthropogenic climate warming at least ranks alongside other recognized threats to global biodiversity.

So how precise are the figures? Williams suggests we should just trust the beliefs of Thomas et al. — an approach referred to disparagingly in the forecasting literature as a judgmental forecast rather than a scientific forecast (Green & Armstrong 2007). These simple models gloss over numerous problems in validating extinction models, including the propensity of so-called extinct species quite often reappear. Usually they are small, hard to find and no-one is really looking for them.

#### Historical data---CO2 concentrations 18 times higher than current levels didn’t cause mass extinctions

Kathy J. Willis et al 10, Professor of Long-Term Ecology at the University of Oxford; Keith D. Bennett, professor of late-Quaternary environmental change at Queen's University Belfast, guest professor in palaeobiology at Uppsala University in Sweden, et al, 2010, “4°C and beyond: what did this mean for biodiversity in the past?,” Systematics and Biodiversity, Vol. 8, No. 1, p. 3-9

Within a time-frame of Earth's history, current atmospheric CO2 levels at 380 ppmv are relatively low compared with the past; geological evidence and geochemical models suggest intervals of time when levels have been up to 18 times higher than present (Royer, 2008). The fossil record thus provides plenty of opportunity to assess biotic responses to intervals of higher global atmospheric CO2 and temperatures. However, this only makes sense if it is also possible to examine the responses of extant species, which have modern-day distributions; and where the position of global lithospheric plates is relatively similar to the present. Therefore, an ideal time interval for consideration is the past 65 million years when many of the ancestors of modern tropical and temperate trees had evolved (Willis & McElwain, 2002; Murat et al., 2004; Morley, 2007). It is also fair to assume that these species had broadly similar ecological tolerances to present day; it has been demonstrated in a number of studies that most species are remarkably conservative in their ecological niches (Wiens & Graham, 2005), and that these remain relatively unchanged through time despite populations persisting through intervals of wide amplitude fluctuations in climate (Svenning & Condit, 2008).

The most recent climate models and fossil evidence for the early Eocene Climatic Optimum (53–51 million years ago) indicate that during this time interval atmospheric CO2 would have exceeded 1200 ppmv and tropical temperatures were between 5–10 °C warmer than modern values (Zachos et al., 2008). There is also evidence for relatively rapid intervals of extreme global warmth and massive carbon addition when global temperatures increased by 5 °C in less than 10 000 years (Zachos et al., 2001). So what was the response of biota to these ‘climate extremes’ and do we see the large-scale extinctions (especially in the Neotropics) predicted by some of the most recent models associated with future climate changes (Huntingford et al., 2008)? In fact the fossil record for the early Eocene Climatic Optimum demonstrates the very opposite. All the evidence from low-latitude records indicates that, at least in the plant fossil record, this was one of the most biodiverse intervals of time in the Neotropics (Jaramillo et al., 2006). It was also a time when the tropical forest biome was the most extensive in Earth's history, extending to mid-latitudes in both the northern and southern hemispheres – and there was also no ice at the Poles and Antarctica was covered by needle-leaved forest (Morley, 2007). There were certainly novel ecosystems, and an increase in community turnover with a mixture of tropical and temperate species in mid latitudes and plants persisting in areas that are currently polar deserts. [It should be noted; however, that at the earlier Palaeocene–Eocene Thermal Maximum (PETM) at 55.8 million years ago in the US Gulf Coast, there was a rapid vegetation response to climate change. There was major compositional turnover, palynological richness decreased, and regional extinctions occurred (Harrington & Jaramillo, 2007). Reasons for these changes are unclear, but they may have resulted from continental drying, negative feedbacks on vegetation to changing CO2 (assuming that CO2 changed during the PETM), rapid cooling immediately after the PETM, or subtle changes in plant–animal interactions (Harrington & Jaramillo, 2007).]

### No Scientific Consensus

#### No scientific consensus---climate science is full of groupthink and coercion against dissenting scientists

Brian Williams 10, Professor of Chemistry at King’s College, and William Irwin, Professor of Philosophy at King’s College, Fall 2010, “An Ethical Defense of Global-Warming Skepticism,” online: <http://www.reasonpapers.com/pdf/32/rp_32_1.pdf>

So far we have considered the epistemological dimension of AGW theory. But this leads us to consider the ethical position of AGW theory proponents, some of whom fail to demonstrate the virtues of honesty and intellectual integrity. All rational inquiry, including the scientific method, is based on a moral and intellectual duty and obligation to investigate matters with an open mind and to form beliefs based on evidence. Unfortunately, there has been a culture of coercion and group-think among proponents of AGW theory, including some philosophers. James Garvey, for example, in The Ethics of Climate Change declares, “There is no room at all for uncertainty about the existence of the problem of climate change.‖ 31 Similarly, sociologist Eileen Crist says, “There is no longer even a semblance of a debate about the reality of global warming, its causes, and the climate change it has effected and portends.” 32 Rather than inviting debate and encouraging dissent, such declarations close off legitimate debate. Likewise, the mantra that the debate is over is meant to silence and disparage opposing voices. In addition, the scare tactics involved in the injunction to “act now” ignore the fact that questioning, skepticism, and open debate are necessary for scientific progress. As John Stuart Mill argues, silencing a minority opinion harms the majority even more than the minority, for the majority may be deprived of the truth if they are wrong. And if the majority is right, then they are deprived of the chance fully to know and understand their views through spirited debate. 33 In line with Mill‘s rationale, public scrutiny of theories has traditionally been welcomed by scientists interested in learning the strengths, weaknesses, and validity of their theories. This has not always been the case among proponents of AGW theory, however.

In November 2009 unidentified persons hacked the server at the University of East Anglia‘s Climate Research Unit (CRU) and presented to the world voluminous personal correspondence among many of the world‘s leading proponents of AGW theory. The hacked emails make clear that the CRU has denied legitimate requests for the data on which its calculations have been made. In addition, some scientists at the CRU have conspired to subvert peer review and to ostracize journals, editors, and scientists who disagree with them. 34 This is no way for science to proceed in a free society, or in any society for that matter.

### Conflict/War---General

#### Best data proves climate change doesn’t cause conflict---cooling’s more likely to cause war

Erik Gartzke 11, Associate Professor of Political Science at UC-San Diego, March 16, 2011, “Could Climate Change Precipitate Peace?,” online: <http://dss.ucsd.edu/~egartzke/papers/climate_for_conflict_03052011.pdf>

An evolving consensus that the earth is becoming warmer has led to increased interest in the social consequences of climate change. Along with rising sea levels, varying patterns of precipitation, vegetation, and possible resource scarcity, perhaps the most incendiary claims have to do with conflict and political violence. A second consensus has begun to emerge among policy makers and opinion leaders that global warming may well result in increased civil and even interstate warfare, as groups and nations compete for water, soil, or oil. Authoritative bodies, leading government officials, and even the Nobel Peace prize committee have highlighted the prospect that climate change will give rise to more heated confrontations as communities compete in a warmer world.

Where the basic science of climate change preceded policy, this second consensus among politicians and pundits about climate and conflict formed in the absence of substantial scientific evidence. While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions (c.f., Homer-Dixon 1991, 1994; Burke et al. 2009). these claims have been severely criticized by other studies (Nordas & Gleditsch 2007; Buhaug et al. 2010: Buhaug 2010).1 In contrast, long-term macro statistical studies find that conflict increases in periods of climatic chill (Zhang et al. 2006, 2007; Tol & Wagner 2010).2 Research on the more recent past reveals that interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt (Goldstein 2002; Levy et al. 2001; Luard 1986, 1988; Hensel 2002; Sarkees, et al. 2003; Mueller 2009).3 While talk of a ''climatic peace” is premature, broader claims that global warming causes conflict must be evaluated in light of countervailing evidence and a contrasting set of causal theoretical claims.4

#### No multilat or “liberal order” impact---U.S. can’t solve

Barma et al., 13 (Naazneen, assistant professor of national-security affairs at the Naval Postgraduate School; Ely Ratner, a fellow at the Center for a New American Security; and Steven Weber, professor of political science and at the School of Information at the University of California, Berkeley, March/April 2013, “The Mythical Liberal Order,” The National Interest, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146)

AFTER A year and a half of violence and tens of thousands of deaths in Syria, the UN Security Council convened in July 2012 to consider exerting additional international pressure on President Bashar al-Assad. And for the third time in nine months, Russia and China vetoed any moves toward multilateral intervention. Less than two weeks later, Kofi Annan resigned as the joint UN–Arab League special envoy for Syria, lamenting, “I can’t want peace more than the protagonists, more than the Security Council or the international community for that matter.” ¶ Not only have we seen this movie before, but it seems to be on repeat. Instead of a gradual trend toward global problem solving punctuated by isolated failures, we have seen over the last several years essentially the opposite: stunningly few instances of international cooperation on significant issues. Global governance is in a serious drought—palpable across the full range of crucial, mounting international challenges that include nuclear proliferation, climate change, international development and the global financial crisis. ¶ Where exactly is the liberal world order that so many Western observers talk about? Today we have an international political landscape that is neither orderly nor liberal. ¶ It wasn’t supposed to be this way. In the envisaged liberal world order, the “rise of the rest” should have been a boost to global governance. A rebalancing of power and influence should have made international politics more democratic and multilateral action more legitimate, while bringing additional resources to bear. Economic integration and security-community enlargement should have started to envelop key players as the system built on itself through network effects—by making the benefits of joining the order (and the costs of opposing it) just a little bit greater for each new decision. Instead, the world has no meaningful deal on climate change; no progress on a decade-old global-trade round and no inclination toward a new one; no coherent response to major security issues around North Korea, Iran and the South China Sea; and no significant coordinated effort to capitalize on what is possibly the best opportunity in a generation for liberal progress—the Arab Spring. ¶ It’s not particularly controversial to observe that global governance has gone missing. What matters is why. The standard view is that we’re seeing an international liberal order under siege, with emerging and established powers caught in a contest for the future of the global system that is blocking progress on global governance. That mental map identifies the central challenge of American foreign policy in the twenty-first century as figuring out how the United States and its allies can best integrate rising powers like China into the prevailing order while bolstering and reinforcing its foundations. ¶ But this narrative and mental map are [is] wrong. The liberal order can’t be under siege in any meaningful way (or prepped to integrate rising powers) because it never attained the breadth or depth required to elicit that kind of agenda. The liberal order is today still largely an aspiration, not a description of how states actually behave or how global governance actually works. The rise of a configuration of states that six years ago we called a “World Without the West” is not so much challenging a prevailing order as it is exposing the inherent frailty of the existing framework.

# 1NR

## Readiness DA

### O/V

#### Military collapse causes great power nuclear war---that’s Gray

#### Independent perception impact is immediate---competitors will be EMBOLDENED if the US military is brought to its knees by environment litigation

#### Nuke war kills the environment---prefer tangible hotspot impacts that the military de-escalates over long-term nebulous warming and bioterrorism---intervening actors solve and ridiculous internal link chains decrease probability

### Link

#### I don’t know what disad the 2AC was responding too---none of the aff arguments apply because the disad is SOLELY about litigation---Gartland says the plan opens the military up to injunctions and lawsuits

#### Their no link arg makes no sense---even IF they win plan ONLY affects environmental issues---that’s SUFFICIENT

#### Guts readiness

#### Operations disruption---disrupts training, nuclear tests, diplomacy---personnel have to get WITHDRAWN to testify---that’s Gartland

#### Overdeterrence---military will be hesitant about doing missions it ordinarily wouldn’t think twice about for fear of lawsuits

#### Uncertainty regarding NEPA restrictions causes revolving door of litigation

Aaron Riggio 09, J.D. Candidate, Seattle University School of Law, Fall 2009, “Whale Watching from 200 Feet Below: A New Approach to Resolving Operational Encroachment Issues,” 33 Seattle Univ. L. R. 229

The Winter decision brought to light several significant failings associated with granting environmental law exemptions to the military. First, although the district court opined that the President's waiver of the CZMA was unconstitutional, the constitutionality of such executive action was never addressed due to the validity of the NEPA claim. n105 Had NEPA been written with a national security exemption, the constitutionality of the President's waiver could have been decided. n106 As written, however, the nation's environmental laws do not promote a clear and unified policy regarding the balancing of national security interests.¶ Second, despite the Navy's best efforts to comply with the statutory exemptions as written, it was still forced to defend against the plaintiffs' ESA and CZMA claims. n107 Because the statutes that authorize environmental law exemptions each have different requirements and citizen suit provisions, the military will experience a revolving door of litigation whenever it plans a large-scale training operation. n108¶ Third, the ability of a single district court judge to enjoin a naval exercise that is reportedly necessary for national defense tends to generate uneasiness. While judges are frequently required to make determinative rulings on issues they lack expertise on, the costs of misjudging the import of naval operations is considerably greater when their rulings have significant effects on the safety and security of the nation. n109¶ [\*244] Finally, partially due to the previous three problems, the federal court system is not the proper venue to resolve these issues. In announcing the Court's decision, Chief Justice Roberts made the exact same determination that the district court could have--the Commander in Chief determined that this training was of paramount interest to national security. n110 It seems implausible that such an easy determination, resting not on the discretion of necessarily biased military leaders or factually limited judges, but on the determination of the Commander in Chief, would require the Supreme Court to resolve.

#### Civil suits result in the death by a thousand cuts of the military

Aaron Riggio 09, J.D. Candidate, Seattle University School of Law, Fall 2009, “Whale Watching from 200 Feet Below: A New Approach to Resolving Operational Encroachment Issues,” 33 Seattle Univ. L. R. 229

From the military's perspective, there are many problems associated with the way exemptions are currently implemented under the previously discussed Acts. n38 The most obvious problem with the current [\*235] exemption framework is that it generally requires intervention from the highest level of the Executive Branch. n39 This problem is closely related to the next. The current system is suited to one-time, isolated events that are irreconcilable with environmental laws. When such isolated events arise, it may be appropriate to require the President to intervene and balance the importance of the military mission with the potential environmental impact. However, operational encroachment rarely involves a one-time, isolated event; it is far more likely to occur with regular and recurring training events. In recognition of the unsuitability of current exemptions to one-time scenarios, the DOD has commented that, while being "a valuable hedge against unexpected future emergencies, [the current statutory scheme of exemptions] cannot provide the legal basis for the Nation's everyday military readiness activities . . . ." n40 The result is "death by a thousand cuts" from "having to employ these exemptions on a case-by-case basis." n41¶ Other military concerns are notable, including the potential for release of classified information due to exemption reporting requirements; n42 so-called "negative training"; n43 increased wear and tear when equipment is shipped to locations suitable for an exercise; n44 and the significant financial costs involved in attempting to comply with exemption requirements. n45

#### Courts on principle will favor the environment over national security---crushes readiness

Major Charles Gartland 12, J.D., United States Air Force judge advocate currently serving as the Environmental Liaison Officer for the Air Force Materiel Command, “AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE,” 68 A.F. L. Rev. 27

On the third prong of the injunction test regarding hardships to the parties, the Ninth Circuit cited the Supreme Court case of Amoco Prod. Co. v. Vill. of Gambell for the notion that environmental injury is often permanent or of extended duration, which inherently favors injunction issuance. n331 Viewing the relative hardships of an injunction in that light, the Ninth Circuit held that the impact to the Navy was "speculative" because the Navy had no experience operating under the two remaining injunction conditions to which it objected. n332 In support of that view, the Ninth Circuit noted that the Navy had not threatened to cease the exercises altogether instead of bearing with the injunction terms. n333¶ However, the Navy had presented declarations during the District Court proceeding from numerous Navy admirals that the injunction terms were "crippling" to realistic training and posed an "unacceptable risk" to the Navy's ability to certify the strike groups. n334 According to those declarations, the consequence to national security was profound. n335 The Ninth Circuit countered those declarations by comparatively applying the two contested injunction terms to data on exercise interruptions available from past exercises, and theorized that had the injunction terms applied to the set of exercises subject to the instant litigation, only two to three additional MFA sonar shut-downs per exercise would have been experienced. n336 Two to three shutdowns per exercise would not have rendered the exercises "ineffective," even though the District Court had noted earlier that its injunction terms constituted a "substantial challenge" to the way it conducted anti-submarine warfare training. n337¶ The Ninth Circuit balance of interests thus resulted in imbalance: on the plaintiffs' side was a "near certainty" of irreparable harm, while on Navy's there was nothing more than the mere inconvenience of altering a training exercise. n338 National security did not therefore figure as a theme in the decision; both the Evans case and Malama Makua were cited for the proposition that "courts have often held" that "precautionary measures to follow the law" can trump assertions of national security. n339¶ On appeal to the Supreme Court, the Court conducted analysis of the District Court and Ninth Circuit decisions that is a microcosm of the injunction themes explored in this article. First, from a purely legal standpoint, the Supreme Court held [\*64] that the lower courts erred in their irreparable harm standard. n340 The Ninth Circuit's "possibility" threshold ran counter to the Supreme Court's "frequently reiterated standard" that irreparable harm must be likely. n341 The "possibility" standard was "too lenient," and as such, "inconsistent with our characterization of injunctive relief as an extraordinary remedy . . . ." n342¶ Second, the lower courts erred in their weighing of the equities because they significantly understated the burden of the injunction to the Navy. n343 That burden was understated because "[t]he lower courts failed properly to defer to senior Navy officers' specific, predictive judgments about how the preliminary injunction would reduce the effectiveness of the Navy's SOCAL training exercises." n344 The District Court's lack of deference to agency judgment was reflected in its fleeting attention to equities balancing, which the Supreme Court calculated to be precisely one sentence in length. n345¶ Third, from a public policy standpoint, the lower courts severely understated the public interest in military readiness. n346 "The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs . . . . In this case, however, the proper determination of where the public interest lies does not strike us as a close question." n347¶ Based on the foregoing, the Court overruled the Ninth Circuit and vacated the two points of the six-part injunction challenged by the Navy. n348 But even victories come at a cost, and for the Navy ultimate triumph at the Supreme Court was not painless. Similar to Evans and Malama Makua, the case had ping-ponged back and forth between the District Court and Ninth Circuit multiple times. n349 From the time the injunction was originally entered to the day the Supreme Court issued its decision, a year and a half of bruising litigation unraveled. The alternative was to operate under injunction terms similar to those in Evans n350 --or even worse, not operate at all, as was the case in Malama Makua for three years. n351¶ Victory was also not complete: the Winter decision simply remanded the case back to the District Court with instructions to vacate the two conditions the Navy had challenged; the other four conditions remained in place. n352 And by no means was this the last time that Navy sonar training would visit the courtroom. [\*65] On January 26, 2012 environmental plaintiffs filed suit seeking an injunction to halt similar exercises off the coasts of Washington, Oregon, and California. n353¶ D. Before and After Winter: NEPA National Defense¶ Winter is not all that it appears to be for national defense vis-à-vis NEPA, despite its resonant notes on the importance of national defense. n354 At a casual glance, the decision certainly says much to benefit the national defense cause. n355 It thoroughly evaluated the equities, discussed deference to military judgment, and discussed the public interest as it relates to national defense. n356 Contrasted with decisions such as Enewetak or Callaway, Winter does seem remarkable; it stands as a firm refutation of the casual, almost undisciplined, manner with which lower courts viewed national defense interests, especially in the sonar cases. Some commentators have consequently concluded that Winter v. NRDC represents a blow to NEPA, n357 and even that an implied national defense exemption is on the horizon. n358¶ Yet, as measured by the three dimensions outlined in Section III of this article--the political question doctrine, national defense exceptionalism, and injunction law--national defense activities have little reason to believe they'll be spared a NEPA injunction in the future. On the political question front, the Supreme Court made no direct mention of the doctrine. n359 The Court's recognition that lower courts failed to grant due deference to the Navy's position on the necessity of MFR sonar training and its impact to national security is better viewed as a statement on proper Administrative Procedure Act practice--not separation of powers talk. n360 The holding in Winter was not that courts owe any more deference to the military than any other Federal agency, n361 or that national defense concerns should prevail over NEPA procedural compliance. n362 In that sense, Winter is a far cry from the military [\*66] exceptionalism that thundered at the Trident District Court, n363 and was strongly implied in McQueary v. Laird n364 and Barcelo v. Brown. n365¶ Even with respect to injunction balancing tests under NEPA, Winter is but a marginal improvement to national defense interests. The Court's holding was extremely narrow, primarily directed at the Ninth Circuit's application of the irreparable harm prong of the four-part injunction test. n366 The Ninth Circuit held that for an injunction to issue, irreparable harm must be "possible" whereas the Supreme Court mandated that it be "likely." n367 It takes no great stretch of the imagination to see what little difference such word parsing will make in practice, regardless of the significant literal distinction between those two words. n368 Moreover no bright-line rules were laid down on those matters beyond what already was the law. n369¶ Most importantly, while affirming the importance of national defense in the context of NEPA compliance, the Court failed to state why the public interest aligns with the national defense interest instead of the environmental interest. n370 Why is that alignment not even a "close question," as Justice Roberts posited? n371 The District Court in Trident stated its answer: there will be instances when one value is so fundamental to the perpetuation of the Republic that environmental planning falls subordinate to it; a judgment call will have to be made to select one value over another. n372 In Winter the Supreme Court effectively selected one value over another, but unlike Trident, declined to expressly say so. n373 Without any such express endorsement, national defense is doomed to replay Enewetak, Malama Makua, Evans, and the lower stages of Winter. n374

#### Link independently turns the case---endless litigation will deter the military from pursuing more environment policies

#### Guts international modeling---countries won’t want to be hampered by similar domestic lawsuits

#### They say it doesn’t hurt readiness---Holmes is about genero exec discretion, not about courts or litigation

#### Their judges can be secret arg is about the status quo, doesn’t assume FORCED COURTROOM DISCLOSURE---lawsuits require evidence to be coughed up publically

### AT: Basing

#### No internal link—plan doesn’t increase access to basing…

#### They gut training---SEAL training key to bases---and to prevent terrorism – solves the nuke and bioterror scenarios

Peterson, 9 – Lieutenant Commander, United States Navy

[Erick, "The Strategic Utility of U.S. Navy Seals," Naval Postgraduate School, June 2009, www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA501950, accessed 2-6-13, mss]

Terror is likely to remain a threat in the foreseeable future. It may become, like Dick Couch proclaims in Sherriff of Ramadi, that terror will be similar to illegal drugs, something we never eradicate, but requires constant attention. For this reason, SEALs will always have a mission of removing terrorist leaders and tenaciously chasing terrorists across the globe. This constant vigilance will **systematically erode** the **terrorists’ ability to operate** (Couch 2008). This task is often seen as the domain of special mission units (SMUs), but SMUs are extremely limited. The “vanilla” or “white” SOF assets, specifically SEALs, can provide a responsive means of dealing with this threat. Terrorism is akin to cancer. Like cancer there are multiple measures that must be taken to eliminate the disease. Some of the measures are non-invasive. For cancer these measures are nutrition, rest and pharmacological. For terrorism these are the activities surrounding civil affairs, psychological operations, and “nation building.” But invasive measures must also be taken and the deadly tumor removed. For cancer this is the work of the skilled surgeon, armed with the scalpel he uses with precision. For the military, the highly trained SEALs are the surgeon and the scalpel. In order to ensure this capability remains a precision tool, SEAL mission focus should remain direct action in nature with a very good understanding of how the "kinetic scalpel of a surgical operation" should be used (Smith, 2009). And just as important, they must understand when a not-so-sharp scalpel can adversely affect the indirect effort. Therefore, **this skill must remain as sharp as possible to ensure success** (Smith, 2009).

### Naval Power

#### Trainings also key to broader naval power

US Navy 8, “U.S. Navy Mine Familiarizer,” <http://www.public.navy.mil/surfor/comomag/Pages/conceptofoperations.aspx#.UQ_YCh19Iw8>

The Navy is seriously committed to maintaining a potent sea mining capability. Mining can beused as a strategic deterrent and/or as a force multiplierin this era during which the Navy faces a continued reduction in platform numbers. The unique attributes of naval mines make them one of the most effective forms of naval warfare across the spectrum of conflict. Even the suggestion of the presence of mines in the water has deterred or delayed waterborne movement until the threat could be effectively assessed and neutralized. In the early stages of future crises, mines positioned either overtly or clandestinely, not necessarily in large numbers, could be a strategic tool in convincing an adversary to reassess its intentions, contributing to the establishment of battlespace dominance. Therefore, mining can be effective across many different levels of conflict, either as a stand‑alone option or as one element in a broader response. Our allies and adversaries recognize that mines are relatively low-cost weapons that can level the playing field between otherwise unequal opponents. To guarantee the effectiveness of our future forces, we must develop and maintain an inventory of modern weapons, integrate mining into the overall planning to shape the battlespace, and ensure the availability of a variety of delivery platforms in sufficient numbers to execute approved plans. Maintenance of a robust mining capability also provides a basic understanding of state-of-the-art sea mine technology that allows us to optimize development of an effective countermeasures force. Our Mining Concept of Operations (CONOPS) describes the top-level operational roles of mining as a key component of our overall naval operational structure. There are three stages of mining operations within which all aspects of mining are grouped. They are the planning, delivery, and campaign stages. Planning The planning stage of the mining CONOPS includes the following basic activities: · Determining mission requirements and maintaining mine assets · Identifying and planning priority minefields · Developing, acquiring, and prepositioning mining assets · Exercising and training in the mining area · Implementation of global mining alliances Requisite to the determination of mission requirements is threat assessment, collection of environmental and target data, and the development of algorithms for mine sensors. Effective minefield modeling is particularly important in this regard. The development and acquisition of mines is an extremely important component of the planning phase, as is maintenance of a modern mine stockpile. Rigorous training and mining exercises are essential to ensure our readiness to conduct mining operations.

#### Global great power war

Conway et al 7 James T., General, U.S. Marine Corps, Gary Roughead, Admiral, U.S. Navy, Thad W. Allen, Admiral, U.S. Coast Guard, “A Cooperative Strategy for 21st Century Seapower,” October, http://www.navy.mil/maritime/MaritimeStrategy.pdf

This strategy reaffirms the use of seapower to influence actions and activities at sea and ashore. The expeditionary character and versatility of maritime forces provide the U.S. the **asymmetric advantage** of enlarging or contracting its military footprint in areas where access is denied or limited. Permanent or prolonged basing of our military forces overseas often has unintended economic, social or political repercussions. The sea is a vast maneuver space, where the presence of maritime forces can be adjusted as conditions dictate to enable **flexible approaches** to escalation, **de-escalation** **and deterrence of conflicts**. The speed, flexibility, agility and scalability of maritime forces provide joint or combined force commanders a range of options for responding to crises. Additionally, integrated maritime operations, either within formal alliance structures (such as the North Atlantic Treaty Organization) or more informal arrangements (such as the Global Maritime Partnership initiative), send powerful messages to would-be aggressors that we will act with others to ensure collective security and prosperity. United States seapower will be globally postured to secure our homeland and citizens from direct attack and to advance our interests around the world. As our security and prosperity are inextricably linked with those of others, U.S. maritime forces will be deployed to protect and sustain the peaceful global system comprised of interdependent networks of trade, finance, information, law, people and governance. We will employ the global reach, persistent presence, and operational flexibility inherent in U.S. seapower to accomplish six key tasks, or strategic imperatives. Where tensions are high or where we wish to demonstrate to our friends and allies our commitment to security and stability, U.S. maritime forces will be characterized by regionally concentrated, forward-deployed task forces with the combat power to limit regional conflict, deter major power war, and should deterrence fail, win our Nation’s wars as part of a joint or combined campaign. In addition, persistent, mission-tailored maritime forces will be globally distributed in order to contribute to homeland defense-in-depth, foster and sustain cooperative relationships with an expanding set of international partners, and prevent or mitigate disruptions and crises. Credible combat power will be continuously postured in the Western Pacific and the Arabian Gulf/Indian Ocean to protect our vital interests, assure our friends and allies of our continuing commitment to regional security, and deter and dissuade potential adversaries and peer competitors. This combat power can be selectively and **rapidly repositioned to meet contingencies** that may arise elsewhere. These forces will be sized and postured to fulfill the following strategic imperatives: Limit regional conflict with forward deployed, decisive maritime power. Today regional conflict has ramifications far beyond the area of conflict. Humanitarian crises, violence spreading across borders, pandemics, and the interruption of vital resources are all possible when regional crises erupt. While this strategy advocates a wide dispersal of networked maritime forces, we cannot be everywhere, and we cannot act to mitigate all regional conflict. Where conflict threatens the global system and our national interests, maritime forces will be ready to respond alongside other elements of national and multi-national power, to give political leaders a range of options for deterrence, escalation and de-escalation. Maritime forces that are persistently present and combat-ready provide the Nation’s primary forcible entry option in an era of declining access, even as they provide the means for this Nation to respond quickly to other crises. Whether over the horizon or powerfully arrayed in plain sight, maritime forces can deter the ambitions of regional aggressors, assure friends and allies, gain and maintain access, and protect our citizens while working to sustain the global order. **Critical to this** notion **is the maintenance of a powerful fleet**—ships, aircraft, Marine forces, and shore-based fleet activities—capable of selectively controlling the seas, projecting power ashore, and protecting friendly forces and civilian populations from attack. Deter major power war. No other disruption is as potentially disastrous to **global stability** as **war among major powers**. Maintenance and extension of this Nation’s comparative seapower advantage is a **key component** of deterring major power war. While war with another great power strikes many as improbable, the near-certainty of its ruinous effects demands that it be actively deterred using all elements of national power. The expeditionary character of maritime forces—our lethality, global reach, speed, endurance, ability to overcome barriers to access, and operational agility—provide the joint commander with a range of deterrent options. We will pursue an approach to deterrence that includes a credible and scalable ability to retaliate against aggressors conventionally, unconventionally, and with nuclear forces. Win our Nation’s wars. In times of war, our ability to impose local sea control, overcome challenges to access, force entry, and project and sustain power ashore, makes our maritime forces an indispensable element of the joint or combined force. This expeditionary advantage must be maintained because it provides joint and combined force commanders with freedom of maneuver. Reinforced by a robust sealift capability that can concentrate and sustain forces, sea control and power projection enable extended campaigns ashore.

## Deference DA

#### Not going for it, we’ll concede rules don’t hurt exec flex---none of the 2AC ev is about litigation

#### Now the DOD abides arg

* Exemptions nows
* Opens up to being challenged
* Increased restrictions

#### No spillover arg is about exec flex---readiness disad is distinct because it’s about military operations, not pres discretion

### 1NC/2NC Deference Now

#### We overwhelmingly control uniqueness---all federal courts are either siding with the executive’s terror policies through narrow rulings or declining to even hear the cases---past rulings are being distinguished

Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

## Bioterror

### 1NC

#### *The worst case scenario happened – no extinction*

*Dove 12 [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]*

*The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.*

#### *They don’t cause mass destruction*

*O’Neill 4**O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]*

*David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.*

#### *Diseases can’t cause extinction --- burnout Intervening actors check*

*Zakaria 9****—****Editor of Newsweek, BA from Yale, PhD in pol sci, Harvard. He serves on the board of Yale University, The Council on Foreign Relations, The Trilateral Commission, and Shakespeare and Company. Named "one of the 21 most important people of the 21st Century" (Fareed, “The Capitalist Manifesto: Greed Is Good,” 13 June 2009, http://www.newsweek.com/id/201935)*

*Note—Laurie Garrett=science and health writer, winner of the Pulitzer, Polk, and Peabody Prize*

*It certainly looks like another example of crying wolf. After bracing ourselves for a global pandemic, we've suffered something more like the usual seasonal influenza. Three weeks ago the World Health Organization declared a health emergency, warning countries to "prepare for a pandemic" and said that the only question was the extent of worldwide damage. Senior officials prophesied that millions could be infected by the disease. But as of last week, the WHO had confirmed only 4,800 cases of swine flu, with 61 people having died of it. Obviously, these low numbers are a pleasant surprise, but it does make one wonder, what did we get wrong? Why did the predictions of a pandemic turn out to be so exaggerated? Some people blame an overheated media, but it would have been difficult to ignore major international health organizations and governments when they were warning of catastrophe. I think there is a broader mistake in the way we look at the world. Once we see a problem, we can describe it in great detail, extrapolating all its possible consequences. But we can rarely anticipate the human response to that crisis. Take swine flu. The virus had crucial characteristics that led researchers to worry that it could spread far and fast. They described—and the media reported—what would happen if it went unchecked. But it did not go unchecked. In fact, swine flu was met by an extremely vigorous response at its epicenter, Mexico. The Mexican government reacted quickly and massively, quarantining the infected population, testing others, providing medication to those who needed it. The noted expert on this subject, Laurie Garrett, says, "We should all stand up and scream, 'Gracias, Mexico!' because the Mexican people and the Mexican government have sacrificed on a level that I'm not sure as Americans we would be prepared to do in the exact same circumstances. They shut down their schools. They shut down businesses, restaurants, churches, sporting events. They basically paralyzed their own economy. They've suffered billions of dollars in financial losses still being tallied up, and thereby really brought transmission to a halt." Every time one of these viruses is detected, writers and officials bring up the Spanish influenza epidemic of 1918 in which millions of people died. Indeed, during the last pandemic scare, in 2005, President George W. Bush claimed that he had been reading a history of the Spanish flu to help him understand how to respond. But the world we live in today looks nothing like 1918. Public health-care systems are far better and more widespread than anything that existed during the First World War. Even Mexico, a developing country, has a first-rate public-health system—far better than anything Britain or France had in the early 20th century.*

*Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)*

*Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.*

#### They don’t have the capability

Sonia Ben Ouagrham-Gormley ‘12, Assistant Professor in the Biodefense Program at George Mason University, Spring 2012, “Barriers to Bioweapons,” International Security, Vol. 36, No. 4,pp. 80–114

Knowledge Acquisition and Diffusion in Past Weapons Programs Studies of knowledge transfer, including in weapons technology, indicate that access to written data does not guarantee its successful transfer and subsequent use, even by experts. The reasons fall into four main categories: the nature of knowledge; external factors; socioeconomic conditions; and the organizational dimensions of programs. As a consequence, scientific data produced elsewhere can be used in a different context as a general guideline to perform a speciªc task, but rarely as a comprehensive set of “how to” instructions to reproduce past work, even with the necessary expertise, which poses serious challenges to weapons development and proliferation. the tacit, local, and collective nature of knowledge Technical and scientific knowledge results from a process of experimentation and testing that, in addition to producing explicit knowledge (e.g., reports, formulas, and designs), produces tacit knowledge, or unarticulated know-how or skills that cannot, or only with considerable difªculty, be translated into written form. Tacit knowledge may also take the form of laboratory practices, routines, or techniques, which, although important for the success of an experiment or process, may not be included in a written document. Two reasons explain their absence: (1) they are not recognized as being an essential part of the experiment or process, or (2) scientists and technicians are unaware that their peculiar way of doing things is crucial for experimental success. Because scientiªc data capture only the explicit portion of the author’s expertise, it is an incomplete representation of the knowledge produced, which constitutes a major obstacle to its efªcient use by others. In addition, written documents rarely explain why scientiªc teams make certain technical choices. 16 As a result, written information requires a degree of interpretation for use in speciªc contexts, implying that those who receive this information must possess sufªcient knowledge to decide how best to use it. Yet, even when the users have the required base knowledge, the absence of the associated tacit knowledge makes the use of explicit data difªcult. Analysts have recorded such technical difªculties in past weapons programs when the transfer of data occurs between state programs, but also within state programs. For instance, despite receiving hundreds of pages of scientific information on the production of the Soviet anthrax weapon designed by the Kirov bioweapons laboratory in Russia, the Stepnogorsk bioweapons production plant in Kazakhstan failed to produce an anthrax weapon based on this information after two years of repeated attempts. Only with the addition of sixtyªve scientists from two Russian facilities at Kirov and Sverdlovsk, and three more years of interpretation and modiªcation of the original protocols, did the Kazakh facility succeed in producing an anthrax weapon, one that proved to be dramatically different from the Kirov weapon. 17 Similarly, the blueprints and scientiªc data that Britain provided to the United States in the early 1940s, which described the production process and weaponization of biological agents, could not be used in the U.S. bioweapons program without extensive modiªcations. The British production process used a series of connected milk churns and was capable of producing only small amounts of agents. The process was not suited for the large-scale production envisioned by the United States. As a result, the United States had to create a new development and production infrastructure, as well as production processes, which required several years of research and testing. 18 Another challenge in using others’ scientiªc data is that tacit knowledge does not transfer easily. It requires proximity to the original source(s) and an extended master-apprentice relationship. 19 Scientiªc and technical knowledge is also highly local: it is developed within a speciªc infrastructure, using a speciªc knowledge base, and at a speciªc location. Some studies have shown that the use of data and technology in a new environment frequently requires adaption to the new site. 20 Successful adaptation often requires the involvement of the original scientiªc author(s) to guide the adjustment. For instance, some of the problems encountered during the production of the Soviet anthrax weapon were solved only after the authors of the weapon in Russia traveled to Kazakhstan to assist their colleagues. These individuals trained their colleagues, transferring their tacit knowledge in the process, and helped adjust the technical protocols to the Kazakh infrastructure, which was substantially different from that of the Russian facility. Even with the presence of these original authors, five years were needed to complete the process of successful transfer and use of bioweapons technology. 21 A further complication is that tacit knowledge can decay over time and may disappear if not used or transferred. Studies have shown that trying to re-create lost knowledge can be difficult, if not impossible

#### Prefer our ev – theirs inflates the threat

Reynolds 5—Senior Fellow at the Cato Institute. Formerly Director of Economic Research at the Hudson Institute. AB in economics from UCLA. (Alan, The Fear Industry, 6 May 2007, http://www.cato.org/pub\_display.php?pub\_id=8234)

Neither gentleman has been at all apologetic about his role in grossly exaggerating the likely risks of biological terrorism. Mr. Wolfowitz once claimed Iraq had enough ricin to kill a million people, enough botulism to kill tens of millions and enough anthrax "to kill hundreds of millions." Terrorists throughout the world have managed to kill only five people with anthrax, one with ricin and zero with botulism or aflatoxin (added to the list by former Secretary of State Colin Powell). This not because terrorists don't want to kill people, but because killing is much easier to accomplish with bombs, guns and crashing airplanes. Even today, however, bureaucrats and politicians still remain easily persuaded to assign a higher priority (and bigger budgets) to extremely unlikely risks than to mundane but palpable threats to health and safety. I wrote a series of columns about the formidable obstacles to effectively delivering biological weapons, often quoting Mr. Wolfowitz or the CIA as examples of extreme gullibility or deception. I revealed many holes in the WMD fable before the Iraq invasion in, "The economics of war," "Hazy WMD definitions" and "The duct tape economy." Those were followed by "Intelligence without brains" in June 2003, "The CIA and WMD" in June 2004, "WMD Doomsday distractions" in April 2005 and "The cost of war in retrospect" in March 2006. Those columns can be found by sifting through archives under my bio at cato.org. The legacy of the 2002 WMD hoax lives on today in "Operation Bioshield" and other federal programs for doling out tax dollars to the multibillion-dollar fear industry. The fear industry begins by hiring lobbyists and subsidizing academics who, in turn, persuade journalists to write scary stories about hypothetical weapons. This science fiction game is not played for fun. It is played for money. It involves what Dale Rose of the University of California at San Francisco described as, "A cottage industry of risk analysts, disaster preparedness experts, psychologists, and others [who] have produced an array of theoretical work and conceptual grids around the issue of low probability, high consequence events." In response to pressure from academic centers whose main mission was to hype bioterrorism (including the infamously erroneous "Dark Winter" scenario of mid-2001), President Bush warned of "the use of the smallpox virus as a weapon of terror" in December 2002. The administration then spent hundreds of millions of dollars on smallpox vaccine for first responders and the military, but both groups (notably, physicians) shunned the risky shots. That was the most costly fiasco of its type since the swine flu vaccination program of 1976, which killed more people than swine flu did. Continuing the tradition, the U.S. government just contracted with Sanofi Pasteur to produce $100 million worth of avian flu vaccine -- of dubious effectiveness against avian flu acquired from birds, much less from any hypothetical pandemic strain that leaps to humans. Whether or not these programs save even one life per $100 million spent is irrelevant. The point is the millions spent. After most federal loot from research grants and vaccine stockpiles has been received, the mission is accomplished and the fear industry moves on to greener pastures. The scare stories about Danger A disappear, replaced with new stories about Danger B, then C and so on. The most reliable cash cow for the fear industry has been the five deaths from inhaling anthrax in October 2001. For those in the business of providing high-cost solutions to minuscule risks, this has been an endless bonanza. A recent news item provides a typical tip for fear investors: "Emergent BioSolutions of Rockville (Md.) said the U.S. government planned to order as many as 22.75 million doses of its anthrax vaccine." The government has spent at least $877 million on anthrax vaccine so far, or $175.4 million per death from anthrax. Sensing that sum may be pressing the limits, the fear industry is busily assembling new threats to scare up some more cash. The Health and Human Services Department reportedly plans to up its spending by more than $100 million on additional anthrax and smallpox vaccines. And it plans to spend more than $100 million to deal with radiation poisoning -- not even on this luxury list until former Russian spy Alexander Litvinenko was assassinated. Compared with anthrax vaccine, $100 million per death sounds cheap, even if he wasn't an American. But they did say "more than" $100 million, didn't they? The plan also "listed as a near-term priority the development of antibiotics for threats such as the plague or tularemia." Sure, why not? There was one unconfirmed case of plague in Texas in 1956. And in the summer of 2000, an outbreak of tularemia from lawn mowing in Martha's Vineyard resulted in one fatality. Whenever you hear the word "bioterrorism" in connection with large sums of federal money, just remember "WMD." Bioterrorism is just a different word for the same old WMD story retold in purely hypothetical terms, without even pretending someone actually has such agents or knows how to kill more than five people with them. \

#### The impact is empirically denied by decades of threat exaggeration

Leitenberg 5—senior research scholar, Center for Int. and Security Studies, School of Public Policy, U Maryland. Original academic training in Bio and Chem; researched at Albert Einstein Medical School, Department of Neurology; Vassar College; Northeastern University; and Washington University, St. Louis (Milton, Assessing the Biological Weapons And Bioterrorism Threat, December 2005, http://www.cissm.umd.edu/papers/files/assessing\_bw\_threat.pdf)

The evolution of nonstate/terrorist biological weapon capabilities. The production and distribution of a dry powder anthrax product in the United States in 2001 is the most signiﬁcant event. However, understanding to what degree that demonstration of competence is relevant to “traditional” terrorist groups is impossible until the perpetrator(s) of the anthrax events are identiﬁed. If it was done with assistance, materials, knowledge, access, etc., derived from the U.S. biodefense program, the implications change entirely. The Rajneesh group (1984) succeeded in culturing Salmonella. The Japanese Aum Shinrikyo group failed to obtain, produce, or disperse anthrax and botulinum toxin. The steps taken by the al-Qaida group in efforts to develop a BW program were more advanced than the United States understood prior to its occupation of Afghanistan in November-December 2001. Nevertheless, publicly available information, including the somewhat ambiguous details that appeared in the March 31, 2005, report of the Commission on Intelligence Capabilities, indicates that the group failed to obtain and work with pathogens. Should additional information become available regarding the extent to which the al-Qaida BW effort had progressed, that assessment might have to be changed. Scenarios for national BW exercises that posit various BW agents in advanced states of preparation in the hands of terrorist groups simply disregard the requirements in knowledge and practice that such groups would need in order to work with pathogens. Unfortunately, 10 years of widely broadcast public discussion has provided such groups, at least on a general level, with suggestions as to what paths to follow. If and when a nonstate terrorist group does successfully reach the stage of working with pathogens, there is every reason to believe that it will involve classical agents, without any molecular genetic modiﬁcations. Preparing a dry powder preparation is likely to prove difficult, and dispersion to produce mass casualties equally so. Making predictions on the basis of what competent professionals may find “easy to do” has been a common error and continues to be so. The utilization of molecular genetic technology by such groups is still further off in time. No serious military threat assessment imputes to opponents capabilities that they do not have. There is no justiﬁcation for imputing to real world terrorist groups capabilities in the biological sciences that they do not posess. Framing “the threat” and setting the agenda of public perceptions and policy prescriptions. For the past decade the risk and immanence of the use of biological agents by nonstate actors/terrorist organizations—“bioterrorism”—has been systematically and deliberately exaggerated. It became more so after the combination of the 9/11 events and the October- November 2001 anthrax distribution in the United States that 89 followed immediately afterwards. U.S. Government officials worked hard to spread their view to other countries. An edifice of institutes, programs, conferences, and publicists has grown up which continue the exaggeration and scare-mongering. In the last year or two, the drumbeat had picked up. It may however become moderated by the more realistic assessment of the likelihood of the onset of a natural flu pandemic, and the accompanying realization that the U.S. Government has been using the overwhelming proportion of its relevant resources to prepare for the wrong contingency.