

Cheney's misfiring security critique

DURHAM Out of office for just over two months, former Vice President Dick Cheney has taken over the role of critic-in-chief of the Obama counterterrorism policies, particularly the decision to close the Guantanamo detention facility and end "enhanced" interrogations. Cheney has characterized the new administration as "people who are more concerned with reading the rights to an al-Qaida terrorist than ... protecting the United States" and recently charged that President Barack Obama is "making some choices that, in my mind, will, in fact, raise the risk to the American people of another attack."

Putting aside the unseemliness of a former vice president lashing out against his successors so soon after leaving office, Cheney's critique is deeply flawed on the merits.

First, the factors increasing risk to the American people have little to do with the Obama administration's alterations to detainee and interrogation policy and much to do with the security dangers resulting from past policy failures. With North Korea testing a long-range missile, Iran pursuing its nuclear ambitions and Afghanistan/Pakistan experiencing unprecedented instability, how we deal with the 240 remaining Guantanamo detainees is the least of our worries.

Cheney claims that these changes demonstrate Obama isn't committed to the hard steps necessary to pre-empt terrorist attacks (such as gaining intelligence from harsh interrogations). But if you look at Obama's policies so far, he is strengthening, not weakening, our preventive efforts.

He has continued former President George W. Bush's policy of using unmanned drones in the border region of Afghanistan and Pakistan to target and kill militants, widened the areas where such attacks are authorized, and raised his previous estimate of the number of troops who will remain in Iraq to protect against a resurgence of al-Qaida fighters. Last summer, Obama voted for the intelligence program to monitor communications from abroad without a court warrant, a fact Cheney conveniently ignores.

Moreover, Cheney mischaracterizes the Obama detainee policies. All that Obama has promised to do is close the Guantanamo prison. He has left open the full range of options for prosecution, transfer and continued detention.

The Justice Department recently announced it has legal authority under international and U.S. law to detain indefinitely and without charge any individual who "substantially supported terrorism." This hardly sounds as if Obama is ready to start unlocking doors and sending dangerous detainees back to bin Laden's training camps.

In fact, Obama has released one detainee in two months; Bush released approximately 550 during time in office, some of whom reportedly returned to the battlefield. Cheney hasn't explained why Obama's detainee policy is increasing the risk of terrorism while Bush's did not.

Cheney's comments also disregard how the prior administration's legal missteps -- including three total and one partial defeat before the most conservative Supreme Court in modern history - have undermined our ability to detain potentially dangerous suspected terrorists. Instead of working with the Congress after Sept. 11, 2001 to establish a fair and defensible system for detaining and prosecuting captured terrorists, Cheney's infatuation with novel theories of presidential power led the administration to implement a prosecutorial system that has resulted in only three convictions of Guantanamo detainees in seven years.

With this system entirely discredited, the Obama administration now faces the daunting task of prosecuting or justifying the continued detention of these individuals based on thin, stale evidence before federal judges who are highly skeptical of the government's cases. If the courts ultimately order detainees released, this will be due to the Bush/Cheney legacy, not Obama's new policies.

The one area where Obama has clearly broken with the past is interrogation policy. He has rescinded prior authorization for the CIA to use "enhanced" interrogation techniques, re-established the Army Field Manual as the government's interrogation standard and ordered the CIA's secret interrogation facilities in Eastern Europe and elsewhere to be closed.

Cheney's opposition to these moves is based on his belief that the interrogations practiced in these facilities were "done legally ... in accordance with our constitution and principles" and the value of the information we obtained justified the derogation in our moral standards. These are serious delusions. In addition to the mounting journalistic evidence of systematic abuse, the military's own lead attorney for the Guantanamo prosecutions has confirmed that at least one detainee has been illegally tortured. And the overly narrow definition of torture contained in the infamous Justice Department memos has been widely discredited, even by the prior administration's own lawyers.

More fundamentally, however, Cheney's ideas are directly contrary to our constitutional values. Whether in the Bill of Rights or the separation of powers, the Constitution consistently sacrifices expediency for principles that better serve our nation's long-term interests. Cheney's lack of faith in this core American belief may be his most troubling legacy.

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