

OBAMA ADMINISTRATION DELIBERATES WHETHER TO TACK TO THE RIGHT OF DAVID RIVKIN

Go read this entire Charlie Savage article describing the deliberations within the Administration on how to respond to ACLU/CCR's lawsuit challenging the government's ability to target American citizens for assassination with no due process. The whole thing makes me want to cry about what our country has become (Congratulations Osama bin Laden! You've won!).

But it was this paragraph that really made me nauseous:

"I'm a huge fan of executive power, but if someone came up to you and said the government wants to target you and you can't even talk about it in court to try to stop it, that's too harsh even for me," [David Rivkin] said.

Rivkin is, of course, the former Reagan and Poppy Bush official that Republicans like to roll out any time they need an absolute unquestioning supporter of unlimited executive power. His job is effectively to put legal lipstick on the power hungry pig that has grown out of 9/11.

But he refuses to endorse the legal approach Obama's DOJ is reportedly considering: to try to get the Awlaki suit dismissed by invoking state secrets.

And it's not just Rivkin being contrary for partisan reasons. He endorses another of the approaches the Administration is considering, just telling the judge to butt out because this is a matter of politics.

Mr. Rivkin said he favored a different argument: a declaration that in war who can be targeted – and where – is a “political question” for the executive branch to decide, not judges.

Yup, according to Savage’s report, a Democratic DOJ is actually contemplating arguing to a judge that during wartime, the President can choose to kill anyone he wants to anywhere he wants to.

If the President kills someone, they’re preparing to argue, it’s legal.

Which gives Savage another opportunity to rely on a right wing lawyer to point out just how crazy are the arguments the Obama DOJ is contemplating. In this case, former W Administration official Matthew Waxman notes that even if it were true that the President can choose to kill whoever he wants wherever he wants during war, we’re not at war with Yemen!

Inside the administration, that argument is also seen as attractive. But invoking it could give the court an opportunity to reject the idea that an armed conflict with Al Qaeda exists in Yemen, said Matthew Waxman, who was the Pentagon’s top detainee affairs official under the second President Bush.

“The more forcefully the administration urges a court to stay out because this is warfare, the more it puts itself in the uncomfortable position of arguing we’re at war even in Yemen,” he said. “The worst outcome would be if the court rules that the president is not authorized to wage war against Al Qaeda beyond combat zones like Afghanistan.”

Of course, no one seems to be contemplating actually litigating this case, actually allowing a judge to rule on whether it is legal to assassinate American citizens with no due process.

And these are the lawyers guarding our
Constitution.