

BUT WHO HAS JSOC'S BACK?

Michael Hayden has another tired whine at CNN about Obama's treatment of the torture program. The entire logic of the piece is predictably silly. It goes something like this:

1. ACLU and CCR are suing the government for targeting American citizen Anwar al-Awlaki with no due process.
2. According to Hayden, the targeting of Awlaki was "Authorized by the president, approved as legal, briefed to Congress."
3. According to unnamed legal scholars, the suit has little chance of success.
4. But Obama's DOJ released OLC memos on the torture program in response to an ACLU suit and investigated the torture of detainees that exceeded DOJ guidelines and therefore was illegal.
5. This makes Hayden mad because it constitutes "exposing a previously authorized program for apparent political purposes."
6. Oh, and by the way, the UN rapporteur for extrajudicial killings also has a problem with targeted killings (and

not just those of US citizens), though I'm not entirely sure what Hayden thinks Obama should do about that.

I guess this piece is supposed to be a warning to the White House—which has already assured CIA that it won't be prosecuted for breaking the law on Obama's orders—that it needs to make triple sure that none of those with the legal means to do so hold the CIA responsible for the illegal things it is doing. The whole thing would just make more sense if Hayden hadn't personalized it so much (because, after all, he probably ought to be more concerned about a future President trying to distinguish herself from Obama's abysmal record in this area). But I get it—Hayden lost some arguments with the Obama Administration and so this whole issue is very very personal.

And I wonder, really, does Hayden believe that Presidents really do have unlimited ability to make laws disappear? And if Hayden is so certain those unnamed legal scholars are correct about the legality of the assassination program and the poor chances the ACLU/CCR suit will succeed, then why complain? Or maybe, given the contortions that Obama's DOJ is going through in contemplation of litigating the ACLU/CCR suit, Hayden's confidence that the suit won't succeed is merely bravado?

But the other amusing thing about this screed is its focus on the CIA. Hayden treats this as danger experienced primarily by the CIA.

The CIA is asked to do things no one else is asked – or even allowed – to do. And when CIA officers agree to do these things (after appropriate authorization, judgment with regard to lawfulness and congressional notification), they believe that they have a contract with their government, not a particular

administration, that the government will have their back legally, ethically and politically. That belief was shattered by the Obama administration's actions. Agency officers were shown that those guarantees have the half-life of one election cycle in the American political process. No wonder one astute observer of the agency likened it to a car bomb going off in the driveway at Langley.

But what about JSOC?

After all, Awlaki has been on JSOC's kill list for longer than he has been on CIA's. According to reporting, JSOC is as involved in the targeted killing program as CIA (as they were in the torture program). Why isn't retired General Hayden worried about those killers?

Granted, there is a distinction. When civilians at the CIA target people for assassination, particularly those who pose no imminent threat, the claim that the killing is legal under the law of war is much weaker.

But for some reason, JSOC doesn't have the need to trot out spokesmen to defend itself every third month, but CIA does.