

DOJ TELLS JUDGES TO GO FUCK THEMSELVES

I wonder how Article III is going to feel about this claim, in DOJ's white paper on targeted killing?

Finally, the Department notes that under the circumstances described in this paper, there exists no appropriate judicial forum to evaluate these constitutional considerations. It is well established that “[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention,” *Haig v. Agee*, 453 US 280, 292 (1981), because such matters “frequently turn on standards that defy the judicial application,” or “involve the exercise of a discretion demonstrably committed to the executive or legislature,” *Baker v. Carr*, 369 US 186, 211 (1962). Were a court to intervene here, it might be required inappropriately to issue an ex ante commend to the President and officials responsible for operations with respect to their specific tactical judgment to mount a potential lethal operation against a senior operational leader of al-Qa’ida or its associated forces. And judicial enforcement of such orders would require the Court to supervise inherently predictive judgments by the President and his national security advisors as to when and how to use force against a member of an enemy force against which Congress has authorized the use of force.

Using this logic, the government can just define all of us imminent threats, and be able to execute us without any review by a court.

And remember – while the document pretends that

Congress has been involved here, it refuses (still!) to show Congress the real authorization it used. So it is basically saying Fuck You to courts in the white paper, and Fuck you to Congress by releasing it.

I can see now why Ron Wyden included this in his letter to Obama today:

In your speech at the National Archives in May 2009, you stated that “Whenever we cannot release certain information to the public for valid national security reasons, I will insist that there is oversight of my actions – by Congress or by the courts.” We applaud this principled commitment to the Constitutional system of checks and balances, and hope that you will help us obtain the documents that we need to conduct the oversight that you have called for. The executive branch’s cooperation on this matter will help avoid an unnecessary confrontation that could affect the Senate’s consideration of nominees for national security positions.

Obama once believed – or purported to believe – in courts and Congress. Apparently not anymore.