

BREAKING! BRENNAN EXTENDS NO RULE DRONES FOR 2 YEARS

It's hard to take this story – reporting, Exclusive: No More Drones for CIA – all that seriously given this assertion:

Brennan has publicly stated that he would like to see the CIA move away from the kinds of paramilitary operations it began after the September 11 attacks, and return to its more traditional role of gathering and analyzing intelligence.

Here's what Brennan has in fact said about paramilitary operations and the CIA, in statements to Congress and therefore presumably with a bit more legal weight than what he says secretly to journalists.

What role do you see for the CIA in paramilitary-style intelligence activities or covert action?

The CIA, a successor to the Office of Strategic Services, has a long history of carrying out paramilitary-style intelligence activities and must continue to be able to provide the President with this option should he want to employ it to accomplish critical national security objectives.

How do you distinguish between the appropriate roles of the CIA and elements of the Department of Defense in paramilitary-style covert action?

As stated in my response to Question 6 above, the CIA and DOD must be ready to carry out missions at the direction of the President. The President must be able to select which element is best suited. Factors that should be considered include the capabilities

sought, the experience and skills needed, the material required, and whether the activity must be conducted covertly. [my emphasis]

What Brennan does have the habit of doing is providing evasive answers when people who want CIA out of the paramilitary business ask him about it, as he did several times in his confirmation hearing.

MIKULSKI: So, let me get to my questions. I have been concerned for some time that there is a changing nature of the CIA, and that instead of it being America's top spy agency, top human spy agency to make sure that we have no strategic surprises, that it has become more and more executing paramilitary operations.

And I discussed this with you in our conversation. How do you see this? I see this as mission-creep. I see this as overriding the original mission of the CIA, for which you're so well versed, and more a function of the Special Operations Command. Could you share with me how you see the CIA and what you think about this militarization of the CIA that's going on?

BRENNAN: Senator, the principal mission of the agency is to collect intelligence, uncover those secrets, as you say, to prevent those strategic surprises and to be the best analytic component within the U.S. government, to do the allsource analysis that CIA has done so well for many, many years. At times, the president asks and directs the CIA to do covert action. That covert action can take any number of forms, to include paramilitary.

[snip]

And the CIA should not be doing

traditional military activities and operations.

Now, Brennan has actually made that last comment – that he wants CIA out of traditional military activities – several times, as well.

From this we can make the following conclusions:

- If flying remotely piloted aerial vehicles and shooting missiles from them is a traditional military operation – and they sure should be – then Brennan wants out.
- If flying remotely piloted aerial vehicles and shooting missiles from them is a paramilitary operation (which is the implied understanding of most people who comment on this), then Brennan very much plans on keeping that capability in case the President wants to conduct such operations covertly.

And with that distinction in mind, note too this conflation Klaidman makes:

At a time when controversy over the Obama administration's drone program seems to be cresting, the CIA is close to taking a major step toward getting out of the targeted killing business.

Lethal drones are in no way the totality of the targeted killing business, and targeted killing almost certainly is included under paramilitary operations.

All that said, Klaidman reports (and this I believe) that the Administration plans to eventually move drone operations under Title 10, where they won't suffer from the clear legal problems they do under Title 50.

The proposed plan would unify the command and control structure of targeted killings, and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations.

To some degree I wonder whether this is just another shell game, though, moving Title 50 under Title 10 after having considered all the legal problems with moving Title 10 under Title 50.

With regards to what it means in practice, I had many of the same thoughts Jack Goldsmith did: given that CIA reportedly doesn't press the button now, given that they will continue to be involved in the intelligence side, what does this really change? Will the Saudis and Pakistanis be as willing to share their intelligence on drone strikes with DOD as they are with CIA? Has Ben Emmerson, in spite of all the claims he's a chump, already managed to get the chief drone killer in the world to give up the plausible deniability that prevents imposing some international legal framework on them? Since DOD is actually better at keeping secrets than the CIA is, will this in fact lead to less oversight of drones?

But here's the detail I find most interesting:

Officials anticipate a phased-in transition in which the CIA's drone operations would be gradually shifted

over to the military, a process that could take as little as a year. Others say it might take longer but would occur during President Obama's second term. "You can't just flip a switch, but it's on a reasonably fast track," says one U.S. official.

Two months ago, we learned that John Brennan's drone rule book would include a one-, maybe two-year, exemption for the drones he would soon operate at CIA.

U.S. officials said the effort to draft the playbook was nearly derailed late last year by disagreements among the State Department, the CIA and the Pentagon on the criteria for lethal strikes and other issues. Granting the CIA a temporary exemption for its Pakistan operations was described as a compromise that allowed officials to move forward with other parts of the playbook.

The decision to allow the CIA strikes to continue was driven in part by concern that the window for weakening al-Qaeda and the Taliban in Pakistan is beginning to close, with plans to pull most U.S. troops out of neighboring Afghanistan over the next two years. CIA drones are flown out of bases in Afghanistan.

"There's a sense that you put the pedal to the metal now, especially given the impending" withdrawal, said a former U.S. official involved in discussions of the playbook. The CIA exception is expected to be in effect for "less than two years but more than one," the former official said, although he noted that any decision to close the carve-out "will undoubtedly be predicated on facts on the ground." [my emphasis]

Here we're learning – BREAKING EXCLUSIVE SHINY SHINY – that the Administration plans to eventually move drone operations under DOD but it might take about as long as three years—that is, probably as long as Brennan will be in charge at CIA. The only new news from what we learned in January seems to be that it might take longer than a year, and the possible exemption will extend to all of CIA's drones, not just those in Pakistan.

So here's what I take from all this: operating drones covertly rather than secretly has diminishing value domestically, as courts grow increasingly impatient with participating such a charade. Given that fact, there are tremendous legal advantages to giving them at least the patina of legality by operating them under DOD. Now, if and when the OLC memos that authorized Anwar al-Awlaki's killing become public, if and when it becomes clear how weak the argument made in them is with regards to CIA, the Administration will be able to claim – Daniel Klaidman reported it so it must be true! – that that weak legal argument no longer matters because CIA is out of the drone business.

But if you read what John Brennan actually says rather than what reporters report credulously, he's a firm believer in keeping certain capabilities available at CIA, just in case the President ever wants to use those capabilities in a covert operation. And what better cover for a covert operation, after all, than a very public campaign saying you'll no longer conduct such activities as covert operations?