

DAVID KRIS: I'M NOT SAYING CIA SHOOTS DRONES, ASSASSINATES AMERICANS, AND INFLUENCES MEDIA, BUT

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In the passage of David Kris' paper that address more public transparency, he included on paragraph on covert action.

For example, the covert action statute 221 could be interpreted and applied in ways that may be extraordinarily important, but about which very, very few Members of Congress, let alone the American People, ever learn.²²² The statute defines covert action to exclude "traditional" military and law-enforcement activities,²²³ provides that a covert action finding "may not authorize any action that would violate the Constitution or any statute of the United States,"²²⁴ and specifically warns that "No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media."²²⁵ Without making any comment, express or implied, on any actual or hypothetical covert action, or even acknowledging that any covert action of any kind has ever actually taken place, it is quite obvious that each of those elements of the statute could raise enormously difficult and complex interpretive questions, some of which might affect many Americans.²²⁶ Yet it might be impossible, in many cases, to explain those interpretations without revealing the most sensitive classified information. ²²⁷ [60]

In other words, in a passage explaining the challenges and limits to making information available to the public, he implies (“without making any comment, express or implied, on any actual or hypothetical covert action, or even acknowledging that any covert action of any kind has ever actually taken place”) that CIA may have:

- Been involved in Traditional Military Operations (which surely includes, but goes well beyond, drones)
- Violated US law (which was a critical issue in the Awlaki assassination)
- Taken actions to to influence US political processes, public opinion, policies, or media (George Tenet, in his memoir and other documents, implied the CIA was back in the journalist-as-cover business, though who knows whether that’s what Kris is avoiding comment on?)

And while he very studiously avoids confirming these things that have all been confirmed elsewhere, his argument about the transparency of the matter has more to do with our treatment of covert ops than with transparency per se.

That is, it’s not so much that the US doesn’t and can’t know about the drone strikes, US person assassinations, and really bad propaganda the CIA has been involved in. It’s just that the government keeps the law on covert operations on the book, pretending it abides by it, while telling just the Gang of Four it doesn’t.

That is, it’s not about transparency, it’s about

the legal sanction to lie about actions that everyone knows the Executive undertakes.

None of that is shocking (though it's an interesting argument). But it'd be nice if Kris wanted to hint whether these covert actions included more politicized spying on American people.