

# MICHAEL HAYDEN, TROLL EXTRAORDINAIRE

"Intelligence agencies often act on the edges of executive prerogative and move forward based on a narrow base of lawfulness and limited congressional notification," says Michael Hayden, the guy who oversaw Bush's illegal wiretap for 2.5 years before the full Gang of Eight first got adequately briefed, and who never briefed Congress on CIA's assassination program.

In the same piece, Hayden hails media editors who ceded to his requests to hold or adjust a story.

So, how do we limit the damage? Well, journalists will have to expand the kind of sensitivities to the national welfare that some already show. In those calls I made to slow, scotch or amend a pending story, most on the other end of the line were open to reasonable arguments. In one case a writer willingly changed a reference that had read "based on intercepts" to "based on intelligence reports," somewhat amazed that that change made much of a difference. (It did.)

But then insists the UndieBomb 2.0 story – for which AP editors had made precisely those kinds of concessions – was right to be investigated because John Brennan's push back to it exposed a mole.

The two prominent cases being debated were indeed serious leaks, because they touched upon sources, not just information.

In the case of the Associated Press report on a Yemen-based bomb plot, the source had apparently penetrated an al Qaeda network and there were hopes that

he could continue to be exploited.

[snip]

And, since the Yemen source appears to have actually been recruited by a liaison partner, the impact of a leak goes far beyond our own service. In that same talk with bureau chiefs, I pointed out that several years before 9/11, one chief of station reported that a press leak of liaison intelligence had “put us out of the (Osama) bin Laden reporting business”.

In both stories, investigations were in order. Journalists, of all people, should understand the need to protect sources and relationships.

As the LAT story Hayden links to says clearly, “The AP did not mention the informant in its report.” And, as I laid out some weeks back, to believe our mole was going to return, the former head of the CIA would have to believe that AQAP shows great tolerance for recruits who fuck up and then return right after high ranking operatives get drone killed.

Because to maintain that claim, you’d have to explain how an AQAP operative who had been entrusted with the latest version of Ibrahim al-Asiri’s UndieBomb sometime in early April, had left (at least as far as Sanaa), had not apparently succeeded in his mission (which was, after all, meant to be a suicide bombing), could return to AQAP without the UndieBomb and infiltrate even further than he had the first time.

“Oh, hi, AQAP gatekeeper” – their story must imagine the mole saying as he returned to AQAP – “I’ve both failed in my mission and somehow lost the bomb you gave me, but based on that would you be willing to let me spend some quality time with even higher-ranking AQAP

operatives?"

In short, Hayden appears to have decided it'd be a good idea to ignore the facts, good sense, and his own history so as to suggest that the Obama Administration is worse than the reasonable old Bush Administration.

But the investigations have been very aggressive and the acquisition of journalists' communications records has been broad, invasive, secret and—one suspects—unnecessary.

A quick survey of former Bush administration colleagues confirmed my belief that a proposal to sweep up a trove of AP phone records or James Rosen's e-mails would have had a half-life of about 30 seconds in that administration.

Just ignore the fact that the government was asking people questions about James **Risen's** phone contacts – indicating they had probably doing just what the Obama Administration did to the AP reporters, only without telling him – before Obama took over.

But here's my favorite part:

The government may also want to adjust its approach to enforcement. The current tsunami of leak prosecutions is based largely on the Espionage Act, a blunt World War I statute designed to punish aiding the enemy. It's sometimes a tough fit. The leak case against former National Security Agency employee Thomas Drake collapsed of its own overreach in 2011.

Perhaps in many of these cases the best approach is not through the courts or the Department of Justice.

Remember, Drake was investigated for telling a

journalist about Hayden's own boondoggle that cost many times what NSA's existing better solution cost. There is virtually no way the investigation against him didn't rely, in part, on Hayden's own testimony.

And now, 6 years after the investigation into Drake started in earnest, Hayden suggests Drake shouldn't have been criminally investigated at all.

Hayden can afford that very belated generosity, of course. He's been profiting off the same kind of boondoggles Drake tried to expose for years now.

I mean, sure, the main gist of what Hayden says is true: the Administration is pursuing leaks far too aggressively. But coming from a guy who has long benefitted from the Executive Branch asymmetric abuse of secrecy, he's not exactly the right person to be making the point.