



President Obama's secret kill list

By Judge Andrew P. Napolitano

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The leader of the government regularly sits down with his senior generals and spies and advisers and reviews a list of the people they want him to authorize their agents to kill. They do this every Tuesday morning when the leader is in town. The leader once condemned any practice even close to this, but now relishes the killing because he has convinced himself that it is a sane and sterile way to keep his country safe and himself in power. The leader, who is running for re-election, even invited his campaign manager to join the group that decides whom to kill.

This is not from a work of fiction, and it is not describing a series of events in the Kremlin or Beijing or Pyongyang. It is a fair summary of a 6,000-word investigative report in The New York Times earlier this week about the White House of Barack Obama. Two Times journalists, Jo Becker and Scott Shane, painstakingly and chillingly reported that the former lecturer in constitutional law and liberal senator who railed against torture and Gitmo now weekly reviews a secret kill list, personally decides who should be killed and then dispatches killers all over the world -- and some of his killers have killed Americans.

We have known for some time that President Obama is waging a private war. By that I mean he is using the CIA on his own -- and not the military after congressional authorization -- to fire drones at thousands of persons in foreign lands, usually while they are riding in a car or a truck.

He has done this both with the consent and over the objection of the governments of the countries in which he has killed. He doesn't want to talk about this, but he doesn't deny it. How chilling is it that David Axelrod -- the president's campaign manager -- has periodically seen the secret kill list? Might this be to keep the killings politically correct?

Can the president legally do this? In a word: No.

The president cannot lawfully order the killing of anyone, except according to the Constitution and federal law. Under the Constitution, he can only order killing using the military when the U.S. has been attacked, or when an attack is so imminent and certain that delay would cost innocent American lives, or in pursuit of a congressional declaration of war. Under federal law, he can only order killing using civilians when a person has been sentenced lawfully to death by a federal court and the jury verdict and the death sentence have been upheld on appeal. If he uses the military to kill, federal law requires public reports of its use to Congress and congressional approval after 180 days.

The U.S. has not declared war since World War II. If the president knows that an attack on our shores is imminent, he'd be hard-pressed to argue convincingly that a guy in a truck in a desert 10,000 miles from here -- no matter his intentions -- poses a threat to the U.S. so imminent and certain that he needs to be killed on the spot in order to save the lives of Americans who would surely die during the time it would take to declare war on the country that harbors him, or during the time it would take to arrest him. Under no circumstances may he use civilian agents for non-judicial killing. Surely, CIA agents can use deadly force to protect themselves, but they may not use it offensively. Federal laws against murder apply to the president and to all federal agents and personnel, wherever they go on the planet.

Since 9/11, the United States government has set up national security systems that function not under the Constitution, not under the Geneva Conventions, not under the rule of law, not under the rules of war, not under federal law, but under a new secret system crafted by the Bush administration and personally directed by Obama, the same Obama who condemned these rules as senator and then extended them as president. In the name of fighting demons in pick-up trucks and wars that Congress has never declared, the government shreds our rights, taps our cellphones, reads our e-mails, kills innocents abroad, strip searches 87-year-old grandmothers in wheelchairs and 3-year-old babies in their mothers' arms, and offers secrecy when the law requires accountability.

Obama has argued that his careful consideration of each person he orders killed and the narrow use of deadly force are an adequate and constitutional substitute for due process. The Constitution provides for no such thing. He has also argued that the use

of drones to do his killing is humane since they are "surgical" and only kill their targets. We know that is incorrect. And he has argued that these killings are consistent with our values. What is he talking about? The essence of our values is the rule of law, not the rule of presidents.