branch will decide when and if to use the fifth amendment.

I understand in times of war and on battlefields that is a different story. I am talking about in the United States. I do not think the executive branch gets an option of whether to adhere to the fifth amendment in the United States. But if they could be more clear on that, I think we could be done with this debate at any time.

I have never objected to a vote on Brennan, on the nominee for the CIA. But I have objected to the idea that basically we are just going to throw out the baby with the bathwater and the Bill of Rights becomes something of lesser importance.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, would my friend yield without losing for the floor for a unanimous consent request?

Mr. PAUL. Without yielding the floor, I would be happy to yield.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 43; that the cloture motion at the desk be reported; that the mandatory quorum under rule XXII be waived; that there be 90 minutes for debate, with 30 minutes under the control of the chair and 1 hour under the control of the vice-chair of the Intelligence Committee, with 30 minutes of the vice-chair's time under the control of Senator PAUL; that following the use or yielding back of that time on the nomination, the Senate proceed to vote on the cloture motion; that if cloture is invoked, the Senate proceed to vote on the confirmation of the nomination, without intervening action or debate; further, that the motion to reconsider be considered made and laid on the table, with no intervening action or debate; that no further motions be in order to the nomination; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Mr. President, before I hear from my friends on the consent, I have no problem if people want to talk for a long time, no problem. I have done it a time or two in my day. But I think that the rest of the body needs to know if we are going to finish tonight or tomorrow or the next day. So my consent request is pretty direct. We would have 90 more minutes of debate, an hour under the control of the Senator from Georgia, and 30 minutes under the control of Senator FEINSTEIN or their designees.

The PRESIDING OFFICER. Is there objection to the majority leader's consent request?

Mr. REID. Mr. President, I would simply say, if there is objection, we will come back tomorrow.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, reserving the right to object, let me, if I may, direct a question to the majority leader through the Chair. As I understand what the Senator is asking, for 90 more minutes—30 minutes to Senator FEINSTEIN and 30 minutes for me, and Senator PAUL would have 30 minutes—it would start right now, basically?

Mr. REID. Yes, basically.

Mr. CHAMBLISS. Continuing to reserve the right to object, I guess, then, I would direct a question to the Senator from Kentucky since he has the floor. What amount of time does the Senator think he wants to utilize?

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. PAUL. Mr. President, reserving the right to object, I would be happy with a vote now. I have talked a lot today. But the only thing I would like is a clarification. If the President or the Attorney General will clarify that they are not going to kill noncombatants in America—he essentially almost said that this morning.

He could take his remarks, that he virtually agreed ultimately with Senator CRUZ, and put it in a coherent statement that says the drone program will not kill Americans who are not involved in combat.

I think he probably agrees to that. I do not understand why we could not put that into words. But if he does, I want no more time. If not, I will continue to object. If the administration and the Attorney General will not provide an accurate answer, I object.

Mr. REID. Mr. President, I am not in a position to talk for the Attorney General. We will just finish this matter tomorrow.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, everyone should plan on coming tomorrow. We are through for the night.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Mr. President, at this time, without yielding the floor, I would like to entertain a question from the Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I want to thank the Senator from Kentucky for raising a very important issue. I would just like to have a little bit of clarification so that I understand exactly what has transpired and the exact question to which the Senator from Kentucky would like a response.

My perception, my understanding, is this seems like a very simple and basic request. So I am surprised that we did not have a simple and straightforward answer. So I wonder if the Senator from Kentucky would just summarize briefly for me, so that I understand clearly the exact request that he made to the administration.

Mr. PAUL. Mr. President, in late January we sent a letter to John Brennan, the nominee for the CIA, asking a bunch of questions. Included among those questions was, Can you kill an American in America with a drone strike? We got no response and no response and no response.

Thanks to the intervention of the ranking member on the Intelligence Committee, as well as members from the opposite aisle on the Intelligence Committee, we finally got an answer about 2 days ago. The answer from John Brennan was that he acknowledges the CIA cannot act in the United States. That is the law. That was nice. But the Attorney General responded and said they do not intend to. They have not yet, but they might.

Mr. TOOMEY. Am I correct in understanding that is currently the state of play? That is the most recent response the Senator has gotten in writing from the administration?

Mr. PAUL. Mr. President, that is the only direct response I have gotten. I have also read the testimony from the Judiciary Committee where the Senator from Texas cross-examined the Attorney General, who responded indirectly to my question by saying: It was inappropriate, we probably would not do that.

But he would not answer directly whether it was unconstitutional. It appears at the end that he may have said that it would be unconstitutional, say, to kill noncombatants.

It should be a pretty simple answer really. That is all I am asking. I can be done anytime if I could just get a response from the administration or the Attorney General saying they do not believe they have the authority to kill noncombatants in America.

Mr. TOOMEY. Further clarification: If the administration seems to be unwilling to state unequivocally that they recognize they do not have the legal authority to kill a noncombatant American on American soil, did they suggest under what circumstances they would?

Did they suggest a process by which they would identify an American citizen noncombatant on American soil who might be subject to being killed by a drone strike?

Mr. PAUL. Well, there has been a white paper that was released that goes through a series of things. They do have a step or a process they go through in determining whom to kill. The problem I have is that in foreign countries—I do not know the exact number because it is classified, but in foreign countries many of the people being killed are not actively engaged in combat.

I am not saying that is right or wrong or making an opinion on that matter. But I am saying that is not a standard I can live with in the United States. So let's say one-third of the drone strikes are going against people who are eating dinner with their family or walking down the road or sleeping in their house. If that is our standard and we are going to do drone strikes in America, I could not tolerate or live with myself if I would accept a standard in the United States that would allow that to happen.

Mr. TOOMEY. Mr. President, judging from the response, what I understand is

that there is a standard that applies overseas. But we have not gotten—correct me if I am mistaken—a definitive word as to whether that same standard would apply domestically to American citizens. If we have not gotten a definitive answer, then we, it seems to me—again, correct me if I am wrong—but then it would suggest to me that we have no idea what standard would be used. I cannot imagine that we would find it acceptable to be in a situation where an administration would suggest that using a drone to kill an American noncombatant on American soil, without even disclosing the process by which they would determine that was appropriate—this is kind of hard to understand. Am I understanding it incorrectly?

Mr. PAUL. Well, the interesting thing about this is for many years, no one would talk about the drone strike program at all. Then, recently, one of the former spokesmen for the President said he was instructed to never say it existed. But now that it is in the open, the President, a week ago, was asked at Google when he was there for an interview: Can you do this?

His answer: Well, the rules would probably have to be different inside than outside.

That implies he thinks he can do it in America. Then the question becomes, What are those rules? This is as much about the checks and balances of—you know, they say we have the ability to advise and consent. This is some friendly advice I am giving to the President today that he ought to think about or we should think about as a body whether we are a check and balance to the power of the Executive, whether it is Republican or Democratic.

I think it is immaterial. No President should have the power to make these decisions unilaterally.

Mr. TOOMEY. Mr. President, I will finish. I just want to make two points: One is I think we ought to have a robust debate about the circumstances under which we would use drone strikes overseas and understand the implications. Think about this. We have what is still, to the United States, a relatively new threat in the form of these nonstate actors, these terrorist organizations that are sometimes affiliated with each other, sometimes not, scattered around the globe. This is new.

In addition, we have new technology we never had before. It was not terribly long ago the idea of flying an unmanned drone and using it to kill a person who could be hundreds or thousands of miles away, that was completely implausible. Now, of course, we have the ability to do it. When new circumstances and new technology come to bear, we ought to have a discussion about when and whether and how it is appropriate to use that.

When we are talking about American noncombatants on American soil, I think the starting point ought to be, we are not going to do that. The onus ought to be on whoever has an explanation for when and whether and why and under what circumstances we would, and that ought to be debated very, very carefully and thoroughly. Until such time, I think it ought to be easy to acknowledge this is not going to take place.

If we cannot get a direct answer to that question, then I have to say I think the Senator from Kentucky is performing an important service in putting a spotlight on this. I commend him for doing it. I thank him for doing it. I am finished with my questions.

Mr. PAUL. I thank the Senator from Pennsylvania for asking his questions and being part of the debate. I think that ultimately we could get this straightened out in the sense that it is not so much about the debate about the person as it is about the issue.

If we could get the administration or the Attorney General to put their answer in a succinct form and simply say they believe they have the authority to repel an attack, which most of—I think all of us agree to that, but they do not have the authority to kill someone in a restaurant, to kill someone at home in their house, to kill someone when they are eating dinner; that, really, if you want to say that you can use drones in America to strike people, not only would it have to be remarkably different, it could not be anything like the way we use drones around the world, which brings up some other important questions.

The thing is this has brought us to a much bigger and important debate. When people tell you that America is a battlefield, when they tell you the battlefield is here, realize what they are telling you. They are telling you your Bill of Rights do not apply because in the battlefield, you really do not have due process. I am not arguing for that. I am not arguing for some kind of silly rules for soldiers to ask for Miranda rights and do all this. War is war. War is hell. But we cannot have perpetual war. We cannot have war that has no temporal limits. We cannot then have war that is a part of our daily life in our country; that we are going to say from now on in our country, you do not have the protections of the Bill of Rights.

So I think it is incredibly important. We have been kind of blase about this whole drone strike program. It should come home to where we can really think about it because that is what they are asking to do. They are asking to bring the drone strikes to the homeland.

So I think we need to be careful. We need to ask important questions. I think at the very least we need to be asking the question: Can you do this with no due process? Are we not going to have an accusation? Are we not going to have a public accusation or charge? Are we not going to have a trial by jury?

I started out today reading from ''Alice in Wonderland.'' I would like to go back to ''Alice in Wonderland,'' because it sort of points out the absurdity of where we are at this point. We think of Lewis Caroll as being fiction. Of course it is fiction. We think Alice never fell down a rabbit hole. Of course she did not. She is not real. The white queen and her caustic judgments are not really a threat to us. But there is a question: Has America the beautiful become Alice's Wonderland? We can hear the queen saying: No. No. But her response is, Sentence first, verdict afterwards.

Well, that is absurd. How could we sentence someone without determining first whether they are guilty or innocent? Only in Alice's Wonderland would you sentence someone before you try them. Would you sentence someone to death before you accuse them? Do we really live in Alice's Wonderland? Is there no one willing to stand up and say to the President: For goodness' sake, you can't sentence people before you try them. You can't sentence people before you determine whether they are guilty.

There has been discussion in our country about whether even the courts can sometimes make mistakes. Some States have gotten rid of the death penalty because they have made mistakes and through DNA testing they have found that sometimes they convicted the wrong person. Can you imagine, with all the checks and balances of our court system—which I think is the best in the entire world, with attorneys on both sides whether you can afford them or not. There is an argument back and forth, and there are all of these procedural protections, and you may appeal, and still sometimes we get it wrong.

If we can get it wrong in the best system in the world, do you think one politician might get it wrong? You will never know because nobody is told who is going to be killed. It is a secret list. How do you protest? How do you say: I am innocent. How do you say: Yes, I e-mail with my cousin who lives in the Middle East, and I didn't know he was involved in that. Do you not get a chance to explain yourself in a court of law before you get a Hellfire missile dropped on your head?

It amazes me that people are so willing and eager to throw out the Bill of Rights and just say: Oh, that is fine. Terrorists are a big threat to us, and I am so fearful that they will attack me that I am willing to give up my rights. I am willing to give up on the Bill of Rights.

I think we give up too easily.

The President has responded, and he said he hasn't killed anybody yet in America. He says he doesn't intend to kill anyone in America, but he might. I, frankly, just don't think that is good enough.

The President's oath of office says ''I will,'' not ''I might'' or ''I intend to,'' the President says ''I will protect, preserve, and defend the Constitution.'' He doesn't say ''I will do it when it is

practical'' or ''I will do it unless it is infeasible, unless it is unpleasant, people argue with me. I have to go through Congress, and I can't get anything done, then I won't obey the Constitution.'' It is out there. It is a rule. He doesn't get to choose.

Recently he made some choices where it appears as if he believes he does have some sort of superpower, some power that sort of exceeds the other branches of government. Recently he told the body of the Senate that he decides when we are in recess, he decides when we are working. The court rebuked him. The court told him it is unconstitutional, and they reversed his decision. Do you know the people he appointed through a recess—do you know what they are doing right now? They are still at their post. They are still working in defiance of the court. This will have to go to the Supreme Court. I guess it will take another year or so to go up there, but he has been told what he did was illegal.

I guess what disappoints me most about this, though, is that the President, when he ran for office, was actually someone for whom I had a great deal of respect on the issues of civil liberties. I work with many on the other side of the aisle because, frankly, many on the left and some on the right—we truly do believe in civil liberties and in protecting the individual. I think the President was one of those when he was in the Senate.

The President, when he ran for office, often talked about, it isn't American to torture people. I agree with him. He said it isn't American to give up on the right to privacy, to say you don't need a warrant to tap someone's phone. I agreed with him, and I respected that about him. I can't for the life of me understand how he goes from that kind of belief where he believes so much in the constitutional protections to your phone, but he is not willing to stand up for the constitutional protection to your life? It doesn't make any sense at all. And if he does, why won't he say it?

I have my own sort of theory on this, and this applies both to Republicans and Democrats. My theory is that it is sort of a contagion, it is sort of an infection that you get when occupying the Oval Office. They think, oh, I am a good person, so more power for me would be a good thing.

Lord Acton said that power corrupts, and absolute power corrupts absolutely. There is a danger when someone has so much power that they think more power, more power and more power—I will do good with that power. The problem is that even if that is a good person, someday someone occupying that office may not be a good person. Someday you may get someone in the Oval Office who says: What about those people? They look different from us. What about those people? They have different color skin. What about those people? They have a different color ideology than I have. What about those people?

The danger is also that we have already defined some of the people who we think might be terrorists. The Bureau of Justice came out with a list of characteristics, and they said: If you see this, report on it. If you see this, tell someone. They want you to inform on your neighbor, so you need to know which one of your neighbors is a terrorist. They gave you some descriptions of people to be worried about. They said people missing fingers, people with colored stains on their clothes, people who have weatherized ammunition, people who have multiple guns, people who like to use cash. If that is the criteria or the criterion for who is a terrorist, I would be a little bit worried if you are one of those people—you might have a drone attack in your bed tonight.

This has gone on in more than one place. The fusion centers they developed were supposed to be a liaison between the Federal Government and the local government. In these fusion centers, for example, in Missouri, they also came up with some characteristics of people who might be terrorists. They actually send it out as a memo to all the police officers. Can you imagine if you are one of these people—people who are pro-life, people who are for secure borders, people who support third-party candidates? The big irony of all is people who belong to the Constitution Party. If you believe in the Constitution too much, you might be a terrorist. They say it was a mistake, and they eventually apologized. Now they don't—they try not to have their memos become public, I think.

The point is, if this is what we are getting to and this is the criterion for who is a terrorist, you would think—you really would think you would be worried about giving your President the authority to kill Americans on American soil without any kind of due process. I find it quite alarming.

I think the answer he could have given is pretty simple. I think there is a possibility he may actually even agree with some of the things we are saying here today. Why won't he give it? I think Presidents, Republican and Democratic, don't give the answer because they are afraid of constricting their authority. They believe in some sort of inherent power, which is not listed anywhere, but they think they have it. They don't want to give up any of it. They jealously guard this power. They have this power, and they don't want to give it up. That is why they won't answer us with a straight answer.

You get things. The only word I can think of is gobbledygook. You get this craziness that comes from attorneys that doesn't make any sense.

He was asked: What is an imminent threat?

These people we are going to kill with drones have to be an imminent threat.

His attorneys say ''imminent'' doesn't have to mean ''immediately.'' That is the only way he can justify this because probably half of these drone attacks are people who really aren't engaged in any kind of combat. That is a different debate. You can argue right or wrong whether we should be killing these people not involved in combat because there is evidence they are conspiring to hurt us and to attack us. That is another argument, but it is a pretty low standard. You can argue that, well, that is war over there, and that is a lower standard, and I can accept it, but for goodness' sake, could there be any question that in America we are going to accept a standard so low, a standard that basically says that if we think you might someday be engaged in hostilities, we can kill you? We need to be careful because the criteria for the drone strike program overseas really is something that I think most Americans wouldn't accept for their fellow citizens.

Overseas, one of the most famous American citizens they killed was al-Awlaki. Before he was killed, he was primarily thought of as someone who they said was a sympathizer. I think there is no question he was a sympathizer. I think he denounced his citizenship. He was a bad guy. He sympathized with our enemies. I think he could have been tried for treason. I think if I were on a jury, from what I have read of nonclassified information, I would have voted his guilt and for his death. The thing is, some kind of process might be helpful.

His son, though, 16 years old, was killed 2 weeks later in a separate drone strike, and he was on nobody's list that I know of; they won't respond. I think the response by the President's spokesman is reprehensible. It really should be called out. It is really sort of this flippant response that I think shows absolutely no regard for individual rights or for Americans. He said: Well, the kid should have chosen a more responsible father. Think about that. Is that the standard you wish your government to operate on in America? We have a lot of criminals in our country. We have a lot of bad people. If you happen to be the son of a bad person, is that enough to kill you?

The other thing is that people killed overseas who are not the target—they don't call them civilians because they say anybody between the age of 16 and 50 who is a male is a potential combatant. Are we going to use that same standard here in our country? Are we going to use the standard in our country that if you just happen to be a male and you happen to be standing near somebody we have judged to be a problem, that we are going to go ahead, and, oh, I guess that is not even collateral damage; that person was probably a bad person because he was standing close to this person?

I think there are different standards for war than there are within our country. It is not always going to be perfect, and there is a legitimate debate over what the rules should be in a war,

where a war is overseas, and exactly what happens. I think good, honest people can disagree on some of that. What I worry about are the people who say America is a battlefield because when they say America is a battlefield, they say they want the laws of war to apply here. The reverse of that is basically, if you reverse the laws of war, they are talking about martial law, is what they are talking about, law that is acceptable under extreme circumstances.

I don't think what we have in our country right now is a circumstance where I would accept martial law, but we have already instituted some of the things you will see in other countries under martial law. In Egypt, they have indefinite detention. That is their emergency decree that occurred back in the 1970s, and it went on and on to the present. They have martial law, and they are very unhappy about having martial law, indefinite detention. You saw it last year. We have indefinite detention in America.

The President's response again was inadequate. What did the President say to having indefinite detention in our country? He said: Well, I don't intend to use it. I would rather have a President who has the chutzpa to not sign the legislation and send it back and say: Take it out or I won't sign it. I would have a lot of respect for someone like that.

Mr. President, without yielding the floor, I would be happy to entertain a question from the Senator from Texas.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator from Texas.

Mr. CORNYN. Mr. President, I wanted to come to the floor to pose a few questions to my colleague from Kentucky. First, I would say that I admire his fortitude and his willingness to ask appropriate and reasonable questions of the administration on a matter of grave importance. This is a matter no less important than our constitutional government itself that does not give sole power to the administration to make these decisions but recognizes that the Congress is a coequal branch of government. Indeed, we have important oversight responsibilities in the Department of Justice, the Department of Defense, and there isn't a more delicate and important matter than the limitations placed on the government when it comes to dealing with our own citizens.

I would like to ask the Senator from Kentucky whether he is aware of some of these issues.

First of all, shortly after President Obama took office, the Holder Justice Department declassified and released detailed, previously top-secret legal memos attempting to explain the legal rationale for the enhanced interrogation program the Central Intelligence Agency used during the Bush administration. These memos were written by the Office of Legal Counsel at the Department of Justice, which is frequently called the lawyer for the executive branch, which issues those authoritative memos. President Obama, Eric Holder presumably decided that they would release those previously classified memos that explained the legal rationale for the enhanced interrogation program.

I would further ask the Senator if he recalls that when the Obama administration made these legal memos—highly classified legal memos—public documents, does he remember the Attorney General made some specific comments? In fact, he said: We are disclosing these memos consistent with our commitment to the rule of law. Yet today, that same Justice Department refuses to release to Members of Congress—including this Senator, the Senator from Kentucky, and other Members who have oversight responsibilities—the very same legal rationale in this case for the drone strikes the Senator from Kentucky is talking about.

So I wanted to ask, first of all, of the Senator from Kentucky whether he believes I have accurately recited the facts, but then to ask him whether he sees a double standard here on the part of the Obama-Holder Justice Department where on one hand they release these legal memos from the Office of Legal Counsel, and in this case, instead of releasing the legal rationale for the authority to make drone strikes, they issue what is, in essence, a white paper, or press release, that was linked to the news media.

I would ask the Senator from Kentucky to respond.

Mr. PAUL. Mr. President, the question from the Senator from Texas is a very good one, and there does seem to be a double standard going on here. There seems to be one standard for wiretapping of phones or interrogation, but there seems to be much less a standard for actually killing. It seems to be hypocritical and one would wonder why.

With regard to releasing the memos and how they come about their process, some of that was leaked. It is always curious to me that it is as if the leaks come out on purpose; as if they are intentional. The leaks happen right before a nomination process. I don't know the truth of that, but I do think that not only should we get the memos, but if there is going to be a drone strike program in America, perhaps we should actually be writing the rules and sending them to the President. That would be our job—not to listen to him and what he is going to do on drone strikes in America, but actually spelling out and having an open discussion. Because in America I don't think that should be a secret—how we are going to go about this in America.

I see no reason not only to get the drone memos, and I think it would be more consistent with their earlier position, but I think what we should do is be a part of the process of determining how we go forward, with whether we are going to have drone strikes in America and what the rules would be.

Mr. CORNYN. Mr. President, will the Senator yield for another question?

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. I would ask a further question of the Senator from Kentucky. I believe the question he has asked—whether the President has the power to authorize lethal force, such as a drone strike against a U.S. citizen on U.S. soil and without trial—is a very clearly stated question and one, I believe, the Senator and the rest of the Members of Congress are entitled to a very clear answer on.

I was in the Senate Judiciary Committee hearing with the Attorney General this morning where we attempted to ask him on a number of occasions what his answer would be to this question. Yet he equivocated and he was ambiguous. He seemed to be ambiguous when a clear answer would serve him just as well, a point the Senator from Kentucky has made.

The question I have for the Senator is: Wouldn't in all likelihood the legal rationale or justification issued by the Office of Legal Counsel at the Department of Justice include a discussion which would illuminate and elucidate the answer to the Senator's question?

In other words, I would assume, without having seen that classified memo, that it would go through a rather lengthy analysis of the hypothetical situations under which these drone strikes might be used and would, in all likelihood, I think, shed some light on and clarify the answer to the Senator's question. Wouldn't that be a reasonable way to answer what is a very straightforward and reasonable question?

Mr. PAUL. Mr. President, piecing together what I have heard of some of his testimony, I actually think he did finally admit to some things that I think are consistent with what I am saying. They haven't put it in writing previously. I would think he could almost take his testimony today—where he almost at some point seems to agree that it would be unconstitutional to kill noncombatants, people not actively engaged in combat—and if he would say that, I think he would answer my question, basically. Because I have never been talking about people engaged in lethal force. You don't get much due process there. If you are engaged in lethal force, lethal force is used against you. So one would think he could answer that simple question, similar to what he actually stated in his testimony today, but they won't give us a succinct answer, or any answer, really. So that is the answer we have been trying to get to all along.

Mr. CORNYN. If the Senator will yield for another question.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. To the Senator's last point, I am reading from a letter dated March 4. It is from the Attorney General to Senator PAUL, and he says:

The question you have posed is therefore entirely hypothetical, unlikely to occur, and

one we hope no President will ever have to confront.

But he goes on to say, in response to Senator PAUL's question:

It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States.

In other words, to the Senator's point, on one hand he said it was a hypothetical question, unlikely to occur, and one we hope no President would ever have to confront; and then, on the other hand, he said it is possible to imagine a scenario under which it would happen. That would appear to cast a further lack of clarity on something that should be a straightforward yes or no.

Mr. PAUL. Mr. President, here is the interesting thing about saying it is hypothetical and it wouldn't happen. I could buy that, except for the fact that our foreign drone strike program—a significant amount of the drone strikes—are on people not actively engaged in combat. Whether that is right or wrong is another question, but since we already have an example of a significant amount of those being used on those not engaged in active combat, it is hard for him to say this is a rare, unusual, hypothetical thing that could never happen, because it seems as though it is a big part of the drone program overseas.

Mr. CORNYN. Mr. President, I said that was my last question, but I would ask the Senator to yield for this last question.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. It strikes me, Mr. President, that there is a clear double standard here. The Senator has asked a reasonable question, to which he has not gotten a clear answer, and one that is clearly within the purview of the Senate in our oversight capacity for the Department of Justice and as a coequal branch of government. On one hand, the Obama-Holder Justice Department not only released a white paper but released previously classified legal memos from the Office of Legal Counsel on the enhanced interrogation program, saying it was consistent with their commitment to the rule of law, but today, in response to an eminently reasonable request, is giving the Senator from Kentucky what I think can appropriately be called the Heisman, or stiff arm, and denying him access to that.

So I wanted to come to the floor and make that point and ask those questions and say again that I admire the Senator's fortitude and willingness to stand up and challenge the administration on this issue. It would be easy to satisfy the Senator's request. He has made that very clear. He is not intending to block a vote on this nomination, but he is intending to get the information he has requested, and he is entitled to it.

Mr. PAUL. Mr. President, the questions and points the Senator from Texas has made are very good points, and it also shows we are not that far apart in trying to find an answer to this, because, there is no ultimate ability for me to stop this nomination. I am already getting tired and I don't know how long I will be able to do this, so I can't ultimately stop the nomination. But what I can do is try to draw attention to this and try to get an answer. That would be something, if we could get an answer from the President. And I think we would all sleep better and feel more comfortable if he would say explicitly that noncombatants in America won't be killed with drones. The reason it has to be answered is because our foreign drone strike program does kill noncombatants. They may argue they are conspiring or they may some day be combatants, but if that is the same standard we are going to be using in the United States, it is a far different country than I know about. Ours is a country where dissent, vocal dissent, even vehement, vociferous dissent as far as whether our country should go to war, whether our country should raise taxes, lower taxes, has always been allowed. We allow a great deal of dissent in our country. But some of the people whom we have said we are targeting have been dissenters, probably traitors too, but they have also been people who have been vocalizing it more than they have been shooting anybody.

That is not to say you can't be a traitor even if you don't shoot anybody. But if you are going to be accused of treason or of being a traitor in the United States, I would think you would get your day in court, probably. It is particularly troublesome since some of the descriptions of who might be a terrorist are such that I would be a little bit concerned about the slippery slope to who is and who is not a terrorist. I can't imagine in America we would do that without an open accusation, without a trial by a jury, without a verdict.

I think it is important this discussion go on, and I am not ultimately setting the goal that I can stop this nomination. I am here today to draw attention to a constitutional principle, to try to get the administration to admit publicly they will not kill Americans who are not involved in combat. But it hasn't so much to do with Brennan or his nomination, it has to do with a constitutional principle. Ultimately, Brennan will be approved. He will be the head of the CIA. This will be a blip in his nomination process. I hope people will see it more as an argument for how important our rights are; that no one, no branch of government, no individual politician should be above the law, should be able to dictate and say what they think the law is.

We had some of this even under a Republican President. I was critical of President Bush for saying he had the ability to interpret the law; he had the ability to put signing statements, which were extensive sometimes, which gave his interpretation of what the law was or what he thought the law was. So I have been critical of both sides thinking they have more power than they have.

Our Founding Fathers were brilliant in the sense that they separated the powers and had these coequal powers of government, these branches of government that were somewhat pitted against each other. And by having equal power and by being able to judge the power of the other branch, no one branch could accumulate too much power. But in our country it has been going the other way for a long time. It hasn't been just Democratic Presidents or just Republican Presidents, it has frankly been both. For maybe 100 years or so power has been gravitating and gravitating and gravitating to the Presidency. And not just the Presidency. When people talk about the bureaucracy, these are people who are within the executive branch—millions of them. When we passed ObamaCare, it was 2,000-some-odd pages, but there have been 9,000 pages of regulations written since. ObamaCare had 1,800 references to ''the Secretary of Health shall decide at a later date.'' We gave up that power. We gave up power that should have been ours, that should have been written into the legislation. We gave up that power, and as a consequence we gave it to the executive branch. We gave it to people—many of them we call bureaucrats—who are unelected. So we gave away power. It is a struggle, and it should be a perpetual struggle, but we shouldn't give in on that struggle and give up that power.

There was mention the President should reveal to us drone memos on how he is making the decisions. We have had some leaks about that, but I would go one step further. Not only should the President let Congress know what he is doing, maybe we should tell him what to do. Maybe the Congress should be setting the rules for how we do drone strikes. Maybe the Congress should be protecting the American people from their government.

That sounds terrible, protecting you from your government. That is what the Constitution was about. The Constitution wasn't written to restrain your behavior, it was written to restrain your government's behavior.

A lot of people get confused when we talk about religion and the first amendment. But if you read the first amendment, it says Congress shall make no law. It doesn't say anything about your religious preferences. It is not supposed to limit your involvement in government. It is really not supposed to limit so much religious involvement in government or even religion.

We have a prayer every morning in the Senate. You can't have it in your public school, but we have a prayer every morning. Explain that to me. We have the Ten Commandments around here. So does the Supreme Court. But

you can't have it in your local school. I think we have gotten confused on things. It was really about government getting involved in your religion.

We didn't want to establish a church. We thought it was a bad idea to have an official church, and I still think it is a bad idea to have an official church because then the government would be telling the church what to do. But it is really all about the documents that we have protecting you from an overbearing government.

Your government was given a few defined powers, the enumerated powers. There are 17, 19—depends on how you want to count them—but there are not very many. They are few and defined. But your liberties are many—basically, unlimited and undefined.

When you read the ninth and tenth amendment, it says those rights not explicitly given to government are left to the States and the people. They are yours. They are not to be disparaged.

These are important debates we are having. When Montesquieu talked about the separation of powers and the different checks and balances, he said: There can be no liberty when you combine the executive and the legislative. Likewise, I would add to that there can be no liberty when you combine the executive and the judiciary.

So if you allow the President to tell you he can have drone strikes on Americans, on American soil, you are allowing him to be not only the executive, you are allowing him to be the judiciary. If he makes it secret, nobody can object.

I remember one time I was complaining to another Senator about these things called suspicious activity reports. Your bank is required to file them on you. In fact, if you pay your Visa bill through your bank, over the phone, you have done a wire transfer, and you can be part of a suspicious activity report. If you turn cash in to the bank or get cash out of the bank over a certain amount, you can get a suspicious activity report.

I was concerned about this because there have been 8 million filed since 9/11, and the Senator's response is he has never heard anybody complain about it. The reason nobody complains is they are secret. They don't tell you they are doing this.

So if you get on the kill list, it is a little hard to complain. We might have a kill list for a couple of years in the United States, on American citizens, and nobody might complain because it is secret. You don't know you are on the list.

So I think it is important that we have a big debate and discussion over this; that we let the President know he doesn't get to write all of these rules on killing American citizens; that the Constitution still applies in our country.

The reason this is a big debate is that when you are in a war, the Constitution doesn't always apply on the battlefield in another country. There is a debate over whether the Constitution is here or whether it extends beyond the borders. But the practical matter is we can't really enforce the Constitution beyond our borders. You sort of consent to your Constitution, you sort of consent to your government by voting. We have that arrangement in our country, but it doesn't happen in Mexico, Europe, or Afghanistan, and it certainly doesn't happen in the middle of hostilities. So you don't really get due process over there. That is the real danger. That is the problem. That is the rub.

This whole thing is about the use of authorization of force that was passed after 9/11 to go to war in Afghanistan. If you had voted on that—you didn't; your leaders did. But had you voted on that, you would have thought: I am going to war in Afghanistan to get the people who attacked us on 9/11.

I was all for it. I still am. I think that was something we needed to do. We couldn't let people attack us, but I don't think you would have thought, when you voted for that, you were voting for a worldwide war with no end that included America as part of the battlefield. That is the real problem.

The administration, John Brennan, who wants to be head of the CIA, and Eric Holder, the Attorney General, they all believe—and many here believe this also—there is no geographic limit to the war. It is not in Afghanistan. They say it is everywhere, but they say everywhere includes here.

Here is the problem: If you don't think you can apply due process in the middle of a war, what happens if they say the war is here? That means you don't get any protection. So if you are accused of a crime, I guess that is it.

I can't imagine that is what we want as Americans. I just can't imagine we would believe or acquiesce or allow the President to basically say he is going to make the decisions for us; that he basically would kill noncombatants in America.

I, frankly, think eventually he will admit—it would be nice if he would admit it tonight—that he is not going to do it. If anybody has a phone, give him a call. Let him know we would like to know an answer. And I think it would be appropriate.

When the Attorney General came this morning to the Judiciary Committee to answer questions, he was asked repeatedly this question: Can you kill noncombatants if they are sitting and having tea somewhere in America? He kind of weebled and wobbled and went around the issue. Finally, we said: We want to know, is it constitutional? Do you think you can do this?

Instead of saying we might not, we don't intend to—and it sounds like he finally admits at the end that it is unconstitutional. But then why can't we get them to issue a statement? Why can't we get them to say explicitly: We are not going to do this? I see no reason. It would take them 5 minutes to jot this down on a piece of paper. If they don't intend to do it, why not tell us?

When your government won't tell you they are not going to do something, when they won't answer, no, they don't have the power, they are saying to you, yes, they have the power.

If they will not answer your question and say: No, I will not kill Americans who are not involved in combat here at home, if they cannot tell you that, they are saying, yes, they will kill Americans not involved in combat. It is a simple question.

Conor Friedersdorf writes for the Atlantic, and he writes:

> Does President Obama think that he has the power to kill American citizens on U.S. soil? If he accuses a guy in the Arizona desert or rural Montana of being an Al Qaeda terrorist, is it ever kosher to send a drone over to blow him up, as was done to—
>
> People overseas—
>
> Or is it never okay to drone strike an—
>
> American citizen to death here in America?
>
> It's an easy question.
>
> Answering it wouldn't jeopardize national security in any way.
>
> So why do Obama administration officials keep dodging it?

When the President was asked this question in a Google Plus interview last week, he said: Well we might have different rules inside the country than outside the country.

Well, that sort of assumes he thinks he can kill Americans here, and he might have different rules. He might have more protections, but he is not going to tell you. He says it is secret. I, for one, am not very comforted.

When the President says he hasn't killed any Americans yet and he doesn't intend to kill any Americans—but he might—that doesn't really comfort me so much. I don't think that is strong enough language.

The Presidential oath of office says, ''I will preserve, protect, and defend the Constitution.'' It doesn't say: I intend to. It doesn't say: I intend to preserve, if it is convenient; I intend to preserve, protect, and defend the Constitution if it is convenient.

In his memo, he says he is only going to kill people if it is infeasible. To me, that sounds a little bit like, yes, it is tough. It is inconvenient, so I am going to preserve, protect, and defend the Constitution as long as it is feasible. It just doesn't inspire me.

Friedersdorf goes on to say with regard to the President's answer in Google: ''But he still didn't give a straight answer.''

Counterterrorism adviser John Brennan—whose nomination we are talking about—won't answer either. He finally did answer, but only under duress. His answer was actually the appropriate answer. He said the CIA can't do this in America. But it begs the question—because the CIA is not in charge of the drone program; the Department of Defense is. So we need an answer from the Department of Defense, and we get an

answer from Eric Holder that says they haven't done it yet, they don't intend to do it, but they might. He doesn't say specifically that they will not.

These answers have been out there for a while, and we have been through this and around this and asked questions. These are simple questions. These are questions I can't imagine why we can't get an explicit answer to—unless the answer is no. Unless the answer is that they don't want limitations on their power. Unless the answer is that they don't want to be constrained by the Constitution. Unless their answer is that the Bill of Rights doesn't apply to them when they think it doesn't apply to them. And that is the real danger.

Eric Holder—your Attorney General—was asked about this and asked about the fifth amendment. He was asked: Does it apply?

He said: Well, it applies when we think it applies.

What does that mean? I know it is a debatable question—overseas, American citizens, this and that—but I don't think it is a debatable question. In our country, does the fifth amendment apply? I don't know how you can argue the fifth amendment doesn't apply. I don't know how you can argue we have an exemption to the Bill of Rights when we want to.

But this is the President—the same President who argued he gets to determine when the Senate is in recess because he didn't get a few of his appointees last year, also argued that the Senate was in recess and said he could appoint anybody he wanted—and he did.

It went to court, and the court rebuked him. The court said: You don't get to decide all the rules for all of government. The Senate decides when they are in recess; you decide when you are in recess, but you don't get to decide the rules for the Senate.

They struck him down. Has he obeyed the ruling? Has he listened to what the court did? Has he been chastised and rebuked by the court?

The people he appointed illegally are still doing that job. All of their decisions are probably invalid. So for the last 2 or 2½ years—however long these recess appointments have been out there—all of these decisions are going to be a huge mess. They have made all these decisions, and it is going to be uncertain whether the decisions are going to be valid. All of this happened because for some reason he thought he had power he doesn't actually have. I think there are some analogies to what we are talking about.

Now, one of the rules he said he would adhere to, as far as the drone strikes overseas, was that there has to be an imminence to the threat. Then his team of lawyers followed up and concluded: Well, it has to be imminent, but it doesn't have to be immediate. I think only a gaggle of government lawyers could come together and say ''imminent'' doesn't mean ''immediate.''

Spencer Ackerman wrote, in Wired, about this. The title is, ''How Obama Transformed an Old Military Concept So He Can Drone Americans.''

''Imminence'' used to mean something in military terms; namely, that an adversary had begun preparations for an assault. In order to justify his drone strikes on American citizens, President Obama redefined the concept to exclude any actual adversary attack.

It is important to get that and to register that he has defined a potential imminent attack to mean that it excludes any actual adversary attack. So you are under imminent attack but there is no attack. It is a bizarre logic, but it is done to widen what they can do to grant them more power.

Ackerman goes on to say:

That's the heart of the Justice Department's newly leaked white paper—

These drone memos—

first reported by NBC News, explaining why a ''broader concept of imminence'' (.pdf) trumps traditional Constitutional protections American citizens enjoy from being killed by their government without due process. It's an especially striking claim when considering that the actual number of American citizens who are ''senior operational leader[s] of al-Qaida or its associated forces'' is vanishingly small. As much as Obama talks about rejecting the concept of ''perpetual war'' he's providing, and institutionalizing, a blueprint for it.

This is what we are talking about. Don't think if you give the President the power to kill Americans, that it is a temporary power.

The use of authorization of force, they say, has no geographic limit and no temporal limit. There is no end to the war. There is no end to the lessening or the abrogation or the giving up of your rights. If you give up your rights now, don't expect to get them back.

Ackerman goes on:

Imminence has always been a tricky concept. It used to depend on observable battlefield preparations, like tanks amassing near a front line, missile assemblage, or the fueling of fighter jet squadrons. Even under those circumstances, there has been little consensus—

internationally about various wars that we have had in the past.

President George W. Bush contended that the U.S. had to invade Iraq not because the government knew Saddam Hussein was about to launch an attack upon America, but because it didn't.

Because it was unknown, because we fear things we don't know—we don't know so we conclude yes, and we preemptively attack.

Bush contended that the uncertainty about Saddam's weapons of mass destruction augmented by 9/11's warnings of shadowy terrorist groups plotting undetectable attacks redefined ''imminence. . . . ''

So when I say this is not a partisan battle, I am true to my word. President Bush started this. President Obama is expanding this.

The real irony, though, is President Obama ran as the anti-Bush candidate. He ran as the guy with the real moral umbrage at what President Bush was doing and in the end he is taking Presidential power to a new level beyond what President Bush could have ever imagined. So Bush contended that they could invade because they were uncertain about what Saddam could do. He:

. . . redefined ''imminence'' to mean the absence of dispositive proof refuting the existence of an unconventional weapons program. . . .

Imminence is the absence of proof that you don't have something. So you have to prove a negative, you have to prove you don't have something, or you are an imminent threat.

That would be sort of like saying to Mexico: Prove to us you don't have a nuclear weapon or we are going to bomb Mexico City. It is a bizarre notion of imminence. So Mexico is now an imminent threat to the United States because they are unwilling to prove they don't have a nuclear weapon. You can see the convoluted logic that occurs here.

But when U.S. troops invaded, they learned that Saddam did not possess what Bush or Condoleezza Rice famously termed a smoking gun that could come in the form of a mushroom cloud.

The undated Justice Department white paper, a summary of a number of still-classified legal analyses, redefines imminence once again. Al-Qaida leaders are ''continually planning attacks,'' the undated white paper says, and so a preemptive attack ''does not require the United States to have clear evidence that a specific attack on U.S. persons and interests in the immediate future.''

Realize what this means. First of all, nobody has an al-Qaida card. I think we say every terrorist in the world is in al-Qaida because then they have to prove otherwise. So nobody has an al-Qaida card. Everyone is in al-Qaida. So we say that unless you can prove that you are not attacking us, because we know the history of al-Qaida is to continue to attack us, we can preemptively attack you.

But now we are talking about bringing that kind of gobbledygook, jumbled logic to the United States. Are these going to be the standards by which we kill Americans?

Ackerman goes on:

For an adversary attack to be ''imminent'' and a preemptive U.S. response justified, U.S. officials need only ''incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on America.''

So if we say al-Qaida is always attacking us and we say you are part of al-Qaida, then we can kill you. But the thing is, that is an accusation. If you are a U.S. citizen, you live in San Francisco or Houston or Seattle and someone says you are a member of al-Qaida, should not you get a chance to defend yourself? Shouldn't you get to go to court? Shouldn't you get a lawyer? Are these not things that we would want in our country?

Ackerman goes on. He says:

There is a subtlety at work in the Justice Department framework. It takes imminence out of the context of something an enemy

does and places it into the context of a policymakers's epistemic limitations.

So really we are not looking to say someone has a rocket launcher on their shoulder. We are saying because we think that these people do not like us and will continue to attack us, we can preemptively kill them.

Realize that this kind of logic is being used overseas, and that is debatable. But now they are going to bring this logic to America. So when you read stuff like this, that imminence is out of the equation and in its place we are going to put a ''policymaker's epistemic limitations'' or estimation—that is how we are going to decide who is going to be killed in America? All we know is what we have in the foreign drone program.

We have no evidence yet because no one has told us. They just told us they have not killed anyone yet, they don't intend to, but they might—but they haven't told us what the rules are they are going to use in this context—what rules are going to be used in America? If you are going to kill noncombatants, people eating dinner in America, there have to be some rules. Does the Constitution apply?

When Eric Holder was asked about the fifth amendment, he said the fifth amendment applies when they think it applies. He says the executive branch is very careful and they are very conscious of the fifth amendment and they do try to apply the fifth amendment when they can.

I mean, it is a different story when you are talking about a war overseas and you are talking about people who live in our country. You don't get the option of determining when the fifth amendment applies.

Ackerman goes on to say:

> If there is a reasonable debate about what imminence means in an era of terrorism, and what standards ought to be accepted for defining it as an international norm, that framework—

where they talk about that they are thinking about what the terrorist is thinking rather than what the terrorist is doing basically preempts the whole idea of determining or trying to discuss or figure out what imminence really means.

Ackerman goes on:

> All that matters to justify a drone strike attack is for the U.S. to recognize that it can't be all-knowing.

So interestingly it's not intelligence that drives the attack, it's you saying I don't know but I am worried that these people do attack us continuously, so by me not knowing their plans, that is a justification for an attack. Realize, that could be the standard in the United States.

> It's the logical equivalent of the CIA's signature strikes, which target anonymous military-age males in areas where terrorists operate—

This should be the thing that should just scare the you-know-what out of you. If we are killing people overseas who we don't know their name because we think they are in a caravan going from a place where we think there are bad people to another place where there are bad people, that is a fairly loose standard. So, let's say there are people going from a Constitution Party meeting to a Libertarian Party meeting. Both these groups don't like big government. They hate big government. They are opposed to government. They are nonviolent as far as I know, but they were on the Fusion List for potential terrorists. Are we going to kill people in a caravan going from one meeting to the next? Are we going to have to name the person we kill in the United States?

You say, oh, that is absurd. We would never do that. Well, what about whose phone we tap? Do we have to name that person? It used to be the requirement. It has gotten less so over time. We have gotten to the point where the fourth amendment protections to name the person, place, and what you want to look at have become looser over time. I think it is a legitimate question. If you are going to target Americans on American soil, are you going to name them first? Are you going to tell us who is on the list? The list overseas is secret so the question is, is the list going to be secret in the United States? How do you get your due process if you don't know you are on the list? It is a little bit late after the drone attack to say: Hey, it wasn't me. I didn't really mean what I said in that e-mail. I should not have made that comment on line.

Some liberals think they have had a double standard on this and haven't been very good. Some have been more honest in their criticism of the President being hypocritical. The President seemed to be concerned at one time about warrants for wiretaps. He seemed to be concerned about Americans and torture. He seems to have lost a little bit of that when we talk about whether to kill Americans on American soil.

Eugene Robinson, whom I would consider a liberal pundit, wrote an article printed in the San Antonio News called ''Judicial Review Needed For Drone Hits Of Citizens.'' He begins this way. He says:

> If George W. Bush had told us that the ''war on terror'' gave him the right to execute an American citizen overseas with a missile fired from a drone aircraft, without due process or judicial review, I'd have gone ballistic.

These are Eugene Robinson's words. If he had heard this about George Bush, he would have gone ballistic. To his credit he says:

> It makes no difference that the president making this chilling claim is Barack Obama. What's wrong is wrong.

Robinson goes on to say:

> The moral and ethical questions posed by the advent of drone warfare are painfully complex. We had better start working out some answers because, as an administration spokesman told me recently, drone attacks are the ''new normal'' in the ongoing struggle against terrorist groups such as al-Qaida.

These attacks have become normal. They have become commonplace. They have become the rule rather than the exception. But at least Eugene Robinson is someone who is consistent in his application of criticism. He says he would have gone ballistic had George W. Bush done exactly what President Obama is doing and his response is, ''It makes no difference that the president making this chilling claim is Barack Obama. What's wrong is wrong.''

The question of when we get due process, whether it applies to you here or overseas, is a big question. But under our concept of government, it is not a question that should be left up to one branch of government. You know, should one branch of government get to decide that you don't get due process? That the fifth amendment doesn't apply to you? This is an incredibly important question. John Brennan and the nomination today pale in comparison to that question. Does the President alone, unilaterally, get to decide whether the fifth amendment applies to you? Or can he say that he is going to secretly accuse you of a crime and that the fifth amendment doesn't apply to you?

This is worrisome because the Attorney General has been asked about the applicability of the fifth amendment to the drone program. He said the fifth amendment applies when they think it applies. He says they try to give some kind of process. It is not due process. Due process involves a jury and a judge and public trial and an accusation. By process, they mean they get together and look at a PowerPoint presentation. They go through some flash cards and they decide who they are going to kill. That is the process. They may say you are demeaning the process by treating it flippantly, about whether they are serious about the process. Is that the process you want for someone in America? Do you want in America, for the process for you being accused of a crime, to be a PowerPoint presentation by one branch of government, maybe in a political party you are part of, maybe in a political party you are not part of?

There are things in politics that are partisan. I don't think I would want Americans to be subject to any partisanship with determining whether you get the fifth amendment, whether you get a jury trial. I can't imagine anybody would. I don't care whether it is a Republican or Democrat, I don't want a politician deciding my innocence or guilt; it is as simple as that. The President should say unequivocally we are not going to kill noncombatants, we are not going to do PowerPoint presentations in the Oval Office on Tuesdays. We are not going to have Terrorist Tuesdays for Americans. He should say that. I don't think it is that hard. It is an easy question to the President.

Mr. President, are you going to have Terrorist Tuesdays for Americans?

Are they going to put flashcards of Americans up and pass them around the table in the Oval Office with pictures of Americans on them and decide

who is going to die and who is going to live? Are they going to publicly charge people or are they going to secretly charge people? Are they going to have any kind of trial or any kind of representation? Does anybody get a chance to say: Hey, it wasn't me. I didn't do it. Does anybody get a chance to represent or have representation?

This is an article we found interesting also by Noah Shachtman. This was also printed in ''Wired.'' It is called ''U.S. Drones Can Now Kill Joe Schmoe Militants in Yemen.'' This is not quite about the domestic issue so much and a little bit about the foreign issue. However, there is a linkage between the foreign drone attacks and what will become the domestic drone attacks.

Why? Because those are the only drone attacks we know and we have not been told that there will be an American plan for killing Americans and a foreign plan for killing Americans or foreigners overseas. We have not been told that. We have not been told anything. We have been told to go and sit in a corner—including the Senate and Congress—and be quiet. They have a process. They have a PowerPoint presentation, and they have flashcards. I don't think that is adequate.

Noah Shachtman writes in ''Wired'':

> In September, American-born militant Anwar al-Awlaki was killed by a U.S. drone strike in Yemen. In the seven months since, the al-Qaida affiliate there has only grown in power, influence, and lethality. The American solution? Authorize more drone attacks—

It kind of brings me back to that quote from the CIA agent. He said drone attacks are like a lawnmower, but when you quit mowing the lawn, the terrorists come back; sometimes they may be more numerous. The question is, Can they kill them all? Can they kill every terrorist in the world? For every terrorist they kill, maybe 3 or 4 pop up—maybe 10 pop up. What happens to the families who happen to be the ones whom we make mistakes on or happen to be in the wrong place at the wrong time?

I know the President's spokesman found it cute to say: Oh, they should have chosen more responsible parents. I don't find that endearing or cute. I find it reprehensible to say that is the standard. We have to ask the question: Is that going to be the standard in the United States? Are we going to kill people because they are related to bad people and then flippantly say they should have chosen better parents after we kill a 16-year-old? Shachtman goes on to write:

> The American solution? Authorize more drone attacks—and not just against well-known extremists like Awlaki, but against nameless, faceless low-level terrorists as well.
>
> A relentless campaign of unmanned airstrikes has significantly weakened al-Qaida's central leadership in Pakistan.

I am not saying we should not use drones. I am not saying they are not a valuable weapon that has helped us to decimate our enemies. I am just saying it is different in a warzone than it is in our country. If the President cannot acknowledge that being in battle somewhere is distinctly different than walking down the street in Washington or Baltimore or Philadelphia, it is beyond me how we can let him get away with that.

> . . . militants were chosen for—

These drone strikes—

> robotic elimination based solely on their intelligence ''signatures''—their behavior, as captured by wiretaps, overhead surveillance and local informants.

We don't know the names of the people who were killed in these drone strikes except to know it was largely in the tribal areas of Pakistan. We are targeting people and we do not know their names. We cannot know much about them if we don't know their names. We are targeting them by their signatures, where they go, and whom they visit.

Probably, inevitably, the milkman or the doctor has to go to the terrorist camp. Maybe some of them are complicit, but some of the people who may not be quite the people we think we are after are in a caravan going from city to city. Maybe they are in the local food distribution business and make good money selling it. But the question is whether that is the kind of standard we would like to have in America. Would a signature strike be acceptable in America? These are questions that ought to be asked and the President ought to answer.

These people are being targeted by their signature. Their behavior is captured by wiretaps, overhead surveillance, and local informants.

Shachtman goes on to say:

> A similar approach might not work in this case, however.

In Yemen, where we have a lot of drone strikes, he says:

> Every Yemeni is armed.

It is going to be kind of hard to tell who is friend or foe when they are all fighting and they are all mad at each other.

> So how can they differentiate between suspected militants and armed Yemenis?

Shachtman goes on to say:

> What's more, al-Qaida in the Arabian Peninsula—the Yemeni affiliate of the terror collective—''is joined at the hip'' with an insurgency largely focused on toppling the local government, another official told the Washington Post last week. So there's a very real risk of America being ''perceived as taking sides in a civil war.''
>
> The Yemeni drone campaign—actually, two separate efforts run by the CIA and the military's Joint Special Operations Command—will still be more tightly restricted than the Pakistani drone war at its peak. Potential targets need to be seen or heard doing something that indicates they are plotting against the West, or are high up the militant hierarchy.
>
> ''You don't necessarily need to know the guy's name. You don't have to have a 10-sheet dossier on him. But you have to know the activities this person has been engaged in,'' a U.S. Official tells the Journal.
>
> Gregory Johnsen, a Yemen specialist at Princeton University, believes that these ''signature'' strikes—''or something an awful lot like them''—have actually been going on for quite a while in Yemen.

He goes on to say that he thinks that ''Awlaki's son was killed just a month after his dad,'' in a signature strike. He says he thinks '' . . . there have been 13 attacks in Yemen in 2012.''

When we talk to people around here, they say there are no signature strikes. What are we supposed to believe? A lot of people are saying they have evidence and have heard there are signature strikes. Those in power who have the secret say we are not. It is hard to know what to believe.

I think one thing that is easy to understand, though, is that I cannot imagine we would allow such a standard in the United States where we don't name whom we are killing and that we kill people involved in a caravan. I think it should be pretty easy for the President to say there will be no signature strikes in America.

Shachtman goes on to say:

> Many of them have hit lower-level militants, not top terror names. This authorization only makes targeting killings legally and bureaucratically kosher.
>
> But despite the increased pace of strikes—those 13 attacks are more than they were in all of 2011—al-Qaida in the Arabian Peninsula. . . . In fact, White House counterterrorism adviser John Brennan last week called it the terror group's ''most active operational franchise.''
>
> All of which leads Micah Zenko at the Council of Foreign Relations to wonder where this drone campaign is going. ''By any common-sense definition, these vast targeted killings should be characterized as America's Third War since 9/11,'' he writes. ''Unlike Iraq and Afghanistan—where government agencies acted according to articulated strategies, congressional hearings and press conferences provided some oversight and timelines explicitly stating when the U.S. combat role would end—the Third War is Orwellian in its lack of cogent strategy, transparency, and end date.''
>
> ''Since these attacks are covert, the administration will offer no public defense, he adds. But ''it begs [CIA director David] Petraeus' haunting question at the onset of the Iraq war in 2003: ''Tell me how this ends?''

That is a question I have for the President: How does the war end? How do we win? How do we declare victory and when will the war end? The problem is we have come up with a scheme that basically has no geographic limitations on where the war is fought. It is harder to defeat an enemy if the entire war is the battlefield. It is not only a problem with determining victory, it is a problem with ultimately coming home.

The other problem with having no geographic limitations to this is saying that war is here; the war is in America and the battlefield here at home is one where we are going to have rules or the laws of war are going to apply in our everyday life.

Before we were talking about drone strikes in America, the Center for Constitutional Rights has been concerned

even about American citizens overseas. On September 30, they put out this release which said:

Today, in response to the news that a missile attack by an American drone aircraft had killed U.S. citizen Anwar Al-Awlaki in Yemen, the Center for Constitutional Rights, which had previously brought a challenge in federal court to the legality of the authorization to target Al-Awlaki in Yemen, released the following statement: ''The assassination of Anwar Al-Awlaki by American drone attacks is the latest of many affronts to domestic and international law'' . . . ''The targeted assassination program that started under President Bush and expanded under the Obama Administration essentially grants the executive the power to kill any U.S. citizen deemed a threat, without any judicial oversight or any of the rights afforded by our Constitution. If we allow such gross overreaches of power to continue, we are setting the stage for increasing erosions of civil liberties and the rule of law.''

Now what they have said there is not completely noncontroversial, and I might even take some issue with the fact that they are saying the Constitution applies everywhere. Some argue it applies to U.S. citizens whether here or at home, and I think there is some debate as to that. I think the only place we can guarantee that the Constitution applies is in our country. The only border we ultimately control is in our country. The courts we ultimately control are here. However, the entity doing the killing is the American military killing a citizen overseas. So I personally have been of the belief that what we should do is try people for treason. It is one of the four crimes in the Constitution that is actually labeled, displayed, and given to the Federal courts.

There are specifics on what is actually treason. I personally don't think it would be that hard to try people for treason. I think we could do it without—we could start at the very top court and not have appeal after appeal.

I think there was evidence that al-Awlaki could have been tried in Federal court for treason and then targeted.

People say: Why would we want to give any protection to people who have denounced their citizenship, who hate America, and who are conspiring with the enemy?

I guess the way I would respond is that I don't like murderers and rapists either. I don't like violent people who commit crimes in our country. But because we prize our system so much and because we want to make sure we arrest, convict, and possibly execute the right person, we have trials. So we think it is pretty important that we have trials. So I agree when people say these are bad people. Yes, these are bad people. Many of them deserve what they get. The problem is, if we give up on the process of how we do it, if we give up on the Constitution, or if we say that kind of standard is going to be brought back to the homeland, or if we say America is a battlefield, there is a real problem. There is a problem in doing that because I think if we do that, the standard becomes so loose, we really won't have what we really expect as Americans.

The Center for the Constitutional Rights goes on with this comment by Pardiss Kebriaei, a senior staff attorney. They went to the court, and they asked for information on some of these drone strikes, and they were denied. She responds:

In dismissing our complaint, the district court noted that there were nonetheless disturbing questions raised by the authority being asserted by the United States.

There certainly are disturbing questions that need to be asked again and answered by the U.S. Government about the circumstances and the killing and legal standard that governs it.

In October 2012 there was an article by Greg Miller in the Washington Post. It was entitled ''Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names To Kill List.'' The editor notes that this project was based on interviews with dozens of current and former national security officials, intelligence analysts, and others who have examined and were examining the U.S. counterterrorism policies and the practice of targeted killings.

This is the first of three stories that appeared:

Over the past 2 years, the Obama administration has been secretly developing a new blueprint for pursuing terrorists, a next-generation targeting list called the ''disposition matrix.''

The matrix contains the names of terrorism suspects arrayed against an accounting of the resources being marshaled to track them down, including sealed indictments and clandestine operations. U.S. officials said the database is designed to go beyond existing kill lists, mapping plans for the ''disposition'' of suspects beyond the reach of American drones.

Although the matrix is a work in progress, the effort to create it reflects a reality setting in among the nation's counterterrorism ranks: The United States' conventional wars are winding down, but the government expects to continue adding names to kill or capture lists for years.

Among senior Obama administration officials, there is a broad consensus that such operations are likely to be extended at least another decade. Given the way al-Qaida continues to metastasize, some officials said no clear end is in sight.

''We can't possibly kill everyone who wants to harm us,'' a senior administration said. ''It's a necessary part of what we do . . . We're not going to wind up in 10 years in a world of everybody holding hands any saying, ''We love America.''

That timeline suggests that the United States has reached only the midpoint of what was once known as the global war on terrorism. Targeting lists that were regarded as finite emergency measures after the attacks of September 11 are now fixtures of the national security apparatus. The rosters expand and contract with the pace of drone strikes but never go to zero.

Meanwhile, a significant milestone looms: The number of militants and civilians killed in the drone campaign over 10 years will soon exceed 3,000 by certain estimates.

We have heard an estimate recently by a Member of the Senate who said 4,700 have been killed.

The Obama administration has touted its successes against the terrorist network, including the death of Osama bin Laden, as signature achievements that argue for President Obama's reelection. The administration has taken tentative steps toward greater transparency, formally acknowledging for the first time the United States' use of armed drones.

Less visible is the extent to which Obama has institutionalized the highly classified practice of targeted killing, transforming adhoc elements into a counterterrorism infrastructure capable of sustaining a seemingly permanent war.

Spokesmen for the White House, the National Counterterrorism Center, the CIA and other agencies declined to comment on the matrix. Privately, officials acknowledge that the development of the matrix is part of a series of moves, in Washington and overseas, to embed counterterrorism tools into U.S. policy for the long haul.

White House counterterrorism adviser John O. Brennan is seeking to codify the administration's approach to generating capture/kill lists, part of a broader effort . . .

CIA Director David Petraeus is pushing for an expansion of the agency's fleet of armed drones. The proposal, which would need White House approval, reflects the agency's transformation into a paramilitary force and makes clear that it does not intend to dismantle its drone program and return to pre-September 11 focus on gathering intelligence.

The U.S. Joint Special Operations Command, which carried out the raid that killed bin Laden, has moved command teams into suspected terrorist hotbeds in Africa. A rugged U.S. outpost in Djibouti has been transformed into a launchpad for counterterrorism operations across the Horn of Africa and into the Middle East.

The Joint Special Operations Command has also established a secret targeting center across the Potomac River from Washington. The current and former U.S. official said the elite command's targeting cells have traditionally been located along the front lines of its missions, including Iraq and Afghanistan. But the joint committee has now created a national capital region task force that is a 15-minute commute from the White House so it can be more directly involved in deliberations about the al-Qaida list.

The developments were described by current and former officials from the White House as well as intelligence and counterterrorism agencies. Most spoke on the condition of anonymity because of the sensitivity of the subject. These counterterrorism components have been affixed to a legal foundation for targeted killings the Obama administration has discussed more openly over the past year. In a series of speeches, administration officials have cited the legal basis, including the congressional authorization to use military force.

This really gets to the crux of the matter, which is that the authorizations for all of these activities around the world and then ultimately here at home all come from the use of authorization of force when we went to war against Afghanistan after 9/11. The problem is, how do we finally conclude war? Is perpetual war OK with everybody? How would we conclude the war in Afghanistan?

The President said he is bringing troops home. It is actually another thing I admire about the President. I think it is time to come home. I think we have accomplished our battle. I think we have accomplished our plan. But the thing is, if we are going to end

the war, why would we not end the war? I think it means we end that war and we go somewhere else. There is a question of whether we can continually afford perpetual war. There is a question of whether it is advisable. There is a question of whether or not we go so many places that maybe in the end we are doing more harm than good.

The thing about the wars as they go on is we have to figure out a way to try to end war. We have to figure out a way to try to limit war. Our goal shouldn't be to expand war to proportions that have no limit. To say there are no geographic limits on war I don't think should be an admirable thing. I think it is a mistake in policy to say we can have perpetual war with no limits, with no geographic limits, with no temporal limits.

It is hard to end a war anymore, though. It used to be easy. In the old days, you won a war and you came home. The problem is that we can't even end the Iraq war. The Iraq war has been over for a couple of years now—at least a couple of years. I tried to introduce a resolution to end the Iraq war, to deauthorize the war, and it was voted down. I think I got less than 15 votes. How do we end war?

The problem is that people take these resolutions and they stretch them and they pull them and they contort them to mean things that really they were never intended to mean. I don't think being involved in a protracted war in Yemen or Mali or any of these other places was intended when we went to war in Afghanistan. I just don't think that was the intention.

Critics contend that the justifications for the drone war have become more tenuous as the campaign has extended further and further beyond the core group of al-Qaida operatives behind the strikes on New York and Washington. Critics note that the administration still doesn't confirm the CIA's involvement or the identities of those who were killed. Certain strikes are now under legal challenge, including the killing last year of the son of al-Awlaki.

Counterterrorism experts have said, though, that the reliance on these targeted killings is self-perpetuating, yielding undeniable short-term results that may obscure the long-term costs. I think that is a good way of putting it because when we think about it, obviously, they are killing some bad people. This is war, and there has been some short-term good. The question is, Does the short-term good outweigh the long-term costs not only in dollars but the long-term costs of whether we are encouraging a next generation of terrorists?

This is a quote from Bruce Riedel, a former CIA analyst. He says:

> The problem with the drones is it's like your lawn mower. You got to mow the lawn all the time. The minute you stop mowing, the grass is going to grow back.

Maybe there is an infinite number of terrorists. Maybe the drone strikes aren't the ultimate answer. There are a billion Muslims in the world. Maybe there needs to be some component of this that isn't just the killing fields. I am not saying that many of these people aren't allied against us and would attack us and they don't deserve to die; I am just not sure it is the ultimate answer, it is the ultimate way. I am also concerned that the people who are the strongest proponents of this are also those who want to bring the war to America and say that America is part of this perpetual battlefield.

> The United States now operates multiple drone programs, including acknowledged U.S. military patrols over conflicted zones in Afghanistan and Libya and classified CIA surveillance flights over Iran. Strikes against al-Qaida, however, are carried out under secret lethal programs involving the CIA and the CSOC. The matrix was developed by the NCTC under former Director Michael Leiter to augment those organizations' separate but overlapping kill lists. The result is a single, continually evolving database in which biographies, locations, known associates, and affiliated organizations are all catalogued.
>
> So are strategies for taking targets down, including extradition requests, capture operations and drone patrols.
>
> Obama's decision to shutter the CIA's secret prisons ended a program that had become a source of international scorn, but it also complicated the pursuit of terrorists. Unless a suspect surfaced in the sights of a drone . . . the United States had to scramble to figure out what to do.
>
> ''We had a disposition problem,'' said a former U.S. counterterrorism official. . . .
>
> The database is meant to map out contingencies, creating an operational menu that spells out each agency's role in case a suspect surfaces in an unexpected spot. ''If he's in Saudi Arabia, pick up with the Saudis,'' the former official said. ''If traveling overseas to al-Shabaab . . . we can pick him up by ship. If in Yemen, kill or have the Yemenis pick him up.''

There has been some discussion as to what to do with these people. It is a complicated situation, but I think the take-home message from all of this is that what we are stuck in is a very messy sort of decisionmaking, a type of decisionmaking that I do not think is appropriate for the homeland, for the United States. I think the idea that in the United States this is to be a battlefield, and you do not need an attorney, you do not need a court, or you do not get due process, is really repugnant to the American people, and should be.

I think it is something we have given up on too easily if we let the President dictate the terms of this. If the President is unwilling to say clearly and unequivocally that he is not going to kill noncombatants in America, I do not think we should tolerate that. I think there should be a huge outcry and the President should come forward and explain his position.

This discussion tonight is not so much about John Brennan, it is not about his nomination so much as it is about whether we believe that in America there are some rights that are so special that we are not willing to give up on these.

So as we move forward into this debate, it is not about who gets nominated to be the head of the CIA. It is about principles that are bigger than the people. It is about something bigger and larger than the people involved. It is about constitutional principles that we should not give up on.

I think we should all judge as inadequate the President's response when he says he has not killed Americans in America yet, he does not intend to, but that he might. I do not think that is a response that we should tolerate.

So as we move forward in this debate, we need to understand and we need to fight for something that is classically American, something we are proud of and something our soldiers fight for; that is, our rights, our individual rights, our right to be seen as an American, to be tried in a court by our peers. I think if we are to give up on that it is a huge mistake.

One of the things we have to ask is, What kind of standard will there be? If there is going to be a program in America, what kind of standard? If we are going to kill Americans in America, what kind of standard will there be?

If the standard is to be sympathy, you can imagine the craziness of this.

Mr. President, I would at this time yield for a question, without yielding the floor, from my colleague from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Mr. President, thank you.

Through the Chair, Mr. President, I would like to ask the Senator from Kentucky a couple of questions.

I have been listening to the conversation, to the debate, to the discussion on the Senate floor throughout the afternoon, and I would ask the Senator from Kentucky these questions: Is it not true that the Constitution of the United States is a document designed to protect the freedoms and liberties of Americans?

I would ask the Senator from Kentucky, while sometimes perceived to be a grant of authority, is not really the main purpose of the U.S. Constitution to make sure the American people enjoy certain liberties and freedoms that the Founding Fathers who wrote that document believed were important for American citizens? And whether or not that is true, I will let the Senator from Kentucky tell me, but if that is the case, if it is constitutional to intentionally kill an American citizen in the United States without due process of law, then what is not constitutional under the U.S. Constitution?

If the conclusion is reached—as the administration, at least, is unwilling to say that is not the case—if the conclusion is reached that it is within the powers of the Constitution for the executive to allow for the killing of an American citizen in the United States, then what is left in our Constitution that would prohibit other behavior? If you can go this far, what liberties remain for Americans?

Mr. PAUL. Mr. President, I think it is a good question because, ultimately,

the question is, Who gets to decide? Does the President get to decide unilaterally that he is going to do this? And how would you challenge it? If you are dead, you have a tough time challenging, basically, his authority to do this.

But, no, I cannot imagine in any way that you can usurp and go beyond the constitutional requirements in the United States. I see no way he can do that, and I cannot imagine that he would even assert such a thing. But it still boggles the mind that he will not explicitly say he will not do this.

Mr. MORAN. Well, I would, again, through the Presiding Officer, ask a question of the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. Again, in the absence of the assurance or the statement from the administration—from the President of the United States or his Attorney General—I ask the Senator from Kentucky, is not this the appropriate venue for us to insist upon that answer? Is it not appropriate for this to be the venue on which we, as a U.S. Senate, make clear that it is unconstitutional, in our view, for the death of a U.S. citizen in the United States by military action?

This is the opportune moment because of the pending confirmation of the nomination of the head of the Central Intelligence Agency. So while today's order of business really is an administrative appointment, is this issue not so important that we need to utilize this moment, this time in the Senate to make certain that question is answered in a way that makes clear—not only for today and for the current occupant of the CIA and its administration, but for all future Americans, all future CIAs, all future military leaders—that it is clear that in the United States American citizens cannot be killed without due process of law?

Mr. PAUL. Mr. President, I think it is a good point. I think also a point to be made is that one resolution to this impasse would be to have a resolution come forward from the Senate saying exactly that; that our understanding is—and this has been something that Senator CRUZ and I have discussed: whether we should limit the President's power by legislation or by resolution, basically saying that repealing an imminent threat is something the President can do, but killing noncombatants is not something that is allowed under the Constitution.

I think the courts would rule that way should the courts ever have to rule on this. But it would be much simpler and more healthy for the country if the President would simply come out and say that.

Mr. MORAN. Perhaps, Mr. President, finally, I would ask the Senator from Kentucky, while this opportunity to discuss this issue on the Senate floor has occurred today, it certainly is an opportunity for the American people to understand a significant basic constitutional right may be at stake. And while the Senator from Kentucky has led this discussion, I would ask him, has he now received, as a result of bringing this attention to this issue, any additional reassurances from the Attorney General or the President of the United States that the administration agrees that there is no constitutional right to end the life of an American citizen using a drone flying over the lands of the United States and attacking a U.S. citizen?

Mr. PAUL. Mr. President, since we began this today, I have had no communications from the White House or the Attorney General. The only thing we have gotten indirectly was that the Attorney General was before the Judiciary Committee today and that he did seem to backtrack or acknowledge a little bit, under withering cross-examination. He was not very forthcoming in saying what we would like to hear: that they will not kill noncombatants in America. But I think that is still a possibility from them. I think his answers were not inconsistent with that.

But you would think it would be a little bit easier and they would make it easier on everyone, and you would think they would want to reassure the public that they have no intention—not just they have no intention—but that they will not kill Americans.

Mr. MORAN. Again, Mr. President, if I can ask the Senator from Kentucky a question through the Presiding Officer, while there is a significantly important issue before the Senate today—and that is the confirmation of the Director of the Central Intelligence Agency—I would ask the Senator from Kentucky, is not the more important issue, the less pedestrian issue, that we face on the Senate floor and in the United States of America one that has been with us throughout our history, one that was with us when the Constitution was written, and one that has been with us every day thereafter; that is, what is the meaning of the words contained in the U.S. Constitution, and what do they mean for everyday citizens, that they know that their own government is constrained by a document created now more than 200 years ago? Is that not the most important question that faces our country and its citizens on a daily, ongoing basis?

Mr. PAUL. Yes, I think American citizens get that. But not only that, I come from a State that has two large military bases. When our soldiers go off—and when I talk to them—they talk of fighting for our Bill of Rights, they talk of fighting for our Constitution. They do not think they are going off to conquer any people. They truly believe and they honestly appraise that they are fighting for our Bill of Rights.

So that is why I see this as somewhat of an insult to our soldiers, to say that and to insinuate somehow that the Bill of Rights is not so important; that our fear is going to guide us away or take us away from something so fundamental and so important.

I think Americans do realize that the protections of having a jury trial are incredibly important and that assessing guilt is not always easy when you are accused of a crime. I think Americans know it is really important to try to get it right when someone is accused of a crime. So I think the American people are with us in wanting to find these answers.

The Senator is right. This is not ultimately about the nomination; this is about a question that is bigger than any individual. It is about something that our country was founded upon; that is, basically, the individual rights.

Mr. MORAN. Mr. President, I thank the Senator from Kentucky for responding to my questions.

Mr. PAUL. Mr. President, we have had a good and healthy debate today. I think we have hit upon a few points. We may have even hit a couple points more than once.

When we think about it and put it in perspective, so many of the battles we have up here are battles that I think the American public is sometimes disgusted with. They see a lot of things we do as petty and partisan. Sometimes I see disagreements up here that I think are completely partisan and completely petty on both sides.

But I think this issue is different in the sense that this is not about this particular individual and his nomination. I have actually voted for the President's first three nominations to his Cabinet. So I have not taken a partisan position that the President cannot nominate his political appointees. I have looked carefully at the nominees. I have asked for more information. I have tried to extend debate on some of the nominees. But in the end, I voted for three out of three and many of the judges that the President has put forward, not necessarily because I agree with their politics. I do not agree with much of the President's politics.

In fact, one of the few things I did agree with the President on was the idea of civil liberties, was the idea that you do not tap someone's phone without a wire, without a warrant, that you do not torture Americans, and that you did not kill Americans without due process. These are things I thought the President and I agreed on. So I am not so sure exactly, you know, where we stand with that. I actually kind of think that probably he still does agree with me, or I still agree with him. But the question is, why cannot he publicly go ahead and announce he is not going to kill noncombatants?

This is a resolution we have talked about. This resolution says: ''To express the sense of the Senate against the use of drones to execute American citizens on American soil.''

Expressing the sense of the Senate against the use of drones to execute American citizens on American soil. Resolved, that it is the sense of the Senate that the use of drones to execute or target American citizens on American soil who pose no imminent

threat clearly violates the constitutional due process of rights. The American people deserve a clear, concise and unequivocal public statement from the President of the United States that contains detailed legal reasoning, including but not limited to the balance between national security and due process, limits of executive power, and distinction between the treatment of citizens and noncitizens within and outside the borders of the United States.

The use of lethal force against American citizens and the use of drones in the application of the lethal force within the United States territory.

There is another article that I think is of interest. This is another article by Spencer Ackerman in Wired. This talks about once again the signature strikes, the idea that basically we are killing people whose names we did not know. The title of this was: ''CIA Drones Kill Large Groups Without Knowing Who They Are.''

The expansion of the CIA's undeclared drone war into the tribal areas of Pakistan required a big expansion of who can be marked for death. Once the standard for targeted killings was top-level leaders in al-Qaeda or one of its allies. That's long gone, especially as the number of people targeted at once has grown.

This is the new standard, according to a blockbuster piece in the Wall Street Journal: ''Men believed to be militants associated with terrorist groups, but whose identities aren't always known.'' [may be targeted.] The CIA is now killing people without knowing who they are, on suspicion of association with terrorist groups. The article does not define the standards, [but the standards are said to be] ''suspicion'' and ''association.''

While this is overseas, it kind of gets to the point we have been talking about: What is the standard that will be used in America? If we are to have drone strikes in America, what is the standard we will use? Is it a standard that says you have to be suspicious, or that you have to be associated?

Strikes targeting those people, usually groups of such people, are what we call signature strikes. The bulk of the CIA's drone strikes are signature strikes now, which is a remarkable thing. So what we are talking about—that is one of the reasons why we are concerned here—is that if the President claims he can do strikes in America, and the bulk of the current strikes overseas are signature strikes, would it not be worrisome that we could kill people in America without evening knowing their name?

The bulk of CIA's drone strikes now are ''signature'' strikes.

It was written in the Wall Street Journal in an article by Adam Entous, Siobhan Gorman, and Julian Barnes. And the ''bulk'' really means the bulk. The Journal reports that the growth in clusters of people targeted by the CIA has required the agency to tell its Pakistani counterparts about mass attacks. We are talking about pretty significant attacks here. They are only notifying them when they are going to kill more than 20 at a time.

Determining who is the target is not a question of intelligence collection. The cameras on the CIA fleet of Predators and Reapers work just fine. It is a question of intelligence analysis, interpreting the imagery collected from the drones, from the spies and spotters below, to understand who is a terrorist and who, say, drops off the terrorist's laundry. Admittedly in a war with a shadowy enemy, it can be difficult to distinguish between the two. So the question is, is this the kind of standard we will use in the United States? Will we use a standard where people do not have to be named? We do not know. The President has indicated his drone strikes in America will have different rules than his drone strikes outside of America. But we have heard no rules on what those drone strikes will be.

So we have drone strikes inside and outside. They are going to have different rules. But we already know that in a large percentage of the drone strikes overseas we are not naming the person. Is that going to be the standard? We also know we have targeted people for sympathizing with the enemy. We talked about that before. In the 1960s, we had many people who sympathized with North Vietnam. Many people will remember Jane Fonda swiveling herself around in a North Vietnamese artillery and thinking, gleefully, that she was just right at home with the North Vietnamese.

I am not a great fan of Jane Fonda. I am really not too interested in putting her on a drone kill list either. We have had many people who have dissented in our country. We have had people in our country who have been against the Afghan war, against the Iraq war. I was opposed to the Iraq war. There have been people against the government on occasion. What are the criteria for who will be killed? Does the fifth amendment apply? Will the list be secret or not secret? Can you kill noncombatants?

And people say, well, the President would never kill noncombatants. The problem is, is that is who we are killing overseas. We are alleging that they may be conspiring someday to be combatants or they might have been yesterday. But are we going to take that same kind of standard and use it in America? Are we going to have a standard that if you are on your iPad typing an email in a cafe that you can be targeted in a drone strike? These are not questions that are inconsequential. These are questions that should be known. These are questions that should be public. These are questions that should be discussed in Congress. In fact, we should not be asking him for drone memos, we should be giving him drone memos. We should not be asking him how is he going to run the drone program, we should be telling him how he is to run the drone program. That is our authority. We have abdicated our authority. We do not do what we are supposed to. We are supposed to be the checks and balances. But we have let the President make those decisions because we have largely abdicated our responsibility.

In this Spencer Ackerman story from Wired, he talks about and goes on to say:

Fundamentally, though, it is a question of policy, whether it is acceptable for the CIA to kill someone without fully knowing if he is the bombsmith or the laundry guy.

The Journal reports:

The CIA's willingness to strike without such knowledge, sanctioned in full by President Barack Obama, is causing problems for the State Department and the military. As we have written this week, the high volume of drone attacks in Pakistani tribal areas contributes to Pakistani intransigence on another issue of huge importance to the United States, convincing Pakistan to deliver the insurgent groups it sponsors to peace talks aimed at ending the Afghan war. The drones do not cause that intransigence. Pakistani leaders, after all, cooperate with the drones and exploit popular anti-American sentiment to shake down Washington. The strikes become cards for Pakistan to play, however cynically.

I think this is quite true of Pakistan. They play both sides to the middle. They play both sides to get more money from us. I think they have been complicit in the drone attacks, and then they complain about them publicly. They have two faces, one to their people, and one privately to us. But the question is, have we gotten involved more in Pakistan than getting al-Qaida leaders, and have we gotten more involved with a war in Pakistan that involves people who want to be free of their central government?

Ultimately, we as a country need to figure out how to end the war. We have had the war in Afghanistan for 12 years now. The war basically has authorized a worldwide war. Not only am I worried about the perpetual nature of the war, I am also worried that there are no geographic limitations to the war. But I am particularly concerned, and what today has all been about, I am worried that they say the United States is the battlefield now. My side, their side, the President, everybody thinks that America is the battlefield. The problem is, they all think you do not get due process in a battlefield. Largely they are correct. When you are overseas in a battlefield, it is hard to have due process. We are not going to ask for Miranda rights before we shoot people in battle. But America is different.

So one of the most important things I hope that will come from today is people will say and people will listen: How do we end the war in Iraq? How do we end the war in Afghanistan? I got a vote. I tried to end the Iraq war 2 years after it ended, by taking away the authorization of use of force. I still could not get that voted on.

It is even more important not only to end the war in Iraq, but ultimately to end the war in Afghanistan. Because the war in Afghanistan, the use of authorization of force is used to create a worldwide war without limitations, to create a war that some say the battlefield is here at home. This battlefield being here at home means you do not get due process at home.

There have been Members of the Senate stand up and say, when they ask you for a lawyer, you tell them to shut up. Is that the kind of due process we want in our country? Is that what we are moving toward? So the questions we are asking here are important questions. These questions are: Does the Bill of Rights apply? Can they have exceptions to the Bill of Rights?

One of the articles from the National Review recently was by Kevin Williams. We got into this a little bit earlier. I thought it was an important article because it talked about what our concern is is about what standard we will use. What will be the standard for how we kill Americans in America? He talked a little bit about how his belief is that al-Awlaki was targeted mainly as a propagandist. An interesting thing about al-Awlaki is that before he was targeted, he was actually invited to the Pentagon. We considered him to be a moderate Islamist for a while.

We invited him to the Pentagon. I think he actually gave and said prayers in the Capitol at one point.

The question is if we made a mistake the first time about whether he was our friend—and I think we did—could you make a mistake on the other end? The question is, if governments are to decide who are sympathizers and people who are politicians, with no checks or balances, are to decide who is a sympathizer, is there a danger that people who have political dissent could be included in this?

The way Williamson describes al-Awlaki was that he was first and foremost an al-Qaida propagandist. He was a preacher and a blogger who first began to provoke United States authorities through the online bile which earned him the faintly ridiculous sobriquet the bin Laden of the Internet.

Was he an active participant in planning acts of terrorism against the United States? The FBI did not think so, at least in the wake of 9/11 attacks. The Bureau interviewed him four times and concluded he was not involved. The Defense Department famously invited him to dine at the Pentagon as part of the Islamic outreach efforts, and in 2002 he was conducting prayers in the U.S. Capitol.

Throughout the following years, al-Awlaki became a sort of al-Qaida gadfly, dangerous principally because he was fluent in English and, therefore, a more effective propagandist. It was not until the first Obama administration that al-Awlaki was promoted by United States authorities from propagandist to operations man.

You may remember the context. The Obama administration had been planning to try 9/11 conspirators in New York City when the country was thrown into a panic by the machinations of the would-be underpants bomber, Umar Farouk Abdulmutallab.

The Obama administration, in an interesting about-face—whereas it had been planning to try Khalid Shaikh Mohammed in New York and his co-conspirators there, definitively turning our back on Guantanamo—turned around and made a decision that it couldn't do it in New York. Al-Awlaki was a part of this. He was a propagandist and part of this. They said Abdulmutallab actually sought out al-Awlaki in Yemen and al-Awlaki had blessed his bomb plot and even introduced him to a bombmaker. This, according to the Obama administration, is what justified treating al-Awlaki as a man at arms earning him a place on the national secret hit list.

Williamson asked this question:

> If sympathizing with our enemies and propagandizing on their behalf is the equivalent to making war on the country, then the Johnson and Nixon administrations should have bombed every elite college campus in the country during the 1960s.

These are his words, not mine. He goes on:

> And as satisfying as putting Jane Fonda on a kill list might have been, I do not think that our understanding of the law would encourage such a thing, even though she did give priceless aid to the communist aggressors in Vietnam. Students in Ann Arbor, MI, were actively and openly raising funds for the Vietcong throughout the war. Would it have been proper to put them on kill lists?

I don't know.

Williamson said:

> I do not think that it would. There is a difference between sympathizing with our enemies and taking up arms against the country.

They aren't the same thing. We have to ask ourselves, what is the standard? Could political dissent be part of the standard for drone strikes?

You say, well, that is ridiculous. We have listed people already on Web sites and said they were at risk for terrorism for their political beliefs. The Fusion Center in Missouri listed people who were of pro-life origin and listed people who believed in secure borders for immigration. They listed people who were supporters of third-party candidates, the Constitution Party or the Libertarian Party. These people were listed in a mailing sent out to all the police in the State to be aware of these people. Be aware of people who have bumper stickers on their cars supporting these people.

That, to me, sounds dangerously close to having a standard where the standard is sympathy not for your enemies but sympathy for unpopular ideas or ideas that aren't popular with the government. That concerns me. It concerns whether we could have in our country a standard that is less than the Constitution. The Constitution is a standard where I can't imagine we would want to give up on this standard, or any President could assert a standard would not be the Constitution.

There was an article in Human Rights First which was published in December of 2012. It begins with this prefacing statement:

> We are establishing precedents that other nations may follow, and not all of those nations may—and not all of them will be nations that share our interests or the premium we put on protecting human life, including citizens.

This was a statement by John Brennan. It is a statement that actually carries some weight and should be thought through. This is the reason why I say this filibuster is not so much about Brennan as it is about a constitutional principle.

The Obama administration has dramatically escalated targeted killing by drones as the central feature of counterterrorism response.

Mr. President, at this time I have a unanimous consent request. I wish to read it into the RECORD. With this unanimous consent request, I would emphasize that this would be ending the debate and allowing a vote on Brennan. Part of this unanimous consent request would be the establishment of a vote on this resolution as well as setting a vote up on the confirmation of John Brennan to be CIA Director.

The resolution states:

> Resolved, that it is the sense of the Senate that:
>
> 1. The use of drones to execute, or to target, American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

That is the most important clause of that. I think it is important for the American people to know that apparently the other side is going to object. Object. It is important to know the majority party here in the Senate, the party of the President, is going to object to this statement being voted on. They may still vote against it if they wish, but they are going to object, I understand, to having a vote on this statement. The use of drones to execute a target, American citizens on American soil, who pose no imminent threat, clearly violates the constitutional due process rights of citizens.

What we are talking about is a resolution that says what we have been trying to get the President to say: You can't kill noncombatants. You can't kill people in a cafe in Seattle. That is what we are asking. It is blatantly unconstitutional to kill noncombatants. I can't understand why we couldn't get a resolution, particularly because I am willing to, with this resolution, move forward and let the vote occur on Brennan.

The second part of the resolution is:

> The American people deserve a clear, concise, and unequivocal public statement from the President of the United States that contains detailed legal reasoning, including but not limited to the balance between national security and due process, limits of executive power and distinction between treatments of citizens and noncitizens within and outside the borders of the United States, the use of lethal force against American citizens, and the use of drones in the application of lethal force within the United States territory.

Basically, the second part of the resolution asked, basically, we do our job and ask the President to let us know what is going on with the program. If there is an objection to this, it would be an objection to, No. 1, killing citizens who are noncombatants and, No. 2,

to giving us a report on what the program will actually entail.

Mr. President, I ask unanimous consent that at a time to be determined by the two leaders tomorrow, the Senate vote on this resolution as I just read it, and with the addition to it they then turn to the Brennan nomination or be allowed to proceed to a vote.

The PRESIDING OFFICER (Mr. HEINRICH). Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I would say to my friend from Kentucky that I am chair of the Constitution, Civil Rights and Human Rights Subcommittee of the Judiciary Committee. We are scheduling a hearing on the issue of drones, because I believe the issue raises important questions, legal and constitutional questions. I invite my colleague to join us in that hearing if you wish to testify. I think this is something we should look at and look at closely. That is why this hearing is being scheduled. I believe at this moment it is premature to schedule a vote on this issue until we thoroughly look at the constitutional aspects of all of the questions the Senator has raised today, which are important.

Because of that, I have no alternative but to object.

The PRESIDING OFFICER. Objection is heard.

Mr. PAUL. Mr. President, I am disappointed the Democrats choose not to vote on this. The answer around here for a lot of things is we will have a hearing at some later date to be determined. The problem is this is a nonbinding resolution. This is a resolution just stating we believe in the Constitution and, A, Mr. President, send us some information about your plan, how it is going to work. It doesn't change the law. In fact, I wish it could do more than that. We have an actual bill which will be introduced. We will actually try to change the law.

This is a symbolic gesture and a way to allow us to move forward. I am disappointed we can't.

This was an article that was published in Human Rights First in December of 2012. As I said, it has an opening statement by John Brennan I think is actually well thought out and recognizes some of the advantages and disadvantages of drone strikes.

John Brennan begins by saying:

> We are establishing precedents that other nations may follow, and not all of those nations may—and not all of them will be nations that share our interests.

Think about what he is saying there. Other people are going to get drones. We have already lost a drone in Iran. How long do you think it is before Iran has drones? How long do you think it is before Hezbollah has drones or Hamas has drones? I think there is a certain amount of thought that ought to go into a drone-killing program, particularly when the people who are being killed by the drones will have their own drones, I think within short order.

> The Obama administration has dramatically escalated targeted killing by drones as a central feature of his counterterrorism response. Over the past 2 years the administration has begun to speak more openly about the targeted killing program, including in public remarks by several senior officials. While we welcome and appreciate these disclosures, they nevertheless provided only limited information.
>
> Experts in other governments have continued to raise serious concerns about:
>
> The precedent that the United States targeted killing policy is setting for the rest of the world, including countries which have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights—

We would like to believe we actually have rules in place, and we would not misuse drones. Imagine what it is going to be like when countries get drones that have none of the rules, none of the checks and balances.

> The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; the impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability, and provide economic aid; the number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations.
>
> Of note and of consideration also is whether the legal framework of the program that has been publicly asserted so far by the administration comports with international legal requirements.
>
> The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. Government's strategy for a targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in the U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences.
>
> How the U.S. operates and publicly explains its targeted killing programs will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles is an increasing global industry and drone technology is not prohibitively complicated.

I will give you an idea where there is a marketplace for drones. Last year, I introduced a bill to require a warrant before you could use a domestic drone to spy on citizens. Before I introduced it or anybody knew outside my office, we already had calls in lobbying coming from drone manufacturers. So this is a big business.

> Some 70 countries already possess UAVs, or drones, including Russia, Syria and Libya, and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: The United States is ''establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians.''
>
> By declaring that it is an armed conflict with al Qaeda's ''associated forces,'' (a term it has not defined)—

I think this is an important point because everybody is always saying: Don't worry. You are fine. You are not a terrorist. We are only going after terrorists. The problem is, as I said, the government has defined terrorism in this country to mean things that may not include terrorists—paying cash, having weatherized ammunition—so there are a lot of different things they have used as a definition. But let's say they are going after al-Qaida, people working with them or associated forces—what that means I don't know, particularly since al-Qaida is a little hard to define because they do not have membership cards. Some of them probably don't use the label at all. I doubt many of them have any communication with any kind of central headquarters or central group called al-Qaida.

> By declaring that it is in an armed conflict with al Qaeda's ''associated forces,'' without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all ''members'' of such groups are legally targetable, the United States is establishing exceedingly broad precedent for those who can be targeted, even if it is not to utilize the full scope of this claimed authority. As an alternative to armed conflict-based targeting, U.S. officials have claimed that targeted killings are justified as self-defense responding to an imminent threat. . . .

The problem is we have defined imminent to be not immediate. So having a murky definition of what imminent is allows us to run into problems.

> It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al-Qaida have been killed in drone attacks, studies show the vast majority are not high-level terrorist leaders. National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial cost of the targeted killing program, including growing anti-American sentiment and recruiting support for al-Qaida.
>
> The broad targeted killing program has already strained U.S. relations with allies and thereby impeded the flow of critical intelligence about terrorist operations.

The problem is, when we talk about this, one of the most important things to our intelligence is actually human intelligence. We get information from people who are our friends, who live in those countries, who blend into the population and are part of their population. But we have gone on to destroy some of this intelligence in the sense that one of the people who helped us to

get bin Laden was a doctor in Pakistan by the name of Dr. Shakil Afridi. If we don't stand by the people who give us intelligence and give us information, we will not get more. But when he did help us, somehow his name was leaked. I don't know where the leak came from, but his name was leaked and then he was arrested by the Pakistanis. He is now in prison for the rest of his life.

I have asked several times, both to the previous Secretary of State as well as to the current Secretary of State, and I asked the current Secretary of State point-blank and directly: Will you use the leverage of foreign aid to say we are not going to give you foreign aid if you don't release this doctor who gave us information?

It is a little ironic that we will not do it, particularly since at one point in time we actually had, I think, a $25 million reward for any information that led to helping us get bin Laden. So it is kind of disappointing that we haven't held out and supported our human intelligence and people such as Dr. Afridi, who helped us get probably the most notorious terrorist of the last century.

While the U.S. Government does not report the number of deaths from drone strikes, independent groups have estimated that the drone program has claimed several thousand lives so far.

Estimates and public comments by some Senators have said as many as 4,700. What we don't know about the 4,700 but what would be an important statistic, I think, or maybe a troubling statistic, would be how many of the 4,700 were killed in combat—actually holding weapons, fighting, going to a battle, coming from a battle—and how many of the drone strikes were actually on people who weren't involved in combat. I think if that number were released, if that number were made public, it would concern you even more because you may well find out a lot of the people—and we have seen some of the strikes on television, with people in their cars, people walking around without weapons, people eating dinner, people at home in their houses. I am not saying these are good people necessarily, I am just saying the drone strike program we have in place currently seems to have a very low threshold for whom they kill. So the question would be whether you are going to use that kind of standard if you have a domestic drone strike program in the United States.

I think we are getting to the point, and that is one of the most important questions as we look at the foreign drone program, is understanding what the parameters are that allow us to kill people in foreign countries and are those the parameters that are going to be used here.

For the most part, over the last decade, they haven't admitted we even have a drone strike program. But now that they admit it, the President doesn't want to answer any questions about it. He doesn't want to deny he will use it here. He just says he isn't intending to use it here but then says: Oh, probably there will be different rules inside the United States than outside the United States.

This is where the Senate ought to get involved, instead of punting this to another time. The Senate ought to say we are not going to wait for the President to send us a memo. We are going to send him a memo. We are going to tell him what the rules on drone strikes are. We are going to tell him the Constitution does apply to Americans, particularly Americans in the United States, and there are no exceptions.

I find it inexcusable that the Attorney General says: Well, the fifth amendment, we will use it as needed, basically. We will use it when we choose. The problem with that is I don't think the executive branch should get to pick and choose.

Without yielding the floor, I am going to allow a question from my colleague from Texas.

Mr. CRUZ. I thank the Senator from Kentucky, and I want to ask the following question: Is the Senator from Kentucky aware of the reaction the American people are having to his extraordinary efforts today?

Given the Senate rules do not allow for the use of cellular phones on the floor, I feel quite confident the Senator from Kentucky is not aware of the Twitterverse that has been exploding. So what I want to do for the Senator from Kentucky is to give some small sampling of the reaction on Twitter so he might understand how the American people are responding to his courageous leadership, to Senator PAUL's doing something that in the last 4 years has happened far too little in this Chamber, which is standing and fighting for liberty.

So I will read a series of tweets.

So proud of Rand Paul standing up for what's right. Stand with Rand.

Rand Paul: a reason to be proud of your elected representatives again. Keep going, Rand.

Proud of Senator Rand Paul and all who have joined him in this effort. Stand today with Senator Rand Paul.

So happy with Rand Paul right now. Someone finally using the system to aid, not usurp, our rights.

Rand Paul filibusters Brennan nomination—over four hours now. Glad someone in the Senate has some spine.

That was tweeted a while ago.

Rand Paul is a hero today, a man with a backbone.

Today Rand Paul is my hero.

Kentucky Senator Rand Paul is a true constitutional hero in his filibuster against CIA nominee.

I can honestly say, I am proud to currently live in Rand Paul's State of Kentucky.

So proud of Rand Paul. He's bringing it. He's not going to let our constitution get trashed. A breath of fresh air. PRAY 4 THIS FIGHT 4 RAND.

I am so beyond proud of Rand Paul and the way he is standing up for each and every American citizen right now by filibustering the Senate.

I am VERY proud of Senator Rand Paul. This is an important moment when one person had the courage to yell STOP. Stand with Rand.

So proud of Rand Paul. We need more like him. Stand with Rand.

Rand Paul is now in hour 7 of his filibuster. He is standing up for our rights. Thank you. Stand with Rand.

It is frightening that Obama seeks to have an ever growing amount of power. Drone strikes are frightening. Stand with Rand.

Dear GOP. The base is crying out for more of you to stand with Rand. If you want the base's votes, get it together.

Stand with Rand. We need you now more than ever. This president has usurped his power. We can't say anything bad against him.

Stand with Rand. So long as Rand speaks, we'll be tuned in.

It is unconstitutional to target and kill Americans on American soil with a drone. Stand with Rand.

A retweet from Senator RAND PAUL. I will commend the Senator from Kentucky. He was so flexible he was able to tweet while he was standing on the floor. A retweet from Senator RAND PAUL's tweet: ''I will not sit quietly and let President Obama shred the Constitution,'' with the hashtags ''filiblizzard'' and ''Stand with Rand.''

Here is a more mixed one, but nonetheless demonstrating the respect the Senator from Kentucky is earning across the aisle.

I may not always agree with Rand Paul but he has my respect. He's very willing to do what he feels is right. Stand with Rand.

From Congressman JUSTIN AMASH:

Why won't President Obama simply state that it is unconstitutional and illegal for government to kill Americans in U.S. without due process? Stand with Rand.

Stand with Rand, because we deserve to know if American citizens should fear murder from our Government.

Everyone should be aware of this important moment in American history. Stand with Rand.

Proud to call Rand Paul my Senator. Stand with Rand.

It is unconstitutional to target and kill Americans on American soil with a drone. Stand with Rand.

The Federal Government does not have the power to kill its citizens whenever it wants. There is something called due process. Stand with Rand.

Fight for our constitutional rights and liberties. Stand with Rand.

Stand with Rand. I have gained a lot of respect for Senator Paul today. This is not a right or left issue, it is a civil liberties issue. Thank you Rand Paul and others who are taking a stand for patriotic Americans.

A great day for liberty when Senator Rand Paul and a handful of others stood up for liberty. Stand with Rand.

It is ironic that a Nobel Peace Prize winner won't guarantee that he won't use drones against Americans. Stand with Rand.

I will note to the Senator from Kentucky and ask his reaction to these—this is but a small sampling of the reaction in Twitter. Indeed, in my office I think the technical term for what the Twitterverse is doing right now is ''blowing up.''

I suggest to the Senator from Kentucky and then ask his reaction—I suggest that this is a reflection of the fact that the American people are frustrated. They are frustrated that they

feel too few elected officials in Washington stand for our rights, are willing to rock the boat, are willing to stand up and say the Constitution matters. And it matters whether it is popular or not, it matters whether my party is in power or another party is in power. The Constitution matters. Our rights matter. And I think so many Americans are frustrated that they view elected officials as looking desperate to stay in power, desperate to be reelected to do everything except fight for the Constitution and fight for our liberties, and I think this outpouring the Senator from Kentucky is seeing is a reflection of that great frustration.

I join with the sentiments of these and many others on Twitter. I ask the Senator from Kentucky if he was aware of this reaction and what his thoughts are to the many thousands more—I haven't been able to read their tweets—and their words of encouragement as the Senator from Kentucky more than anyone is standing with Rand.

Mr. PAUL. Mr. President, I thank the Senator from Texas for coming to the floor and cheering me up. I was getting kind of tired. I appreciate him bringing news from the outside world.

As you know, we are not allowed to have electronics on the floor, so I don't really have much knowledge of the electronic outside world. But actually it is probably a good thing for every American eventually not to see their phone or their computer for about 8 hours.

The thing is, people think that we should not—people are always saying don't fight, get along, and stuff. I think people do want that. I think at the same time they want you to stand up and stand for something and believe in something. It doesn't have to mean that we do it in an acrimonious way. Even the Senator from Illinois and I usually have civilized words together. There is a smile.

The thing about it is that there are principles we ought to stand for. I think the most important principle here, though, is that really this is a tug-of-war between the executive branch and the legislative branch. There may be some partisanship, that we can't all get together in the Senate to say to the President that we think his power should be restrained, but I think at the same time there are some on the other side who are saying that. Really, that is what this should be about.

It is about how much power a President can have. Can a President have the power to decide to kill Americans on American soil? But not only that, can the President have the power to decide when the Bill of Rights applies? Can you be targeted because you have been alleged to have committed some crime and your Bill of Rights is stripped away even if you are here in the United States? I think it is a pretty easy question.

Maybe someone from the media would ask the President tonight—I don't know if he is still up or not—but ask the President the question. Ask him, do you plan on killing Americans who are not in combat? Do you plan on killing Americans who are not in a combat position, people whom you might be accusing of some kind of crime but who are actually not engaged in combat? I would think it would be a simple answer. In fact, I am willing to go home if we can get an answer from the President that says: People not engaged in combat won't be on any target list. It is a pretty simple question to ask and a pretty reasonable question to ask.

After much jockeying and debate with the Senator from Texas asking the Attorney General this question, we finally did get to where it seems as though he was coming toward not trying to but being forced to say it is not constitutional to kill noncombatants.

It should be an easy question. So we will take a telegram. We will even take a tweet. If the Attorney General would tweet us, we can have that relayed to the floor and let him know—let us know that basically they acknowledge that their power is not unlimited.

I don't think this is really an overstatement of the cause. This has been written up. Glenn Greenwald has written this up. Conor Friedersdorf has written this up, talking about if you have a war that has no end, if you have a war that has no geographic limit, and then if you have strikes that have no constitutional bounds, basically what you have is an unlimited imperial Presidency.

This is not a partisan issue. A lot of this began under George Bush. It has been continued, expanded, doubled, and quintupled and made 10 times worse by the current President. But even under George Bush, nobody ever maintained they could kill Americans at home. I can't imagine that the President, when he comes forward and says he has not killed Americans and he does not intend to do it but he might—that somehow we are supposed to be placated by that. Somehow that is supposed to be enough.

This is not the first time we have seen this—not the first time we have seen a reversal of fortunes here, reversal of what I think he stood for as a candidate. I have said many times, probably 10 times today that I admired the President. I admired the President when he was a Senator on many issues. I admired the President when he ran for office. But the President who ran for office and said we are not going to tap phones without a warrant, the President who ran for office and said we are not going to torture people now says we are going to kill people with no due process? I find that incredibly hypocritical and incredibly ironic. I see no reason why he can't come forward and say: We don't get to pick and choose when the fifth amendment applies. We don't get to pick and choose when people can be accused of crime and get no adjudication and be killed by a drone.

I just cannot imagine he can't answer these questions. It is not enough to say: I don't intend to do so.

Last year when we passed the national defense authorization bill, there was included in that the ability to indefinitely detain an individual, an American citizen. In fact, I asked another Senator on my side—I said: Does that mean you can send an American to Guantanamo Bay?

He said: Yes, if they are dangerous.

That would be fine if we all agreed who is dangerous and who committed a crime, but that would be an accusation, and that would have to be adjudicated somehow, and if you don't get a trial, how do we determine your innocence or guilt or whether you are going to be sent to Guantanamo Bay?

The President, like so many times, said: I don't support indefinite detention. I would veto that.

No, no, I won't veto that this time, but I would veto that if I were still Candidate Barack Obama. But I am President Barack Obama, I am not going to veto that.

So instead he says: I have no intention of detaining anyone.

Here is the problem. It is not good enough. The law is for everybody. It is not for saying: Oh, I am a good President. I am very—I went to Harvard. I am not going to detain anybody.

That is not enough. The law is what the law is. If the law allows you to be detained as an American citizen, what about the next guy who is not so high-minded, the next guy who decides he is going to detain political opponents and ethnic groups or people he dislikes? What happens when that happens? It is not enough to say: I don't intend to do something.

I would think the leader of the free world, the leader of I think one of the most important nations if not the most important nation or civilization we have had in historic times—I have high hopes and high estimation of who we are as a people. It is not enough for him to say: I don't intend to break the Constitution. You either believe in the Constitution or you do not.

I think illustrative of sort of this opinion was when I interviewed or asked questions to Senator Kerry when he was being nominated. I asked him these questions about, can you go to war without a declaration of war.

His answer was, oh, of course I will support the Constitution, except for when I won't support the Constitution, when it is inconvenient. It is sometimes hard to go to war, it is messy, there is all this voting stuff, and people don't want to vote to go to war, they don't want to raise taxes. It is just hard to get the votes for war. So when it is inconvenient, I will not.

That is the problem.

He asked me or sort of insinuated that I was an absolutist. I don't know how to halfway believe that Congress should declare war. I don't know how to halfway believe in the fifth amendment. This is not one we are even debating exactly what it means, what the

establishment clause of the first amendment means. There is really not a lot of debate over what due process is. When you are accused of a crime, when you are accused of something, you are indicted. When you are accused, you get a trial, you get due process. Nobody is really debating what that means. Yet the Attorney General for this President has said that the fifth amendment will be applied when they can.

To be fair, I think he is referring to foreign strikes. He is talking about foreign strikes. To tell you the truth, it is kind of muddled, whether the Constitution applies to people in foreign lands or in foreign zones. But that is the whole point of this. The point is that this is America. We are not talking about a battlefield. We are not talking about people using legal force. If you are in America, if you are outside the Capitol and you have a grenade launcher, you will be killed without due process. You don't get due process. You don't get an attorney. You don't get Miranda rights. Nobody thinks that you do. But if you are sitting in a cafe, and somebody thinks you e-mailed your cousin in the Middle East, and they think you are conspiring with them, you should be charged. You should be imprisoned if they can make the charges stick. But they should not just drop a Hellfire missile on your cafe experience.

We have to realize and the President above all people—someone who taught constitutional law should realize that his opinion is not so important. Even as the President, it is not so important. For him to say that he doesn't intend to kill people—I would defy a constitutional lawyer in our country to say that is important. The law is what it is, and he is going to give us a legal interpretation of the law and not what his intent is. To say he hasn't killed anybody yet, to say he has no intention of killing anybody but he might, is just not a legal standard I chose to live by. It concerns me.

It concerns me that we have documents in the United States that are produced by the government that indicate people who might be a terrorist. The Bureau of Justice came out with one last year, and it said people who are missing fingers, people who have colored stains on their clothes, people who have more than 7 days of food might be terrorists. Ironically, another government Web site says that if you live on the coast, you should have 7 days of food because there might be a hurricane, you might need to have the food. But another Web site says that if you do, you might be crazy and a lunatic and a survivalist, and you might be someone we might need to target with a drone. If you see somebody hiding this, you are supposed to report them. If you hear of people who have guns in their house or lots of weatherized ammunition or ready-to-eat meals, they could be on the target list. Of that is whom we are targeting to be terrorists, I would certainly want a trial. I just wouldn't think it would be enough to be accused.

People say: Oh, well, they are just members of al-Qaida, but they don't have a membership card. I don't know that we have looked at anybody's because they are dead; they were blown up with a missile, so no one is looking at their al-Qaida membership card. The thing is in the United States they might say someone is associated with al-Qaida or associated with terrorism. We have had experience with government offices and officials talking about people who might be terrorists.

The Fusion Centers in Missouri said people who are pro-life might be terrorists. They said people who are for secure borders might be terrorists. They said the people who vote for the Constitution Party or the Libertarian Party might be terrorists. So if they believe in signature strikes, I guess if we see the traffic going to the Libertarian Party Convention, that could probably hit a caravan and hit a whole bunch of them at once.

People say that is absurd. The President is not advocating that. He is advocating a drone strike in America, and all we have to compare it with is the drone strike overseas. He doesn't want to talk about it, but when forced to, he says the rules will probably be slightly different inside the United States than they will be outside the United States. I guess he does believe he has a right to have a drone strike program in the United States. He will just have slightly different rules.

I have an important question for him. He needs to give me a call. Is one of the rules of inside the U.S. drone strike program to obey the Constitution that a person will get a trial by a jury of their peers? Is that going to be in the rules for inside America as opposed to outside America?

It is disturbing that it has been so hard to get any information on this. I wouldn't have gotten any information at all—I don't think—had we not gotten some support from the other side.

The Senator from Oregon stood in the committee. In fact, he asked the question before I did. I was fascinated he asked the question. Senator WYDEN stood in the Intelligence Committee and asked: Can you do a drone strike on Americans on American soil? John Brennan's response—I kid you not—we need to optimize transparency and we need to optimize secrecy. That was his answer. Here is the followup question: What does that mean? Does that mean you can kill Americans on American soil? What are you trying to say or what are you trying not to say? To Brennan's credit, he finally answered the question only when there was a threat of him not getting out of committee—thanks to the bipartisan support of Republicans and Democrats threatening to hold him up. He finally got out, but on the day we threatened to hold him up, he finally responded.

I sent him questions a month and a half previously, and I finally got an answer after the threat of his nomination not coming out of committee. This is not the way it should work. The President is bragging about how transparent the guy is, that he believes in transparency, that he is such a high-minded fellow, but he won't give any answer unless someone forces him to. The same thing with the President.

So we finally get an answer and John Brennan says: Well, the CIA cannot kill people in the United States, it is against the law. Yes, we knew that. Thanks. Thanks for admitting you are going to obey the law. We feel blessed that you said you will now obey the law. But it is sad that it took a month and a half—and under severe duress—that they have admitted they will obey the law and the CIA will not kill you in America.

The problem is it is kind of a tricky answer because they are not the ones running the drone program. The Defense Department runs the program. You can be sure the CIA is not going to kill you, but the Defense Department might. Still the answer is: We haven't killed anybody yet. We don't intend to, but we might. So that is what we are going to have to be satisfied with.

So we got the answer from the Attorney General, and his was a little more detailed and actually had some good things in it. Basically, he concluded by saying they could conceive of a place where someone could get attacked or where the United States might attack Americans, but the examples they came up with were not what we were asking about. So it is sort of akin to answering a question but answering the question that wasn't asked.

They said: Well, if planes are flying at the Twin Towers and if Pearl Harbor is happening again, obviously, we could see a use for drone strikes. Well, me too. I mean, if we are being attacked and there is a war or even if there is a person with a grenade launcher, we have the ability to respond to that. No one is questioning that. The reason this question comes up is that a significant portion of the drone strikes overseas are occurring on people who are not involved in combat.

Now there are allegations that there are bad people and they may have been in combat but are not currently in combat. The question is: Are we going to use the foreign drone strike model in the United States? Are we going to kill noncombatants in the United States? Are we going to kill people whom we suspect? That sort of gets us to the other question when we talk about what rules and procedures we expect in our country. Do we expect that the police would come and arrest you and put you in jail for the rest of your life because they suspect something? Is suspicion enough? Obviously not. We believe that is the beginning of it. Usually, it involves probable cause and involves a judge to get information.

I have a message here—not from the White House. It is a message saying the White House hasn't returned our phone

calls. If anybody knows anybody at the White House and wants to come, we are looking for an answer from the White House. We have called Justice also. I think the answer says something about the sequester. Maybe they are going to call me when the sequester is over.

I think one of the courtesies they ought to think about is—particularly if what they are hearing is something that they don't object to—why not end the debate by going ahead and letting us know? Why not go ahead and let us know they agree they are not going to be killing noncombatants. I would think that would be a pretty easy answer for them. In negotiating with any kind of executive branch—this one or others—that when we get a nonanswer or a nonresponsive answer or get a refusal to answer, I think that is when we need to be concerned that the answer is not the answer they want to be public. It is an answer that perhaps the fifth amendment will be optional depending on who is judging the circumstances.

As we look forward and look at some of the information that has been gathered over time on this, one of the interesting articles we have collected on this was an article in the Los Angeles Times entitled ''Police employ Predator drone spy planes on the home front.'' This is an article by Brian Bennett.

Reporting from Washington—Armed with a search warrant, Nelson County Sheriff Kelly Janke went looking for six missing cows on the Brossart family farm in the early evening of June 23. Three men brandishing rifles chased him off, he said.

Janke knew the gunman could be anywhere on the 3,000-acre spread in eastern North Dakota. Fearful of an armed standoff, he called in reinforcements from the state Highway Patrol, a regional SWAT team, a bomb squad, ambulances and deputy sheriffs from three other counties.

He also called in a Predator B drone.

As the unmanned aircraft circled 2 miles overhead the next morning, sophisticated sensors under the nose helped pinpoint the three suspects and showed they were unarmed. Police rushed in and made the first known arrests of U.S. citizens with help from a Predator, the spy drone that has helped revolutionize modern warfare.

But that was just the start. Local police say they have used two unarmed Predators based at Grand Forks Air Force Base to fly at least two dozen surveillance flights since June. The FBI and Drug Enforcement Administration have used Predators for other domestic investigations, officials said.

''We don't use [drones] on every call out,'' said Bill Macki, head of the police SWAT team in Grand Forks. ''If we have something in town like an apartment complex, we don't call them.''

The drones belong to U.S. Customs and Border Protection, which operates eight Predators on the country's northern and southwestern borders to search for illegal immigrants and smugglers. The previously unreported use of its drones to assist local, state, and federal law enforcement has occurred without any public acknowledgement or debate.

Congress first authorized Customs and Border Protection to buy unarmed Predators in 2005. Officials in charge of the fleet cite broad authority to work with police from budget requests to Congress that cite ''interior law enforcement support'' as part of their mission.

In an interview, Michael C. Kostelnik, a retired Air Force general who heads the office that supervises drones, said Predators are flown ''in many areas around the country, not only for federal operators, but also for state and local law enforcement. . . .''

But former Rep. Jane Harman (D–Venice), who sat on the House homeland security intelligence subcommittee at the time and served as its chairwoman from 2007 until this year, said no one discussed using Predators to help local police serve warrants or do other basic work.

Using Predators for routine law enforcement without public debate or clear legal authority is a mistake, Harman said.

''There is no question that this could become something that people will regret,'' said Harman, who resigned from the House in February and now heads the Woodrow Wilson International Center for Scholars, a Washington think tank.

The point is it isn't so much about technology. I am not opposed to drones being used even domestically. It is about the individual freedom, it is about the process, and it is about how they are used. For example, just like in national defense, if someone is robbing a liquor store and it is safer to get the robber down with a drone, that is fine. If someone is armed and robbing and threatening people in the liquor store and people as they come out, I don't mind if that person was shot with a drone or a rifle from a policeman. It is what it is. As one of my friends who is a physician would say when people would come in wounded from robbing someone: Well, I guess that is an occupational hazard if you break into homes. The thing is it isn't the force we are talking about, it is whether the process is right. So they can use lethal force when lethal force is threatened. The question about drones is whether they are being used with warrants, if they are spying on someone or doing surveillance on someone.

One of the bills we introduced last year was a bill to require warrants for drone surveillance. This is a hot topic, and I think it will probably get up to the Supreme Court. I don't believe it has yet. There were cases that were talking about GPS tagging of cars, and the Supreme Court ruled they cannot do that without a warrant.

My suspicion is they will rule in favor of warrants on drones too. Although there is some dispute over what they call open spaces. I think that with open spaces we need to be concerned that just because you are not inside your house does not mean you don't still deserve some privacy on your own land. So it is not so much that the drone is necessarily our enemy, but it just allows the government to do so much more. We need to be very careful about the safeguards of the Constitution and requiring whether these safeguards are met as far as protecting our liberty.

This is from the same article from the Los Angeles Times:

In 2008 and 2010, Harman helped beat back efforts by Homeland Security officials to use imagery from military satellites to help domestic investigations. Congress blocked the proposal on grounds it would violate the Posse Comitatus Act.

The Posse Comitatus Act is pretty important and it has been part of our discussion today and we are not the first person to raise this. The military is not authorized to operate in the United States. Some may say: Why not? The reason is they operate under different rules of engagement than our police do. In Afghanistan, Iraq or in any kind of war theater, they have warrants, they don't have Miranda rights, and they don't get due process in war. At home we do. That is why it is important we get folks to acknowledge this is not a battlefield. America is not a battlefield. It is a place where we have constitutional rights and have for hundreds of years.

The Posse Comitatus Act—after the Civil War—regulated and prohibited the military from acting as a police or taking a police role on U.S. soil. Proponents say the high resolution cameras, heat sensors, and sophisticated radar on the Border Protection drones—and this is the other point—were legislated to be used on the border.

One could argue that there is a Federal role for monitoring borders for national defense and other reasons, but now they are loaning them out to local law enforcement and law enforcement is also buying drones directly. So they have high-resolution cameras, heat sensors, and sophisticated radar on the Border Protection drones that can help track criminal activity in the United States just as the CIA uses predators and other drones to spy on militants in Pakistan, nuclear sites in Iran, and other targets around the globe.

For decades, U.S. ports have allowed law enforcement to conduct aerial surveillance without a warrant. This is part of that sort of open spaces doctrine. I am not saying it makes it right but that the government has been doing it for decades. Some of the courts apparently have ruled that what a person does in the open—even behind a backyard fence—can be seen by a passing airplane and is not protected by privacy laws. I don't think I agree with that. If a person is swimming in their pool in their backyard or in the hot tub, just because we have the technology to be able to see them in their hot tub, does that mean they have a right to look at what people are doing in their backyard? I don't accept that. I think it has been abused and we should be fighting against this surveillance state.

Advocates say Predators are simply more effective than other planes. Flying out of earshot and out of sight, a Predator B can watch a target for 20 hours nonstop, far longer than any police helicopter or manned aircraft.

What I would say there is it seems as though that might be somewhat analogous to the GPS case. The Supreme Court ruled that you can't tag people's

cars and watch them constantly, waiting to see if they break any laws. So I would think the same for a Predator, that you stake them out, watch, and you will eventually get somebody breaking the speed limit or running a stop sign. I don't think that is what was intended.

Howard Safir says, ''I am for the use of drones.'' He is the former head of operations of the U.S. Marshals Service and former New York City police commissioner. He said, ''Drones could help police in manhunts, hostage situations and other difficult cases.''

I agree completely. If someone is being held in harm's way, if someone is being held and threatened, drones are a great idea. So it is not that I am opposed to the technology. I am not particularly excited about them hovering outside our windows looking over our shoulders at what magazines we read, whether we are reading any free market magazines that might be offensive to government officials. So I think we don't want people looking into our activities in our houses without a warrant. But I think in situations where people have already broken the law, there is lethal force being exposed and there are people in danger, why wouldn't we want to use a drone versus a policeman to save the life of a policeman going into a difficult situation. So I think those probably will come to fruition. That doesn't bother me.

In some ways it is a little bit analogous to the situation we are talking about with drone strikes by the military in the United States. It is not so much that anybody is opposed to using a drone to shoot down a plane that is flying in to attack us, or people who are flying into a building to knock a building down, or flying into the Capitol. Nobody is opposed to using a drone when there is a lethal imminent force. The problem is it has gotten so convoluted. The President said an imminent threat doesn't have to be immediate. So that is the kind of thing we are concerned about. We are not concerned about an imminent or lethal threat where someone responds. What we are concerned about is a drone strike against a noncombatant. It seems as though it ought to be an easy question for the President. Couldn't he at least respond and say, I have always believed this, I just forgot to mention it, and we weren't very clear in the way we expressed it but, obviously, we would never use a drone against a noncombatant. He needs to say that, though, because the drones overseas are being used against noncombatants and we need to know what the rules are going to be.

This is a long, drawn-out day, but it is to try to get some answers. It is to try to shame the President into doing the right thing. I think he knows what the right thing is. I think the President, part of him would like to do the right thing. But I think there is a certain stubbornness there too. I think there is a certain belief that he is the President and Presidents have all this power and he doesn't want to give up any of that power. I think some of that we see with Republicans and Democrats, frankly. When people leave the legislative branch and go to the White House, they think, I am a good person. I would never use power wrongly, so why would it be wrong if I got more power? Why would it be wrong if I said, I am going to use the fifth amendment, people will get due process, except for sometimes when I think they are bad people, and then I won't use the fifth amendment, they won't get due process.

Privacy advocates say that drones help police snoop on citizens in ways that push current law to the breaking point. Ryan Calo, director for privacy and robotics at Stanford Law School's Center for Internet and Society, says:

> Any time you have a tool like that in the hands of law enforcement that makes it easier to do surveillance, they will do more of it. This could be a time when people are uncomfortable and they want to place limits on that technology. It could make us question the doctrines that you do not have privacy in public.

I think that is a good point. Maybe we will question some of the things we have said before about open spaces now that we can crisscross every inch of our open spaces. We have to imagine that we now have drones that weigh less than an ounce, so we are not even talking about the pictures of you coming down—some of us after a while don't want pictures of us in our bathing suit, whether it is 2 miles up or whether it is from 5 feet in front of us. So I can't imagine we would eventually rule that a drone could swoop down and be 10 feet over our fence. What is the question going to be? Can they be 10 feet over our fence or 2,000 feet in the air and still snoop without any kind of problem at all?

Do we want to live in a police state is basically what the question is. Do we want to live in a surveillance state? It is going to take people to stand up and say enough is enough, that we are not going to do this, instead of everybody being like a herd of lemmings and going off the cliff saying, ''Lead me, lead me, take care of me.''

We have to ask the question that Franklin asked: Are you going to trade your liberty for security? Are you so fearful, are you so afraid that you are willing to trade your liberty for security? That is sort of the underlying question to this entire debate.

The Los Angeles Times article continues:

> This can be a time when people are uncomfortable and they want to place limits on that technology. It could make us question the doctrine that you do not have privacy in public.

This is from a June 13 article, 2012, in ''Wired'' magazine by Lorenzo Franceschi-Bicchierai:

> We like to think of the drone war as something far away, fought in the deserts of Yemen or the mountains of Afghanistan. But we now know it is closer than we thought. There are 64 drone bases on American soil. That includes 12 locations housing Predator and Reaper unmanned aerial vehicles, which can be armed.
>
> Public Intelligence, a non-profit that advocates for free access to information, released a map—

which is probably not a very good idea to release a map of where our drone bases are in the United States.

> The possibility of military drones as well as those controlled by police departments and universities flying over American skies have raised concerns among privacy activists.

The other thing that should concern everybody, and probably people saw this as they had some university students seeing if they could commandeer a drone. So they had a drone fly over and the guy who didn't know the frequency all of a sudden within 2 minutes is commandeering the drone. There are questions whether that is what happened in Iran or whether the thing landed accidentally. I don't know the answer to that, but I think it is of concern that the drones could be commandeered and used by the people. It is also a concern that ultimately our enemies are going to have these drones too, and so while war is a messy thing and there are a lot of imperfections to war, I think the way we act in war should be the way we ultimately want to be treated in war. It is easier said than done and I don't think it is an easy doctrine, but it is something I think we should aspire to.

> The possibility of military drones as well as those controlled by police departments and universities flying over American skies has raised concerns among privacy activists. The American Civil Liberties Union explained in its December report that the machines potentially could be used to spy on American citizens. The drones' presence in our skies threaten to eradicate existing practical limits on aerial monitoring and allowing for pervasive surveillance, police fishing expeditions, and abusive use of these tools in a way that would eventually eliminate the privacy Americans have traditionally enjoyed in their movements and activities.

I have told people that when I first read ''1984,'' I was bothered by it. Everybody is bothered by Big Brother being able to have these two-way televisions in your house and they see everything you do. You can't escape Big Brother. But part of the consolation I had and part of the feeling was, Well, they can't do this. The technology doesn't exist. When I was a kid it didn't exist.

It is amazing, though, to think that Orwell writes this in 1949, before any of this technology. We were getting closer in the 1970s when I was a kid and now we are there, though. The technology is there. So while technology is not an enemy and technology is not something we can or should ban, technology makes our privacy more important, it makes the defense of our privacy something that needs to be guarded more jealously, because our government now does have the technology to see our every movement, to monitor our every move. So do our enemies, for that matter. So one can imagine, we don't want

the police GPS tracking us and we probably don't want our political opponents tracking our car, either. So there have to be some protections of privacy.

The issue and discussion of privacy has been one that conservatives and people on the right haven't always been as unified about. Libertarians on the right have been better with these issues and some conservatives have as well. But the question has always been, Do you have a right to privacy? I have always said, Sure, you have a right to privacy. I can't imagine why you wouldn't have a right to privacy.

Some on the conservative side say, Well, you don't have a right to privacy; nobody talked about it in the Constitution. You don't necessarily have a right to privacy. I have to disagree because I think what is talked about in the Constitution are the freedoms we gave up or agreed to have limited. The freedoms that you didn't agree to have limited are unnamed. They are unenumerated. And the 9th and 10 amendments say they are to be left to the States and people. The 9th and 10th amendments say that there is a plethora of rights, there is an unlimited amount of rights and they are yours. They stay with you, unless the government explicitly takes these rights away from you.

So the conclusion I come to with the right to privacy is I think you do have a right to privacy. I think we have a right to private property. Private property isn't listed in the Constitution, either, but I think all of our Founding Fathers believed in private property and some of them talked about actually putting the words in there. But I think some of them liked more the idea—instead of life, liberty, and property, they liked life, liberty, and the pursuit of happiness, and I think it has a more noble ring to it because it is not talking about the property, but pursuit of happiness does involve the pursuit of gaining things you will own.

One of the things about our government and about the rule of law, and one of the things that frankly I think a lot of people don't think about but that makes us an incredibly prosperous Nation is the certainty of the law. By that, what I mean is the certainty of ownership. This gets to sort of the idea of not only do we want these rights for the civil protections so we can't be incarcerated or accused of a crime falsely without being able to defend ourselves, we also want the rule of law to be consistent for everyone and not mutable. We don't want it to be arbitrary. We don't want the whims of any politician or any executive to be able to decide what the law is.

This isn't the first time I have had some disagreement with the President on this. When we had some of the bankruptcies, when the car companies were going bankrupt, I believe it was with the Chrysler bankruptcy, that as things went through, there were people who were creditors and they owned part of the company.

I learned this firsthand because I actually had some Fruit of the Loom. When Fruit of the Loom went bankrupt, I thought, well, I will get something, right? They will be bought out, and I will get some money when they are bought out. I did not get anything. I was an unsecured creditor. Apparently, in the Chrysler thing, so were the labor unions.

Usually what happens is that as a company, unfortunately, goes bankrupt, all those contracts would be renegotiated, and really then the car companies could become competitive. They could become like Toyota or other successful companies that are nonunionized. And they might become successful again.

But instead we took the actual bankruptcy law and turned it on its head. When we do this and when we bail out banks and things and change the rules at midpoint, it changes what investors do, and it changes that certainty investors need either in banks or in car companies.

Pension plans invest in a lot of these things. So a lot of people think, oh, well, the President had preference for the union because he liked the union. Well, that is fine. But teachers are in a union too, and they had a pension plan, and they owned Chrysler stock, and they got ripped off because he changed the law and gave the money to the autoworkers' union. But he took it from somebody else.

The problem is that you need those pension funds, some of which are for regular working folks. Firemen have them. Police have them. Teachers have them. It is one of the things that were not fully explained in the Romney campaign. He got so much grief for running these funds, but a lot of the people who became successful along with him and who made money were just average, ordinary citizens who are teachers, firemen, and policemen. Their pension plan was there in Bain Capital. I think that was never fully explained.

But my point is, with the rule of law, that certainty is what creates wealth in our country. One of the reasons it is hard for Africa to get ahead—Africa has great resources—diamonds and minerals. One of the big reasons they do not get ahead is there is corruption in their government. Some of that corruption we aid and abet because we give foreign aid directly to corrupt governments that steal it.

Mubarak was one of the richest men in the world—probably worth between $5 and $10 billion, maybe between $15 and $20 billion. We gave him $60 billion, so I guess we should be thankful he only stole one-third of it. Mobutu in Central Africa stole billions. There was no running water, no electricity. He and the soldiers around him lived high off the hog, and they took our money and stole it as well.

But the problem is that not only do you have the kleptocracy and the stealing of foreign aid, but then you do not have the certainty of your property. A lot of capital formation in our country is based on your home loans. It used to be before the housing market went south, but it still is. It is where a lot of capital comes from, particularly for average, ordinary citizens borrowing against their house.

If you do not have that certainty of the law, it is a problem. So what we are talking about today is more certainty of your liberty from unfair prosecution or unfair arrest or unfair death, ultimately, from a drone, which takes consistency of law, which takes that the Constitution will be adhered to and will be adhered to consistently and not in an arbitrary fashion. So it is important not only for your civil liberties, it is also important for your private property as well to have a rule of law.

People talk about a rule of law, and they talk about it all the time. I do not think it fully gets through to everybody exactly what a rule of law means and how important it is. Hayek wrote that nothing more clearly distinguishes an arbitrary society from a stable society than the rule of law. He said that the rule of law is what gives that certainty to the marketplace. So it is not enough just to have freedom. You can have complete and random anarchic freedom, and you may well not get prosperity if you do not have a law that stabilizes things. You have to have a police force and a judiciary that enforces contracts.

So that is a lot of what goes on in the developing world that they do not have. They have kleptocracy, which we aid and abet by giving them money and giving it to thieves because the thieves are our friends, not somebody else's friends. But then they also have this instability by not having a rule of law.

> The drones' presence in our skies ''threatens to eradicate existing practical limits on aerial monitoring . . .

This comes from an article in Wired by Lorenzo Franceschi-Bicchieri.

> As Danger Room reported last month, even military drones, which are prohibited from spying on Americans, may ''accidentally'' conduct such surveillance—and keep the data for months afterwards while they figure out what to do with it.
>
> The material they collect without a warrant, as scholar Steven Aftergood revealed, could then be used to open an investigation.
>
> The Posse Comitatus Act prohibits the U.S. military from operating on American soil . . .

So once again, if we go back to asking the President this question: Can you do military strikes on Americans on American soil, you know an easy answer is, I will obey the law. The law says he cannot do it. Yet he indicates that he is going to have different rules inside America than outside America for his drone strikes, which implies that he thinks he can do it.

The Posse Comitatus Act expressly forbids the military from operating in the United States. So if he is going to kill Americans in America, it will either be in defiance of the Posse Comitatus Act or he is going to have to arm the FBI with drones to kill people.

The problem is that I think once he gets into the FBI, the ludicrous nature of what he is asserting will really be paramount. I cannot imagine that he can argue at that point that we are not going to obey the Bill of Rights with the FBI because we already do with the FBI.

So many of the answers are pretty simple here and pretty easy, and I just cannot imagine why he is resisting doing this.

This new map comes out almost two months after the Electronic Frontier Foundation revealed another one, this time of public agencies—including police departments and universities—that have a permit issued by the Federal Aviation Agency to use [drones] in American airspace.

''It goes to show you how entrenched drones already are,'' said Trevor Timm, an EFF activist, when asked about the new map. ''It's clear that the drone industry is expanding rapidly and this map is just another example of that. And if people are worried about military technology coming back and being sold in the US, this is just another example [of] how drone technology is probably going to proliferate in the US very soon.''

This is another article from February of 2013.

This is in Wired. It is called ''Domestic-Drone Industry Prepares for Big Battle with Regulators.''

For a day, a sandy-haired Virginian named Jeremy Novara was the hero of the nascent domestic drone industry.

Novara went to the microphone at a ballroom in a Ritz-Carlton outside Washington, D.C. . . . and did something many in his business want to do: tenaciously challenge the drone regulators at the Federal Aviation Administration to loosen restrictions on unmanned planes over the United States. Judging from the reaction he received, and from the stated intentions of the drone advocates who convened the forum, the domestic-drone industry expects to do a lot more of that in the coming months.

There's been a lot of hype around unmanned drones becoming a fixture over U.S. airspace. . . .

You may have seen just 2 days ago, I think, a pilot coming into New York City saw one on the way down. And I saw the report, I think yesterday, saying they are still asking whose drone it was. You would think certainly we would have found out in 24 hours. I would think for certain it probably would be a government drone. But it is a little worrisome that they are seeing drones, that they do not know who is flying them or where they are as far as getting in the way of our commercial airliners.

There's been a lot of hype around unmanned drones becoming a fixture over U.S. airspace, both for law enforcement use and for operations by businesses as varied as farmers and filmmakers.

It sort of leads to another point—that it is not the technology that we are opposed to. There are going to be all kinds of private uses for drones. There have to be some rules for where they are flown so they do not get in the way of airplanes. But I would think farmers and ranchers might want to use drones to, I don't know, count their cattle or their sheep. I do not know if you do that. But there are going to be private uses for these drones that will not be objectionable.

All have big implications for traditional conceptions of privacy, as unmanned planes can loiter over people's backyards and snap pictures for far longer than piloted aircraft.

The government is anticipating that drone makers could generate a windfall of cash as drones move from a military to a civilian role. Jim Williams of the Federal Aviation Administration told [a conclave of the drone manufacturers conference] that the potential market for government and commercial drones could generate ''nearly $90 billion in economic activity . . . ''

But there's an obstacle: the Federal Aviation Administration.

The FAA has been reluctant to grant licenses out of fear that the drones, which maneuver poorly, have an alarming crash rate, and are spoofible, don't have the sensing capacity to spot approaching aircraft, which could complicate and endanger U.S. airspace.

The FAA has been criticized some by—there is a group called the Electronic Frontier Foundation—for not being transparent about its licenses. And they have filed Freedom of Information Act because they would like to know whether the intentions of those putting the drones up is benign or whether it involves some kind of surveillance.

We talk a lot about the government spying on us, but I think there is great potential for your competitors, your enemies, and other people to spy on you with drones, particularly as they become cheaper. Those issues will be complicated. I think one way to sort of rectify or give an answer to those is to say your property from where it starts on the ground up is yours. People can fly over it, but I do not think they should be able to snoop and look down in it—I think probably private or public looking down on your property. That will be something, though, that the courts will continue to have to work out.

There was a push last year by Congress and the Obama administration directing the FAA to fully integrate unmanned aircraft into American skies. It has not been nearly enough for the drone makers. The FAA is months late in designating six test sites for drones around the country. The question is when the test site selection will begin. ''I'm sure that's what all of you are asking now,'' says Williams, the head of the FAA's drone division.

Drone makers are also frustrated by the logic of existing FAA regulations. Currently, a drone weighing under 55 pounds, flying below 400 feet within an operator's line of sight and away from an airport is considered a model airplane and cleared to fly without a license. That is, if it is not engaging in any for-profit activity—sort of. ''A farmer can be a modeller if they operate their aircraft as a hobby or for recreational purposes.''

Enter Novara, a 31-year-old who owns a small drone business in Falls Church, Va. called Vanilla Aircraft. ''If a farmer, who hopefully is profit-minded, can fly as a hobbyist an unmanned aircraft,'' Novara challenged Williams, ''why can't I, as the owner of an unmanned aircraft company, fly as a hobbyist my own unmanned aircraft over property that I own? The guidelines before this were that any commercial intent is prohibited, but . . . ''

The bottom line is that there is going to be a lot of things we are going to enter into with private drones. But opposition to the technology, either for military purposes or for private purposes, is not something we are going after. What we are talking about is whether your privacy will be respected and whether your constitutional rights will be protected.

This is a new article from today by Conor Friedersdorf. It is called ''Killing Americans on U.S. Soil: Eric Holder's Evasive, Manipulative Letter.''

On December 7, 1941, Japanese warplanes bombed the U.S. naval base at Pearl Harbor, Hawaii. Six decades later, al-Qaeda terrorists flew hijacked airplanes into the World Trade Center and the Pentagon. Neither President Roosevelt nor President . . . Bush targeted and killed Americans on U.S. soil in the aftermath of those attacks. Doing so wouldn't have made any sense.

How strange, then, that Attorney General Eric Holder invoked those very attacks in a letter confirming that President Obama believes there are circumstances in which he could order Americans targeted and killed on U.S. soil.

It is kind of strange. The things that he gives as justification are things in which we did not kill Americans.

It's possible, I suppose, to imagine—

These are Eric Holder's words now.

It's possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use force if necessary to protect the homeland in the circumstances of a catastrophic attack like what happened in 1941 and again on 9/11. This very scenario to be guarded against is a President using the pretext of a terrorist attack to seize extraordinary powers. Isn't that among the most likely scenarios for the United States turning into an authoritarian security state?

To be sure, if Americans are at the controls of fighter jets en route to Hawaii, of course Obama could order that they be fired upon. If Americans hijacked a plane, of course it would be permissible to kill them before they could crash it into a building. But those are not the sorts of targeted killings we are talking about. What we are talking about is killing people not engaged in combat because you suspect them of being a terrorist.

If you read to the end of Holder's letter, to the passage where he said—

This is Friedersdorf again.

If you read to the end of Holder's letter, to the passage where he says, ''Were such an emergency to arise, I would examine the particular facts and circumstances before advising the president on the scope of his authority,'' it becomes clear that, despite invoking Pearl Harbor and 9/11, even he isn't envisioning a response to an attack in process, which would have to happen immediately. So what does he envision? If he can see that a

''for example'' is necessary to explain, he ought to give us a clarifying example rather than a nonsensical one that seems to name-check events for their emotional resonance more than for their aptness to the issue.

Elsewhere in his letter, Holder writes that ''the US government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter moreover, we reject the use of military force where well-established law enforcement authorities in the country provide the best means for incapacitating a terrorist threat.'' Interesting they reject it ''as a policy matter,'' but aren't willing to reject military force in the United States as a legal matter—

That is a good distinction—

even in instances where law enforcement would better incapacitate the threat. For the Obama Administration, conceding that the executive branch is legally forbidden to do certain things is verboten,—

So it is kind of interesting. When they are willing to admit to any kind of limitations on their power they say: ''Policywise'' they might be limited, but they are not willing to say ''legally'' they are limited. This is a problem of not just this administration, but the previous one of thinking that any kind of inch that they give to another branch of government, that they will be losing some of their power and they are unwilling to do it.

Friedersdorf goes on to say that:

For the Obama administration, conceding that the executive branch is legally forbidden to do certain things is verboten, despite the fact that an unchecked executive is much more dangerous than the possibility of a future President failing to do enough to fight back against an actual attack on our homeland.

Any thinking person can see that Holder's letter is non-responsive, evasive, and deliberately manipulative in its sly reassurances, right down to the rhetorically powerful but substantively nonsensical invocation of 9/11. (Being more subtle about it than Rudy Giuliani doesn't make it right.) To credulously accept this sort of response on an issue as important as this one is behavior unfit for any citizen of a free country, where safeguarding the rule of law is a civic responsibility. The time to discuss the appropriate scope of the president's authority is now.

I know many would rather defer this, they would rather do this at another time. But the thing is, it is now. We brought the issue up. We have spent a lot of time on this issue. Why not have a discussion, instead of putting me off and saying: Oh, we will have a committee hearing on it. Sorry you are not on that committee, but we are going to have a committee hearing on this at a later date. It will never be discussed. Nothing ever happens around here. I mean, they promise you stuff. They say: We are going to take care of it. But it never happens. I think it never will.

The time to discuss the appropriate scope of the president's authority—

This is Friedersdorf again.

The time to discuss the appropriate scope of the president's authority is now, not in the aftermath of a catastrophic attack on the nation, as Holder suggests. The fact that he disagrees speaks volumes about team Obama's reckless shortsightedness.

This is another article from Wired. This is from today. This is by Spencer Ackerman.

The Obama administration calls it ''targeted killing.'' Steven Segal would call it getting marked for death. It's the practice of singling out an individual linked to a terrorist group, for killing, and it's been played out hundreds of times in the 9/11 era—including more recently against U.S. citizens like al-Qaida's YouTube preacher Anwar al-Awlaki. The Obama team has said next to nothing about how it works or what laws restrict it. Until Monday.

Attorney General Eric Holder explained the administration's reasoning for killing American citizens overseas—and only overseas—with drone strikes and other means during a Monday speech at Northwestern University. Holder claimed that the government can kill ''a U.S. citizen who is a senior operational leader of al-Qaida or associated forces'' provided the government—unilaterally—determines that citizen poses ''an imminent threat of violent attack''—

Once again, a little bit of a problem on the imminent doctrine is that ''imminent'' does not have to mean ''immediate.''

—he can't be captured; and ''law of war principles,'' like the use of proportional force and the minimization of collateral damage, apply.''

The reason why some of this is important—even though he is talking about overseas now and not what we are trying to talk about here is that since we have not been given sort of the parameters for how they will kill Americans in America, we can only assume that they will work with the parameters they have overseas. The whole idea that an imminent threat is not immediate is problematic no matter where that doctrine is used.

The idea that the law-of-war principles—I think proportional force is a good idea as far as trying to restrain how much force we use. But there are other things within the law of war that we need to be concerned about; things that happen in war are not quite the same kind of standard that we would have in the United States.

Ackerman goes on and he says:

This is an indicator of our times.

This is actually Holder.

This is an indicator of our times, not a departure from our laws and our values. The debate over killing Awlaki, whom Holder barely discussed, began long before a Hellfire missile fired from a drone killed him and fellow propagandist Samir Kahn in September. Awlaki's father sued the Obama administration in 2010 to compel it to reveal its legal rationale for the long-telegraphed strike. The administration refused, with a judge's support.

For months after Awlaki's killing, the government never disclosed any evidence supporting its decision that Awlaki posed an imminent danger to Americans beyond his rhetoric of incitement. But during the February sentencing of the ''Underwear Bomber,'' the government put forward a court filing claiming that Awlaki worked intimately with convicted would-be bomber Umar Farouk Abdulmutallab—

Who was the Underwear Bomber.

—to blow up Northwest Airlines. Holder referred to that connection in his speech.

Several legal scholars have wondered why the United States did not have to provide Awlaki with due process of law before killing him, as stipulated under the fifth amendment. Holder contended that the United States actually did, even if no judge ever heard the case.

Well, this is sort of an interesting point. I am not making an opinion on whether the fifth amendment applies to al-Awlaki overseas. I think a lot of that is complicated and not necessarily certain whether you can apply the Constitution to people outside the United States, or whether an entity within the United States should obey the Constitution on people outside the United States.

The bottom line is, in war you are not going to get due process. You are not going to get Miranda rights if you are fighting in battle. It is a little more debatable when you are not. The point is, though, that they are saying they are applying the fifth amendment sort of in private to al-Awlaki.

The question is, if this is the standard that is going to be used in the United States, it is not going to be the actual use of the fifth amendment, which means a court and a jury, it is going to be the pretend use that is done behind closed doors. I am not so sure you can have the fifth amendment that does not involve a courtroom. I just do not understand a grand jury indictment, due process, not to be deprived of life and liberty. I do not how it happens in private.

But that is the way they are administering the fifth amendment in private. They are using their discretion as to when to administer the fifth amendment. I do not know how that is going to work. I also do not think that is appropriate for U.S. citizens. So other than the President asking and answering a question as to whether noncombatants will be killed in America, we need to ask whether he is going to—before he kills them, is he going to use the fifth amendment in private in the Oval Office, or is the fifth amendment going to be public? If it is public, I do not know how you kill someone. If you are going to get some kind of due process, you would have to get tried in a court. I am not sure how this would go forward.

This is an additional quote from Holder from the same speech:

The Constitution's guarantee of due process is ironclad, and it is essential—but, as a recent court decision makes clear, ''it does not require judicial approval before the president may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war, even if that individual happens to be a U.S. citizen.''

Well, that is kind of confusing. If that is going to be the standard here, I would be quite concerned. The standard over there—I think there are arguments on both sides of it. But the standard over here, I cannot imagine that this is the standard we are going to use. Because basically he is saying the Constitution applies unless we think it does not apply, and then decide it does not apply.

But then he says, as long as we are at war. Well, who are we at war with? We are at war basically with anybody who

does not like us around the world. I am not sure if there is ever an end to that. I think there are problems overseas. But particularly the problem is—I think the problem at hand that we are trying to get to the root of is, is this the standard? If you are using this standard overseas, are you going to use the standard here that basically the fifth amendment applies when we think it applies, and it does not apply when we do not think it applies?

This is Ackerman, at this point, from Wired again.

Holder did not explain why Awlaki's 16-year-old son, whom a missile strike killed two weeks after his father's death, was a lawful target. Holder did not explain how a missile strike represents due process, or what the standards for due process the government must meet when killing a U.S. citizen abroad. Holder did not explain why the government can only target U.S. citizens suspected of terrorism for death overseas and not necessarily domestically.

As I said, a lot of these things overseas you can debate and try to decide whether this is a war zone or not a war zone. But they obviously do not apply in the United States. The most troubling thing about the killing of the 16-year-old son of Awlaki is the President's spokesman's response to this. You know, the flippant nature of it and the irresponsible nature for him to have said: Well, he should have chosen more responsible parents. If that is the standard we are going to have for killing Americans on American soil, that we are going to kill people who do not have responsible parents, we have set the bar pretty low for our killing program.

I think al-Awlaki was killed—I don't know. I have not seen the classified information. I think the son was killed probably when they either targeted someone else or they did what they call these signature strikes where they don't know whom they are killing necessarily. They just think they are bad people, they came from a meeting of other bad people:

The decision to kill an American, Holder said, is ''among the gravest that government leaders can face.'' Targeted killing is not assassination, he argued, because ''assassinations are unlawful killings.'' Among the few external limitations on the government's war power that Holder mentioned were the approval of a local government where the strikes occur—which must have pleased reluctant, unsteady U.S. Allies in Pakistan and Yemen.

He is saying an interesting thing, and probably Pakistan has approved of most of the killings. However, Pakistan wants to come in and wants to convince and say: No, we haven't. They are doing it against our will, but my guess is they have been told.

Some Members of Congress don't consider that a sufficient safeguard.

''The government should explain exactly how much evidence the president needs in order to decide that a particular American is part of a terrorist group,'' says Sen. RON WYDEN, an Oregon Democrat who sits on the Senate's Intelligence Committee. ''It is also unclear to me whether individual Americans must be given the opportunity to surrender before lethal force is used against them. And I'm particularly concerned that the geographic boundaries of this authority have not been clearly laid out.''

The point on the geographic boundaries is a pretty important point because this is one of the concerning items about what they maintain. They say there are no geographic limitations. They say they get the authority for war everywhere around the world, as well as war here, because they say there were no geographic limitations to the use of authorization of force when we went to war in Afghanistan.

I think people who voted for that—and I would have voted to go to war in Afghanistan—thought we were going to Afghanistan to fight the people who got us on 9/11.

I don't think they thought, when they voted for that resolution, it meant we could have war in the United States under that resolution and that the standard would be one of the laws of war or one of martial law within the United States. I don't think anybody voting on it had that conclusion. That is a real problem. Those people are saying, including the administration is saying, no geographic limitations and, essentially, there are no temporal limitations. We have a perpetual war without any geographic limitations, which now they want to apply war principles to killing in the United States.

Ackerman continues quoting Senator WYDEN:

''And based on what I've heard so far, I can't tell whether or not the Justice Department's legal arguments would allow the President to order intelligence agencies to kill an American inside the United States.''

He is unclear about it, and he has seen a lot more information than I have because he is on the Intelligence Committee and sees secure and classified information. He is unsure of it.

This makes me think nobody in the Senate or the Congress knows whether they are asserting whether they can kill Americans on American soil.

Mary Ellen O'Connell, the vice president of the American Society of International Law, found Holder's legal rationale flimsy, stating:

''First, [Holder] restates the renamed global war on terror, which Obama himself condemned. Then he tries the United Nations Charter Article 51 but does not include the whole article: It says member states of the U.N. have an 'inherent right of self-defense' if an armed attack occurs. Article 51 does not provide a legal green light for targeted killing,'' O'Connell said in an e-mail. ''Finally, he adds the argument that the U.S. may use force against States that are 'unable or unwilling' to act. This argument has no basis in international law. It simply does not exist. So regardless of how carefully you target under the law of armed conflict, there is no right in the first instance to target at all.''

Without yielding the floor, I would like to entertain a question from the Senator from Utah.

Mr. LEE. Senator PAUL recently sent a letter requesting some information from the Obama administration relating to drone strikes.

It is significant that on March 4, 2013, just a couple days ago, Senator PAUL received back from the administration a letter signed by Eric H. Holder, Jr., which reads as follows:

Dear Senator Paul:

On February 20, 2013, you wrote to John Brennan requesting additional information concerning the Administration's views about whether ''the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.''

As Members of this Administration have previously indicated, the U.S. government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter, moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. We have a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests abroad. Hundreds of individuals have been arrested and convicted of terrorism-related offenses in our Federal courts.

The question you have posed is therefore entirely hypothetical, unlikely to occur, and one we hope no President will ever have to confront. It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use such force if necessary to protect the homeland in the circumstances of a catastrophic attack like the ones suffered on December 7, 1941, and September 11, 2001.

Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of his authority.

Sincerely, Eric H. Holder, Jr., Attorney General.

It is good to have this letter as a response to Senator PAUL's inquiry. I believe the inquiry Senator PAUL raised is a legitimate one. It is also essential we have some clarity with regard to the administration's position on this type of an attack. It is important for us to remember every time government acts, it does so at the expense of the liberty of individual Americans.

This doesn't mean government action is bad. This simply means government action always has to be weighed. It always has to be counterbalanced against the impact it has on the citizenry. It is very important we approach these things delicately. Nowhere is this balancing act more necessary than where we have circumstances in which our government action threatens not just the liberty but also the property or, most important, the life of an individual American. Where life is threatened, the concerns of the Constitution are at their highest where life is threatened as a result of government action.

Government owes it to the citizens to undertake all its activities with utmost caution. It owes it to its citizens never to deprive human beings of their lives, particularly American citizens,

unless it has done so through operation of law with what we call due process of law.

It is on this concept, due process of law, that the 5th and 14th amendments of our Constitution focus so intently. Due process of law is a familiar phrase to many Americans. We have heard this phrase over and over. We understand on some level what it means, but I would like to talk for a few minutes in response to Senator PAUL's question about the fact that in order to have due process of law, you need to have a familiar legal standard or at least a legal standard. You have to have a law that is capable of being applied in a way that American citizens can understand.

They can read the law. They can review it. They can understand what the law requires of them. They can understand what it is that the law demands and what it is that the law authorizes the government to do. In the absence of such a law, a law that can be applied, a law that can be understood in advance of its application, you run a very real risk of arbitrary and capricious government action, where government action is arbitrary, capricious and where it threatens to underline life, liberty or property but especially life. There is the greatest level of concerns where the greatest level of detail must be examined with regard to what the government wants to do.

In this circumstance, where the question relates to under what circumstances, to what extent the government may take an American life, the government may snuff out the life of an individual American citizen, the government has an obligation to see to it and to assure its citizens that it will not ever undertake such an action without due process of law. To have due process of law, you need to have a discernible legal standard. A discernible legal standard is not entirely evident on the face of this letter. That is understandable. It is just a brief response to Senator PAUL's inquiry.

It is, however, a little troubling Eric Holder doesn't do more to assure Senator PAUL in this response to his letter that these kinds of actions wouldn't be necessary to undertake on American soil, that these kinds of actions would be fraught with constitutional problems when undertaken on American soil.

It is difficult to understand why the Attorney General wouldn't just say we will not do this. This would be fraught with constitutional problems. This is not something we would do.

Also troubling is the related point that the Attorney General has apparently relied on some legal analysis provided by the chief advisory body within the U.S. Department of Justice. The U.S. Department of Justice is something one might loosely describe as the largest law firm in the United States. It is the law firm of the Federal Government.

Within any law firm you have lawyers who do different things. There are lawyers who specialize primarily in litigation, lawyers who specialize primarily in attracting agreements or in giving advice to people.

The Office of Legal Counsel within the U.S. Department of Justice is the chief advisory office within DOJ. It was the Office of Legal Counsel which drafted one or more memos outlining the circumstances in which the Obama administration might consider undertaking actions involving lethal force against American citizens.

Sadly, most of us in the Senate have been unable to review those. The American people generally have been unable to review them, but it is particularly frustrating those of us who are members of the Senate Judiciary Committee and, therefore, have an oversight responsibility over the U.S. Department of Justice, have not been fortunate enough to review the memoranda upon which the Obama administration has apparently relied in undertaking this legal analysis.

I had the opportunity to question and did question this morning Eric Holder with regard to these memoranda. I explained to him the great need we have to be able to review these memoranda, particularly as members of the Senate Judiciary Committee. I explained to him this is part of our oversight responsibilities. This is our duty. It is our right to see such documents, and it is very frustrating we have not been allowed to see such documents.

I added to that my concern what we do have is a different document, not the Office of Legal Counsel memorandum but something simply captioned as the ''Department of Justice White Paper.'' I always thought that was an interesting phrase, ''white paper.'' I don't know why they feel the need to call it that, why they don't just call it a paper. Normally, we don't have legal analyses or other important documents which are written on green paper, orange paper or any other color of paper. Nonetheless they call it a white paper.

This paper was leaked by the Obama administration to the news media. This particular paper purported to contain some analysis, perhaps in summary form, the same type of analysis of what was used in the still secret Department of Justice Office of Legal Counsel memorandum.

There were a couple things I found very disturbing about the contents of the white paper. First, the white paper focused on the fact that the U.S. Government may use lethal force to kill an American citizen only where there is an imminent threat of some sort. Where the other conditions outlined in the memorandum are satisfied, there still has to be an imminent threat of some sort. There needs to be an imminent threat that the use of lethal force by the government on the U.S. citizen in question is designed to confront.

That is a somewhat familiar legal term. It is used in other context to identify a circumstance in which one thing has to occur in order to prevent something else even worse from happening.

(Mr. SCHATZ assumed the Chair.)

An individual, for example, when confronted with an imminent threat to his or her own life, is entitled to use lethal force in defending him or herself in order to avoid that attack—in order to avoid death. But it does have to be an imminent threat. There are other examples. When a person argues that a certain action was undertaken under duress, there does have to be some degree of imminence. And it is appropriate in this circumstance, where we are talking about authorizing the Federal Government of the United States of America to use lethal force on an American citizen, that there ought to be some sort of imminent threat to American national security that necessitates and fully justifies that action.

The strange thing about the white paper, this white paper that was leaked by the Obama administration to the news media, is that it redefined ''imminence.'' It redefined it completely. It defined it to be something else, something that bears no resemblance to what you or I would call an imminent threat. It seemed to suggest that an imminent threat may occur even when there is nothing that is about to occur on an immediate basis that would involve a loss of American life or an attack on an American compound or installation or any kind of a loss or a deprivation to American national security.

This is a problem because, as we discussed just a few minutes ago, in order to have due process of law, you have to have law operating, and you have to have law operating as something other than a tool to justify arbitrary and capricious behavior by government. You have to have a discernible, judicially manageable legal standard. Even if it is something that is never going to go through a court, it needs to be a legal standard that means something, that has teeth to it, that doesn't just say government officials may undertake action X, Y, or Z if the government official in question feels moved upon to take such action. There needs to be something that has the capacity to restrain government action, and it needs to be—and the basis of and by operation of generally applicable standards—generally applicable rules of law. That is what we mean when we say due process.

Again, due process and the restrictions that accompany it are at their highest when government wants to take an action that is designed to or could lead to the ending of a human life. The sanctity of human life requires nothing less than that.

Now, there was another part of the memo that was also a little bit disturbing. The other part of the memo suggested it would, of course, be necessary in order to carry out an action involving lethal force against an American citizen; that efforts to capture

that individual would somehow prove to be futile; that those efforts wouldn't work. But there, again, the definition supplied by the white paper suggested something else. The language of the white paper suggested almost that the government official in question, in charge of this decision to end an American citizen's life, could be made somewhat arbitrarily, somewhat capriciously. This is a problem.

You don't want someone sitting there one day having the authority to say so-and-so is a troublemaker, so-and-so shouldn't be there, so-and-so has been involved with some very bad actors. So-and-so may in fact be a bad individual, may in fact be associated with people who want to harm the interests of the United States or may even have been involved in the planning of attacks on the United States, but you don't want the government official in question to be able to end that American citizen's life just on the basis of flimsy analysis, on a toothless legal standard. You want the American people to continue to be able to live under the rule of law and with an understanding that actions of government, particularly those actions designed to bring an end to a human being's life, won't be undertaken lightly.

That is what it means to live in a society that operates under a rule of law as opposed to the rule of individual human beings. It is that we have standards and we reduce those standards to writing. Those standards are rules that are generally accepted and generally applicable, that govern the conduct of individuals in society, and both the governors and the governed will themselves determine the behavior of those involved in our society.

So our law of laws, our rule of rules, our most fundamental law, is the U.S. Constitution—this 225-year-old document that I happen to believe was written by the hands of wise men raised up by their Creator for that very purpose. These were wise men who understood human nature, wise men who understood that whenever you put an individual in charge of a lot of other individuals, there are risks—risks that are inherent in human nature, risks that can be managed if you put certain checks and balances in place, and those checks and balances will ensure that no one person, no one group of people, will become so powerful as to become a law unto themselves.

You see, that is what this document, our Constitution, the Constitution of the United States, was designed to ensure; that we, as Americans, would live free, and we would live free because our laws would govern us, not the whims or the caprice of individuals.

Now, I do have another letter that I would like to share. This is a letter that was sent to my friend, Senator PAUL, from Mr. John Brennan, currently serving as Assistant to the President for Homeland Security and Counterterrorism. This letter is dated from just earlier this week. In fact, it is dated March 5, 2013, and here is what it says:

Dear Senator Paul:

Thank you for your February 20, 2013, letter regarding the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.

The Department of Justice will address your legal question regarding the President's authorities under separate cover. I can, however, state unequivocally that the agency I have been nominated to lead, the CIA, does not conduct lethal operations inside the United States—nor does it have any authority to do so. Thus, if I am fortunate enough to be confirmed as CIA Director, I would have no power to authorize such operations.

In addition, I have asked the CIA to respond to your letters of January 25 and February 12, 2013, which raise a number of important questions regarding issues pertaining to the advancement of America's strategic priorities around the globe.

Sincerely, John O. Brennan.

This is helpful. This is a helpful indication from a government official who has been nominated to head the Central Intelligence Agency, and who acknowledges if he is confirmed to this position, he would have no authority as Director of the CIA to order lethal drone strikes within the United States. So that is helpful.

It is still significant that we be allowed to ask from time to time what the CIA might do with regard to other persons—other persons including U.S. citizens outside the United States—and under what circumstances a lethal drone strike or a different type of lethal force might be appropriate when directed toward an American citizen outside the United States.

I notice one phrase he uses in his letter, when he says: '' . . . such as a drone strike against a U.S. citizen on U.S. soil, and without a trial.'' Whenever we are talking about any person within our jurisdiction, whenever we are talking about an American citizen, regardless of where that American citizen might be found, it seems to me we do owe that person certain responsibilities. We owe that person a duty of following the law, of following our most fundamental law—the U.S. Constitution—and following other statutory authorities we have in place specifically to protect the rights and the interests, the life and the liberty and the property of the American people.

We are told those things cannot be taken by the government without due process of law. Now, normally, when we take away someone's life or their liberty or their property, we entitle that person to a trial. This is where our constitutional protections overlap a little bit and they complement each other. We have in the fifth amendment this protection that says that no person shall be deprived of life, liberty, or property without due process of law. There, again, at a bare minimum, that entails the operation of these generally applicable laws that actually have some standards to them. It typically also involves, quite necessarily, an opportunity on the part of the person being acted upon by government to have a trial.

We have elsewhere in the Constitution other protections that guarantee this. We have protections indicating that if a person is charged with a crime by our government, under the sixth amendment they have a right to a jury trial, and they have a right to counsel in connection with that trial. They have a right even to counsel paid for by the government if they can't afford an attorney in connection with that. The seventh amendment, likewise, protects the right to a trial in the context of civil disputes.

So these and other protections overlap to guarantee that Americans will have due process. Frequently, what due process entails, among other things, is the privation of a jury trial. You see, juries do perform an important function. Juries are there to help protect our rights. When we have a jury of our peers deciding critical questions with regard to our interests in life, in liberty, in property, we see to it that a panel of lay persons, a panel of nongovernment officials, a panel of citizens who have sworn an oath to do justice will do precisely that, and they will not shrink from the obligation to enforce the demands of the Constitution. They will not shrink to enforce the demands of the law. They will not shrink from their duties, and they will not see themselves as part of a government establishment.

This is how our constitution protects us and insulates us from the government because we are the people; and we, the people, control the government. We, the people, have the right to a jury trial. And when we actually get a jury trial, we are able to see our rights protected.

So, in response to the Senator's question, I do think there are some problems that we confront as a society. I think the security of the United States is, of course, of paramount importance. We need to protect American national security. We need to protect Americans. As we do so, we also need to protect the inalienable rights of individual Americans to the due process guarantees that are hundreds of years old, that extend at least as far back as the drafting and ratification of our constitution, and are, of course, much older than that. They are centuries, indeed, they are millennia old. We must continue to honor them.

Mr. PAUL. Mr. President, I would like to thank the Senator from Utah for his expert constitutional analysis, and I rely on his advice and analysis of legislation and want to thank him very much for being part of this debate.

We are in contact with the White House, and we have told the White House we will allow debate on Brennan as soon as they will give a clarification of what their opinion is on drone strikes in America.

I think after Holder's cross-examination, his opinion may not be too far off from what we are asking for. But we want it clarified and in writing because we think this is an important battle

for the American public and an important battle for the Constitution. So if the President or the Attorney General will promise to give us something, even give us something by morning, we are more than willing to go ahead with the vote in the morning with that information.

At this time, without yielding the floor, I wish to entertain a question from the Senator from Wyoming.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Wyoming.

Mr. BARRASSO. Madam President, I come to the floor of the Senate in great admiration for the Senator from Kentucky, for what he is doing to try to get information. All we are asked to do is to give advice and consent to the President on this very important nominee to be the head of the Central Intelligence Agency, the key to central intelligence in this Nation. I come to the floor this evening to thank my colleague from Kentucky for the leadership he has continued to show by asking questions which are not just questions of his, they are questions of the American people.

I was traveling around the State of Wyoming last week, talking to folks. I went to 13 different counties in our State of 23 counties. There were many questions being asked about drones, not just their accuracy but their intent and what this administration's policy is related to drones and how they can be used. People in my home State of Wyoming are concerned about drones being used in the United States, not just specifically for attacks against American citizens but also the concept in observation, in surveillance. What about our rights as citizens to privacy? Those are the questions that come up as I travel around the State.

I had a telephone townhall meeting the other evening with many people from all around Wyoming on the line. They admire the questioning from the Senator from Kentucky. They have concerns: Is Big Brother watching? What is happening and what role has government in observing and surveillance and looking into the lives of the American people?

It was not until Senator PAUL asked the question would there be strikes on American citizens in America that I think things became very focused at home and all around the country. Then we got more e-mails, more concerns, because the specific question that Senator PAUL is asking is a question that is on the minds of all Americans. I believe Senator PAUL deserves an answer. The American people deserve an answer. So it is not just Senator PAUL who deserves an answer, it is an answer to all of the people of this country. But I appreciate Senator PAUL's leadership in asking the specific question.

The Intelligence Committee, the Select Committee on Intelligence met, they had hearings, they had debates, discussions, deliberations, and actually they voted. That is why we are here on the floor tonight, to ask finally from the White House and from the nominee what the specific position and policy of this administration happens to be on drones. I know we have a unanimous consent request from Senator PAUL and in a second I am going to ask him to explain and maybe reiterate his unanimous consent request, explain the resolution he wishes to vote on. I think the Senator deserves a vote. We want to make sure the public understands what we are discussing here. That is why I appreciate the leadership of Senator LEE who has come here as a constitutional scholar to address some of these concerns.

I think before many Senators are able to make the final decision of how to vote, how to give advice and consent to the White House, we need more information. We need to hear from the White House. We need to hear from the administration because the people all around the country want those same questions answered.

We do have a situation where the Senator from Kentucky said he is willing to have a vote. He is willing to allow a vote on this nominee on the floor of the Senate as soon as his question is answered. He would be happy to proceed with that vote as early as tomorrow morning.

The American people deserve better than they are getting right now from this administration in so many ways. This is but one. That is why I think all of us try to go home every weekend to learn what is on the minds of folks in our home States, in our home communities. This is clearly what I have been hearing about, traveling around Wyoming, a State of vast open spaces, a State of great majesty and beauty, but a State where people are concerned with their own privacy, with overhead surveillance and of course not just their own personal privacy but their security.

What are the rights and responsibilities of a national government when new technology exists, as we have seen with drones? I had the privilege of visiting our soldiers overseas in Afghanistan with a number of Senators in January. We have seen up close, through detailed video, the capabilities of drones, capabilities that were not there that many years ago. Questions such as this would have never arisen a number of years ago because the technology was not there. But now the technology is there. With that given technology, that raises new questions. That is why I think so many Americans are appreciative of the work by Senator PAUL to specifically ask questions that have never been asked before because the technology was not there before. Now we have the technology, we have the know-how, and the question continues to be asked.

I ask my friend and colleague from Kentucky if he could explain perhaps his unanimous consent request, what vote he is asking for, why it is so important, and what it means to all of us as free citizens in this great Nation.

Mr. PAUL. Madam President, I thank the Senator from Wyoming for coming to the floor and helping to advance this debate. One of the points that was made toward the end is about our soldiers he visited and that he saw the capacity of the drones. The one thing that should not be lost here is that we are not arguing about the use of drones, particularly in defense of our military. When people are shooting at our soldiers I want the best equipment in the world that we have to defend them and to win our battles. That is something I think we should all want.

But I think our American soldiers would be disappointed in us here at home if they felt, which I think many of them do, that they are fighting for our Bill of Rights, they are fighting for our Constitution, they are fighting for our conception of freedom—in doing so, I think they would be disappointed if they felt the drones that were being used against the enemy in the mountains of Afghanistan and Pakistan were going to be used against Americans in America without any kind of due process, because the whole idea of the Constitution is what they are fighting for. That is what the President has pledged to uphold and preserve. So it is such an important battle.

The unanimous consent that we put forward, which we had hoped they would let us vote on in the morning also but they have disagreed with, basically says the use of drones to execute or target American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

The point we are trying to get at, which I think for the administration ought to be an easy question—we are not talking about someone attacking the Twin Towers. We are in agreement that the military can repulse attacks by American citizens in planes. Some of the hijackers—I think some of them—I don't know if any of them were citizens or not but—yes, some of them were citizens, I think. The point is, no matter who you are, if you attack the United States you can be repelled and that lethal force can be used.

The point is we are concerned that some of the drone strikes overseas are of people not involved in combat at the time, and that is another question, but here at home I don't think we want to have a standard where someone who we think might be a terrorist, who we think might be engaged in something, who is in a restaurant eating dinner, would be killed. I think we want more protections for Americans. We want, if you are accused of a crime, to have the ability to defend yourself in a court of law.

I, without relinquishing the floor, would be happy to entertain any other questions.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I come and ask my colleague if this is

something he may have heard about at home as well, because this is something clearly on the mind of the people of Wyoming. Of course, just like Kentucky—and I will tell you when I was overseas in Afghanistan I ran not just into soldiers from Wyoming—I met eight of them in four different locations that I went to throughout Afghanistan. I met soldiers from Kentucky in each of those locations. So we are both from States with a significant commitment to our military. People over the centuries have continued to fight and defend our freedoms. But today in Afghanistan we have soldiers from my home State and your home State doing what they do to keep us free, defending the Bill of Rights, defending the Constitution.

When we talk about the Bill of Rights, let's think about what Ronald Reagan said. The Bill of Rights was not established to protect the government from the people, it was established to protect the people from the government. Search and seizure, freedom of press, freedom of speech, freedom of religion, our second amendment rights to own and bear arms—those are the constitutional rights, individual rights that people are fighting for every day in Afghanistan. They want to know when they get home what sort of freedoms are there going to be in this country? Where is the role of liberty and freedom in our society?

That is why there is no better time, I would say, than this evening, before voting on the nominee to be the Director of the Central Intelligence Agency—the head of the CIA for the country—what better time to have this debate than during that nomination process about where is that line between freedom of individual citizens and the rights of a government which now has a technology which has not previously been there up until most recently.

So I ask my friend and colleague—No. 1, I congratulate him and thank him for remarkable leadership. I hear that all around my home State and I know he hears it at home as well. He hears it all around the country. But is this a concern on the minds of people? Is there a reason we are here to bring this out, not just because a couple of Senators are on the floor debating it? This is a crucial issue for this Nation.

Mr. PAUL. Madam President, one of the things I hear at home, similar to what the Senator from Wyoming is talking about, is that we hear people worried about the erosion of their rights. They worry about statements from the President when the President says he intends to protect the Constitution—except for maybe when it is infeasible or when it is inconvenient. I think that worries people.

One of the other things about drones, which is not particularly related to this, necessarily, but I know in Wyoming I bet they have the same concerns, is our farmers are not too happy about the government flying drones over their property. That is something on which we had an interesting vote last year. We had a vote on whether the EPA could continue these without explaining to us. Once again, it was sort of similar to this fight in the sense that we wanted to stop the drone flights over farms. It was a pretty simple request, an easy request until we got the government to explain what kind of criteria, what kind of rules they were using for flying over farms.

We got 56 Senators to vote to ban these drone flights until we got more information. But it is like a lot of other things in the Senate, it took 60 votes, so we didn't actually quite win even though we had a majority.

With regard to what we are trying to accomplish through this, the main thing we want is a public acknowledgment from the President or from the Attorney General, saying that their policy is not to kill noncombatants in America. Many of the drone strikes overseas have been noncombatants—at least at the time they are killed they were not involved in combat. I don't think it is too much to ask the President to clarify that what he means is the United States can repel invasion, the United States can repel attacks, whether they are American citizens or not. We don't have a dispute with that. Our concern is when you look at the drone program overseas, a lot of people are sitting around eating, walking, sleeping in their house—that that is not the sort of a program I can imagine using in the United States. I cannot imagine we are going to have drone strikes on people while they are asleep in their home or when they are out eating in a cafe or eating in a restaurant. I cannot imagine that is the standard we are going to use. Maybe it is just a misunderstanding. Maybe the President can clear this up.

When Attorney General Holder was there this morning, the Senator from Texas asked him this question and under pointed questioning it seemed as if he was backing toward an answer that might be acceptable. He said it was not appropriate, but what we are looking for from the lead legal officer of the President, from the President, is something a little more precise than ''I don't intend to,'' or a little more precise than ''it is not appropriate.'' We would like him to say that they don't have a legal authority to kill Americans on American soil. We just don't believe they do. Targeted drone strikes in America, I don't think they have the legal authority nor the constitutional prerogative to do this, and they need to admit to that. It has been like pulling teeth trying to get information or get them to acknowledge anything. Our goal is to try to get the President to acknowledge something publicly, more so than any kind of legislation.

We do have some legislation that we are interested in. We are not demanding that it pass in order to let this nomination go forward. What we are asking for is we will let them have a vote any time they want if they will at least give us a little more of a clear understanding that they are going to obey the law. It took a month and a half for us to get the response from them that the CIA doesn't operate in the United States; that just is the law. It has been the law since 1947.

One would not think it would be that hard to get them to acknowledge they are going to obey the law. The posse comitatus law has been here since the 1860s, and it says the military doesn't operate in the United States. How hard is it for the administration to say we are going to adhere to the posse comitatus law and that we are not going to use the military in the United States? That clarifies quite a few things because if they think they are going to kill Americans with the FBI, at least we already know the FBI works under the rules of the Constitution. I would think at that point we are getting somewhere or at least moving in the right direction.

We are not looking for something where we permanently stop the President from getting his political appointees. I have mentioned previously I voted for three of the President's political appointees. My point in being here doesn't have so much to do with the CIA Director as it has to do with the policy of the administration on drones. He just happens to have been in charge of that policy on drones and the CIA has something to do with drones overseas. At least Brennan has been forthright and finally came forward with a letter that says the CIA doesn't operate in the United States.

Unfortunately, Attorney General Holder's response has been somewhat muddled in the sense that he kind of says we have not yet, we don't intend to, but we might. Now he says there is an extraordinary circumstance, but his extraordinary circumstance doesn't quite make any sense because it is 9/11 or Pearl Harbor. Well, in both of those instances we would react immediately to stop somebody, but they would not be targeted drone strikes. I cannot imagine that we would know the person's name and who they are when they are flying a plane into a building. We would respond to them, but it would not have anything to do with the targeted drone strikes. It is sort of answering a question that wasn't asked.

At this time, Madam President, and without yielding the time, I wish to entertain a question from the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, I have been able to put my hand on the letter Senator PAUL has written to John Brennan on February 20. This is something that I believe brought in focus the key piece of what has been on the minds of the people in my home State with regard to their support for the question that Senator PAUL is asking. Since I don't serve on that committee and was not part of the hearings, I wish to review this letter so I

can specifically ask Senator PAUL about the response he has received to this. Perhaps then we can share that with the American people as to why so many folks who have been focused on this believe it is of key importance.

The letter from Senator PAUL says:

Dear Mr. Brennan, In consideration of your nomination to be Director of the Central Intelligence Agency, (CIA), I have repeatedly requested that you provide answers to several questions clarifying your role in the approval of lethal force against terrorism suspects, particularly those who are U.S. citizens.

It goes on to say:

Your past actions in this regard, as well as your view of the limitations to which you were subject, are of critical importance in assessing your qualifications to lead the CIA.

That is what we are doing. We are here in our role to advise-and-consent the President on a nomination he has made.

The letter goes on:

If it is not clear that you will honor the limits placed upon the Executive Branch by the Constitution, then the Senate should not confirm you to lead the CIA.

The people of Wyoming carry their Constitutions in their breast pockets. We have them with us just as Senator Bob Byrd used to do right here on the Senate floor, and many Members of the Senate do. We need to make sure the limits placed upon the executive branch by the Constitution are still upheld; otherwise, the Senate should not confirm Mr. Brennan to lead the CIA.

So the letter from Senator PAUL goes on to say:

During your confirmation process in the Senate Select Committee on Intelligence, committee members have quite appropriately made requests similar to questions I have raised in my previous letter to you.

I agree. Members of the committee did make appropriate requests and wanted to have those same questions answered that Senator PAUL has been offering, and they are that you expound on your views, Mr. Brennan, on the limits of executive power in using lethal force against U.S. citizens. This is against U.S. citizens, especially when operating on U.S. soil.

That is among the fundamental questions I have been asked during telephone townhall meetings when I travel the State of Wyoming. It comes down to the use of lethal force against U.S. citizens, especially when operating on U.S. soil.

The letter from Senator PAUL goes on and says:

In fact, the Chairman of the SSCI, Sen. Feinstein, specifically asked you in post-hearing questions for the record whether the Administration could carry out drone strikes inside the United States.

We are now getting to the crux of the matter: drone strikes inside the United States.

Senator PAUL goes on:

In your response, you emphasized that the Administration ''has not carried out'' such strikes and ''has no intention of doing so.''

So has not done it, doesn't intend to do it, but it doesn't answer the question that Senator PAUL, the people of his home State, the people of my home State, and the people all across this country are asking.

Senator PAUL goes on in his letter to Mr. Brennan:

I do not find this response sufficient.

As people are following what the Senator from Kentucky is doing here, more and more people are asking and focusing on this specific question. The question I and many others have asked is not whether the administration has or intends to carry out drone strikes inside the United States, but whether they believe they have the authority to do so. The question is about whether it has the authority to do so. The question is not whether they have carried them out, not whether they intend to, but do they have the authority to do so. This is an important distinction that should not and, I would add, cannot be ignored.

Well, the letter goes on:

Just last week, President Obama also avoided this question . . .

So the President has avoided the question when posed to him directly. Instead of addressing the question of whether the Administration could kill a U.S. citizen on American soil, he used a similar line, that ''There has never been a drone used on an American citizen on American soil.''

Well, we believe that. We know that to be the case. We know that is the President's belief. We know that is the testimony of the nominee to be the CIA Director, but it evades the question. That is actually what Senator PAUL says in his letter.

The evasive replies from the Administration to this valid question have only confused the issue further without getting us any closer to the actual answer.

So it is not whether they have intent or whether they have done it before, but do they have the authority to do so. This is the distinction which Senator PAUL is trying to get at, as are many Americans all around the country who are tuning in to this important debate.

Senator PAUL goes on to say in his letter to John Brennan:

For that reason, I once again request you answer the following question: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial?

Let me repeat:

For that reason, I once again request you answer the following question: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial?

Senator PAUL goes on to say:

I believe the only acceptable answer to this is no.

And that is what the American people believe as well.

Senator PAUL concludes:

Until you directly and clearly answer, I plan to use every procedural option at my disposal to delay your confirmation and bring added scrutiny to this issue and the Administration's policies of the use of lethal force.

He says:

The American people are rightly concerned, and they deserve a frank and open discussion of these policies.

So I come to the Senate floor tonight in support of my colleague and agree with what he is writing to John Brennan because the fundamental question is: Do you believe the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil and without trial.

Senator PAUL goes on:

I believe the only acceptable answer to this is no.

So I would ask Senator PAUL, through the Chair, if he could perhaps add a little light to this matter. This letter was sent to Mr. Brennan on February 20. It is now March 6. I know there has been some give-and-take and back-and-forth, but the fundamental question is one that has been on the minds of the people in my home State of Wyoming, as I traveled the State over the last few weeks.

Mr. PAUL. Madam President, we sent our last letter to John Brennan, I believe, in the latter part of January. We got no response. We then sent him a second letter in the first or second week of February and got no response. We then sent our third letter, which I believe is the letter the Senator was reading from, and that was a couple of weeks ago. We got no response to any of these letters.

However, when the committee—both Republicans and Democrats—was holding up his nomination last week and the chairman of the committee asked for a response, all of a sudden we got a response. The response from Brennan was actually encouraging. The response, I believe, was this morning or yesterday. The day has kind of run together. That response was basically that the CIA doesn't have the authority to operate in the United States and that is the rule. It has been the law since the 1947 National Security Act.

Our concern is that the Attorney General's response has been a little more vague. Basically they have not done any killings in the United States yet. They don't have any intention to, but they might. The problem with the ''they might'' part is they left it kind of vague. They said it would have to be extraordinary, but they point out two occurrences in which they would not have targeted drone strikes. They point out Pearl Harbor and 9/11.

In both of those instances, I think it is appropriate to respond militarily, but they would not have targeted drone strikes. They might use drones, but they would not have targeted drone strikes because they would be responding immediately to someone attacking us. I think we all agree that we can respond to lethal force at any point in time.

I think the problem is the drone program around the world often targets

people who are not in combat. It is hard for me to imagine that we would have people who—I don't know if they are conspiring or what they are doing—are talking to an individual or someone in a restaurant or cafe, that we wouldn't arrest them.

The ranking member on the Intelligence Committee made a good point. He said: Particularly if they are in a noncombat area in the United States, wouldn't you want to arrest them to get some information from them to see if they might be a threat? One reason would be to see if they are innocent or guilty. If they are truly guilty, you would probably be able to get some information from them by interrogating them.

The Senator asked the question about the limitations. That is ultimately what we are asking Brennan, Eric Holder, the Attorney General, and the President. What limitations do you cede to your authority? The President takes an oath that he is going to preserve, protect, and defend the Constitution. He says he will do that, but the oath doesn't say: I intend to do that. It says: I will preserve, protect, and defend the Constitution.

The problem we have is that when John Brennan has been asked what are the limitations to your authority, his response has been that we have no geographic limitations. He says he gets that from the use of authorization of force to go to war in Afghanistan. The problem with that is I don't think people who voted for that intended that there would be no limitations and that we could have war anywhere.

Then the question is: Is there a limitation at the U.S. border?

Well, there is a law—a posse comitatus law—from after the Civil War which says the military doesn't operate here. It is not because we think the military are bad people, we just have different rules for the military. Our soldiers are not used to dealing with due process, and we don't make them. On a battlefield when they are shooting, they don't give people their Miranda rights. They don't get to have a jury trial.

There is none of that going on on the battlefield so soldiers don't have to deal with that, but policemen in our country have different rules of engagement. They are required to deal with that, and we want that because we want there to be a process because we have always been concerned in our country—we broke away from the mother country in England because we were concerned about too much power. We wanted that power to be reined in.

So our biggest problem is that when they say they have no geographic limitations, that could include America. So that was our next question. Senator WYDEN asked Brennan in the committee: Do you have the authority to do strikes in America? John Brennan's answer was—this was the first answer before we got the second answer: Well, we want to optimize transparency and we want to optimize secrecy, and that was his conclusion. It was like, what does that mean? So that is when we got more and more involved with asking this question and asking it repeatedly.

But I think there are limitations. Ultimately, there is a limitation of the Constitution, but also there is a big debate that needs to go on about what are the limitations of what we voted on when we went to war. I was all in favor of doing everything possible to those who attacked us on 9/11, of going to Afghanistan. We need to figure out how and what the completion of that mission is, and whether that use or authorization of force is open-ended, forever, or whether we are ever going to vote on that again, which I think means when we vote on that again, we retain that power to bring it back to the Senate, to the Congress. It doesn't mean we would not do it again, but we should have that debate and a vote again if we are going to have another war.

At this time I would be happy to entertain another question from the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. What I just heard from the Senator from Kentucky is that these questions were asked in a bipartisan way. This was not partisan at all. I heard Senator WYDEN from Oregon had similar questions. So this is a request for information.

Now, I have been able to find a copy for the first time of that January 25 letter that Senator PAUL referenced to John Brennan, sent to him in his capacity as Assistant to the President for Homeland Security and Counterterrorism, and I just wanted to go through some of that and perhaps ask Senator PAUL some specific questions related to it because it is my understanding that he has not gotten any kind of response to that.

The Senator mentioned three specific letters: First, the January 25 letter, then the letter of February 14, and then the letter of February 20 which, asks, really, the ultimate question: Do you believe the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without trial?

So now I have all three of those letters sent by Senator PAUL to Mr. Brennan in his capacity currently as the Assistant to the President for Homeland Security and now the nominee to be the head of the Central Intelligence Agency.

So the letter goes:

> As the Senate moves forward with its consideration of your nomination to be the next director of the Central Intelligence Agency, it will be necessary to examine not only your qualifications and record, but also to determine whether you will provide the necessary leadership as the head of an agency that operates under unique rules for transparency and that quietly holds significant influence over the advancement of America's strategic priorities around the globe.

No other agency is like the CIA—unique rules for transparency. So Senator PAUL goes on:

> After reviewing your record as well as the record of President Obama to whom you have provided a great deal of advice and direction on issues of national security and terrorism, I must ask several questions to help inform my decision on your nomination.

That is what a responsible Senator does, a Senator who has taken quite seriously his role in providing advice and consent to the President on a nominee—a key nominee of a specific agency that operates under unique rules for transparency.

So I think it is absolutely appropriate that Senator PAUL would write such a letter, and the questions raised are appropriate, many of which have been raised in a bipartisan way.

So question No. 1: Do you agree with the argument put forth on numerous occasions by the executive branch that it is legal to order the killing of American citizens and that it is not compelled to explain its reasoning in reaching that conclusion? Do you believe this is a good precedent for the government to set?

What better, clearer question to ask than that? He goes on:

> Congress has been denied access to legal opinions and interpretations authorizing placement of U.S. citizens believed to be engaged in terrorism on targeting notices, thus denying Congress the ability to perform important oversight.

Oversight is a key role of this Congress. Oversight is a key, critical role of this branch of government, of Congress.

Senator PAUL goes on:

> Will you provide access to those opinions as well as future opinions?

Very reasonable question.

The Senator said:

> Would it not be appropriate to require a judge or a court to review every case before the individual in question is added to a targeting list?

Legitimate question.

> Please describe the due process requirements in place for those individuals being considered for an addition to a targeting list.
>
> Would you agree that it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap of a U.S. citizen overseas, but possibly not to order a lethal drone strike against the same individual?

I want to go back to this question when I am visiting with Senator PAUL, but this is the kind of thing I get asked in Wyoming, and I am sure the Senator from Kentucky is hearing the same thing: Would you agree that it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on a U.S. citizen overseas, but possibly not to order a lethal drone strike against the same individual?

So what you have to do if you wanted to perform a wiretap would be more than you would have to do if you wanted to do a drone strike. I think it is a very legitimate question because if not, Senator PAUL goes on to ask:

> Please explain why you believe something similar to the FISA standards should not be applied in regards to illegal action against

U.S. citizens. Is it still your intent to codify and normalize the so-called disposition matrix, a targeting list that you helped to establish—

This would be Homeland Security Counterterrorism Assistant Brennan—

to direct counterterrorism operations in future administrations as well as the targeted killing procedures you have outlined in your playbook?

Then Senator PAUL goes on and asks:

Aside from the President, how many people have access to the full disposition matrix? Of those, how many participate in the process to add individuals to the targeting list, and how many have the authority to veto an individual's inclusion?

This is a very thoughtful letter from Senator PAUL to Mr. Brennan dated January 25, 2013. I want to continue to share with the American people the questions that have been asked by Senator PAUL because I think they are so telling and so appropriate:

How many times have you specifically objected to an individual's inclusion on a targeting list? How many times have you recommended to the President against including an individual on the targeting list?

These are questions people want to know the answers to:

How often are the criteria used for determining whether an individual should be included on a targeting list amended?

Not simply reviewed; he is not asking about a review but an amendment.

How many government officials and which agencies participate in establishing these criteria? Does the National Counterterrorism Center have final say over all criteria?

Anybody who watches this issue closely has asked these questions and wants to know the answers.

Of those individuals who have been but are no longer included in the disposition matrix or other target list, how many have already been killed? How many have been removed from the list by other means? How many individuals remain in the disposition matrix or other targeting list today? And how does the number compare to the number in prior years? Is the number growing? Is the number shrinking? Is the number static? What is happening to those numbers?

How many U.S. citizens have been added to this disposition matrix or other targeting list? How many remain on the list? How many U.S. citizens have been intentionally killed by U.S. drone strikes since 2008? How many have been unintentionally killed by U.S. drone strikes during that same period of time?

In how many countries has the United States executed a drone strike against a presumed terrorist?

In each of the countries where the United States has executed a drone strike in the past 4 years, please provide a year-to-year estimate of those who self-identify or otherwise associate with al-Qaida within that country.

I come to read this as somebody who has just come to see the capacity of the drones. I see the junior Senator from Texas has been on the Senate floor as well. He and I traveled together to Afghanistan. We have been able to see directly video from drone strikes. We know the capacity. We know their ability to target precisely. These are questions that in previous wars were not asked because the technology was not there, but now these are questions that are asked, that are being asked, which is why I am so grateful for the leadership of Senator PAUL in asking these questions.

The letter goes on:

You have indicated that no credible evidence exists to support recent claims that civilian casualties resulted from U.S. drone strikes.

Again, this is the letter from Senator PAUL to John Brennan. He asks:

Please indicate how you define credible evidence and what process is in place to evaluate the legitimacy of alleged civilian casualties.

Which countries have publicly stated their support for U.S. drone strikes within their territory? Have any publicly indicated support for U.S. drone strikes in the long term?

In this letter:

How relevant is the opinion of the public in the countries where U.S. drone strikes are ongoing? In those countries, how would you characterize public opinion toward U.S. drone strikes?

In light of civilian casualties caused by the extensive use of drone strikes under your guidance, do you continue to stand by your remark that ''sometimes you have to take life to save lives?''

Do you condone the CIA's practice of counting certain civilians killed by U.S. drone strikes as militants simply because they were of military age and within close proximity of a target? Do you believe such accounting provides an accurate picture of our drone program?

These are key questions to be asked for a nominee to the Central Intelligence Agency and they deserve answers before anyone makes a vote yes or no.

What changes to the CIA review process will you put in place or have you attempted to put in place in your previous role to prevent further unintentional killings of U.S. dissidents? What role did you play in approving the drone strike that led to the death of the under-aged U.S. citizen, son of al-Awlaki? Unlike his father, he had not renounced his U.S. citizenship. Was this young man the intended target of the U.S. drone strike which took his life? Further, do you reject the subsequent claim apparently originating from anonymous U.S. Government sources—

Always a concern when you hear anonymous U.S. Government sources—

that the young man had actually been a military age male of 20 years or more of age, something that was later proven false by the release of his birth certificate.

Senator PAUL goes on in the letter:

Do you believe that the inadvertent killing of civilians and the resulting anger from local populations should cause us to limit rather than expand the drone program?

Key question:

The CIA has and will reportedly continue to have authorization to carry out lethal drone strikes in Pakistan, autonomously and without approval from the President. Will you seek to reduce or eliminate this practice or keep it in place? Will you hold to the discussed 1 or 2 year phaseout of this authority or work to expedite the phaseout?

I could go on and on because these are key questions Senator PAUL asked, and it all gets back to the fundamental question of: Do you believe the President has the power to authorize lethal force, such as a drone strike against a U.S. citizen on U.S. soil and without trial?

So as I look at this letter of January 25 and look at the questions being asked:

Do you believe the lethal drone strikes constitute hostilities as defined by the War Powers Act?

On what legal basis does the administration derive authorization to conduct such strikes?

Then the President's own words:

The President has stated that al-Qaida has been decimated. Do you believe this assertion is correct and, if so, what is it that we are now targeting if not al-Qaida?

That is a fundamental question that came up in the hearings with then-Secretary of State Hillary Clinton. When she came to the Senate, to the Foreign Relations Committee, they changed their tune and said: No, it was core al-Qaida; not just al-Qaida but core al-Qaida in Afghanistan, but, fundamentally, the tune has changed.

Senator PAUL goes on:

Is the U.S. drone strike strategy exclusively focused on targeting al-Qaida or is it also conducting counterinsurgency operations against militants seeking to further undermine their governments such as in Yemen? Would you support expansion of the CIA's drone program in Mali to provide support to counterterrorism operations?

We all know what happened there and the impact in Benghazi and the concern that those who weren't captured or tried in Benghazi for the atrocities there went then to Mali. So, again, a key question.

The Senator goes on:

Do you believe a long-term, sustained drone strike program can eliminate all threats to the American people or completely eliminate al-Qaida as you have indicated in your intent? If not, how would we eventually wind down the drone program? At what point do you believe drone strikes will reach the point of diminishing returns? If so, can it be done on the scale the drone program operates on now or would it have to be expanded?

I was going to specifically ask Senator PAUL to discuss this question:

Do you support the Attorney General's 2012 guidance to the NCTC that it may deliberately collect, store and continually assess massive amounts of data on all U.S. citizens for potential correlations to terrorism, even if the U.S. citizens targeted have no known ties to terrorists?

That gets into the whole thing we started on earlier today. Where is the role of individual freedoms, the right to trial, the right to be heard, the right to present their case? What about the fundamental rights in the Bill of Rights?

The final question here to Mr. Brennan is this:

Please describe in detail the steps you have taken as assistant to the President as well as transparency measures you would support as Director of the CIA to improve the transparency of the administration's counterterrorism policy.

Mr. President, I would just say that they are extremely well-thought-out

questions by a very thoughtful Senator and questions to which the American people would like to have answers.

There is more to the letter, but I would like to take a second to ask Senator PAUL if he feels those have been adequately addressed and if he feels he has gotten closer to the solution to the question of, do you believe the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without trial? That would be my question to Senator PAUL.

(Mr. SCHATZ assumed the chair.)

Mr. PAUL. Mr. President, we have sent three different letters over the last month and a half or so, and we really have not gotten a detailed response to any of the letters.

We finally had one question answered from John Brennan, and that question was answered by him by saying the CIA does not operate within the United States, which is a reassertion of the law, which we at least appreciated. But they have not responded by saying they will follow the law. We have not gotten an adequate answer yet, although we are getting closer to it.

Maybe the Senator from Texas can give us a little more insight into this in the sense that the question now really is not just Brennan. Brennan has answered that the CIA cannot operate in the United States. But there is a question: Can the military operate in the United States? And this question was asked, I think very poignantly, by the Senator from Texas today, trying to get an answer from the Attorney General on this question: Can you kill Americans on American soil who are not involved in combat? The answer has been evasive because he has brought up basically a red herring: Pearl Harbor or the Twin Towers, which none of us are disputing that the military can respond to a lethal attack with lethal force.

So what I would like to do without relinquishing the floor is see if the Senator from Texas would like to respond as to his interpretation of what he was hearing from Attorney General Holder and whether the comments he was hearing—if Attorney General Holder were willing to sort of try to complete that conversation in a letter to us—whether actually we might get close to actually being on the same page.

Mr. CRUZ. I thank the Senator from Kentucky for allowing me to ask him a series of questions and to address both what the Attorney General said and the substantive issue.

I wish to begin my questioning, though, with simply an observation. I would like to take a moment to thank the Senator from Kentucky. I have had the privilege of serving in this body 9 weeks, and today is the first day I have ever had the extraordinary privilege of speaking on the floor of the Senate. On my first time to speak on the floor of the Senate, I found myself being given the chance to read from Travis's letter from the Alamo. As I observed walking off the floor of the Senate, as they say in the beer commercial, it don't get no better than this. So I thank the Senator from Kentucky for giving me the opportunity to be welcomed to the floor of the Senate and having a chance to stand with him fighting for liberty.

There are a number of things I would like to address and ask the views of the Senator from Kentucky. I will begin by observing, as I did the last time the Senator from Kentucky and I had a colloquy, that Twitter never sleeps, and we heard from a number of tweets across the country. But those have not ceased. So since the Senator from Kentucky is still prohibited from looking at his cell phone, I wanted to prevent him from going into technology shock and withdrawal and provide an in-person feed for him.

This is about The Constitution. Stand with Rand. Get it together GOP.

Stand with Rand. Rand praising Dem OR Sen Ron Wyden for raising the same questions and concerns he has. Where are all the other Dems?

Sad day when killing Americans is up for debate. Sad day that every Senator is not up there with him. Stand with Rand. We are watching you guys.

I don't know how Sen Rand Paul does it . . . I'm tired just from WATCHING him. . . . a tip of the cap to you, sir. Thank you. Stand with Rand.

Sen Rand Paul is extemporaneously giving a better human rights speech than Barack Obama ever has. Stand with Rand.

And I am pretty certain that for the record I can confirm that no teleprompter was in front of the desk of the Senator from Kentucky.

Sen Rand Paul, Jimmy Stewart would be proud, sir.

Sen Rand Paul, look what's trending. Stand with Rand.

It's been awhile since I could say I am a proud American. Thank you, Rand Paul. Stand with Rand.

Rand Paul might be waiting a long time for an answer from The White House. Stand with Rand.

I would note that it has been 10 hours, so that would indeed be a correct observation of fact.

Democrats—Why not just agree that the POTUS cannot use drones to summarily kill US citizens on US soil? Stand with Rand.

Sen. Rand Paul crosses 8 hr threshold of filibuster. Stand with Rand.

Stand with Rand, please.

Sen Rand Paul did not filibuster for the right or the left, he did it for every person in this country. Stand with Rand.

Once you give up your rights, you will not get them back. Believe that. Stand with Rand.

We should all go to the U.S. Capitol and Stand with Rand.

I would note that quite a few Members of the House of Representatives have crossed over the Capitol and joined us precisely to stand with Rand, as have the men and women in the gallery who have been here throughout this long and historic stand.

Finally able to sit and watch the Rand Paul filibuster. Just epic. Stand with Rand.

Read the constitution and explain why each sentence is relevant to today. Not worthless and outdated.

7 hours and counting for Sen Rand Paul in the filibuster. This can end, Brennan, just say u won't unilaterally kill us. Stand with Rand.

America is watching. Stand with Rand.

I get the feeling that a more libertarian stance is the only thing which can bring about a fresh start for the GOP. Stand with Rand.

I stand with Rand in his 9th hr awaiting the President saying he doesn't have the power to kill Americans at will.

''I haven't killed anyone yet and I have no intention of killing Americans, but I might''—Barack Obama. Stand with Rand.

The federal government was closed today. Yet Sen Rand Paul working overtime. YouDaMan.

D-a-M-a-n is the precise spelling of that.

Sen Rand Paul, 100% support you. Keep going. Stand with Rand.

This isn't a filibuster. This is a line in the sand drawn with a quill pen that penned the constitution.

I think that one is particularly cool.

Do you agree with your colleague, Rep Justin Amash? Stand with Rand.

Almost always the answer to that one should be yes.

Do you stand with Sen Rand Paul and demand an answer from the WH on extra-judicial assassinations of Americans?

There is a word we do not hear too often within our own borders—assassinations. Yet that is exactly what we are talking about here tonight.

Don't think I've ever been quite so proud to say I'm from Kentucky. Stand with Rand.

Sen Rand Paul getting to the heart of issues. Not partisan politics, but a question of due process.

He's just about 8 hours away from having the 5th longest filibuster.

I apologize to the Senator from Kentucky if that is less than encouraging.

Stand with Rand.

I have a renewed sense of hope for our leaders in Washington today. Thank you, Sen Rand Paul, for standing by We The People. Stand with Rand.

I am a strong liberal supporter and two time Obama voter. I Stand with Rand.

Dr. Rand Paul, Excellent, excellent work today. We stand with Rand, too.

I hope Sen Rand Paul Can keep them up all night. There hasn't been a real filibuster on the Senate floor in years. Stand with Rand.

And I would note, as I was walking in, that this is certainly the least well-shaven I have been on the Senate floor. And it is particularly ironic that the desk at which I am standing, in addition to having been the former desk of a great hero of mine, Senator Barry Goldwater, was also the former desk of Senator Richard Nixon. So perhaps that spirit is animating the 5 o'clock shadow that I find myself at 10 o'clock at night sporting.

Stand with u I do. Stand with Rand.

I wonder if that one was from Dr. Seuss.

Stand with Rand because you have the freedom to do so.

Obama is going to have to address the points raised by Paul. Stand with Rand.

I stand with Rand . . . best line of the filiblizzard thus far. RT—

Yet another of Senator Rand Paul's miraculous tweets that he did from the floor of the Senate, a tweet of Senator Rand Paul—

''They shouldn't just drop a hellfire missile on your cafe experience.''

I would suggest to the Senator from Kentucky that at the end of what I am sure will be a long and very distinguished career in politics, fighting for every American, that with statements such as that, a subsequent career at Starbucks may indeed be promising.

The fight for liberty has a real hero. May the spirits of past patriots fuel you.

Until you get an answer, Rand, keep on going. Let's take it into tomorrow.

Is suspicion enough? Obviously not. Sen Rand Paul.

If you have family or friends in the Middle East, you might be a terrorist. Stand with Rand.

For the first time since November, I feel like I see a light at the end of the tunnel. It is a long tunnel. Stand with Rand.

Sen Rand Paul: If you have no bounds, you have an unlimited imperial presidency. So true.

Sen Rand Paul, eight hours, and still going strong. Thanks for standing for the Constitution. God bless you. Stand with Rand.

Thank you, Rand Paul, for standing up for our Constitution. We are behind you. Stand with Rand.

Go get 'em, Rand Paul. Great way to end my birthday. Stand with Rand.

I hope we do not make it to that individual's next birthday.

Best TV I've seen in a while. Stand with Rand.

Sen Rand Paul, I'm superproud of my Senator today. I have always been proud of him, but today I'm more proud than ever. STAND WITH RAND.

My kids—watching Rand Paul give a lesson to the country—on their own, without me telling them to. Stand with Rand. Thank you, Sen Rand Paul.

Why won't Obama say that he won't use drones to kill noncombatant U.S. citizens on U.S. soil? Seems a simple question. Stand with Rand.

Senator Rand Paul, thank you. Be encouraged and stay strong. Would stand there with you if we could. We are no longer free. Thank you for standing up for freedom.

''Stand with Rand'' is trending worldwide. That is pretty darn cool.

Rand Paul goes into his 9th hour of filibuster over drones. Watch it here.

I will not read the link to C–SPAN.

Senator Rand Paul, I am so proud of you. Way to stand tall. Stand with Rand.

Senator Rand Paul, your loyalty and dedication to we the people are not going unnoticed. Stand with Rand.

If you give back your rights, don't ever expect to get them back. Stand with Rand.

Call the White House. 202–456–1111. Take a stand.

For some reason, I feel compelled to read that tweet a second time.

Call the White House. 202–456–1111.

Rand Paul, standing for liberty and freedom. God bless you. Stand with Rand.

Rand Paul, the 21st century version of Washington, Jefferson and Madison.

No matter how you fall politically, you have to admire Rand Paul's absolute conviction.

I cannot stop watching Senator Rand Paul filibuster. Greatness. Stand with Rand.

Are you going to retweet Stand with Rand all night? I am. Liberty. Rand Paul.

And the final one.

Senator Rand Paul, I am a grandma who just learned how to Twitter tonight so that I could stand with Rand and the Constitution.

The first question I will ask of the Senator from Kentucky—and I have several more—is simply: What would you say to these millions of Americans and people worldwide who are coming together to stand with Rand?

Mr. PAUL. Mr. President, I thank the Senator from Texas for coming to the floor. I am overwhelmed with all the responses. What I would say is that I think there are things that are more important than personalities, more important than party, and they are the things our country was founded upon.

These are the things that bring people together who want us to stand and say these protections will exist. The interesting thing about our Constitution is it protects people who are—those who are defenseless often, those who can be falsely accused of crimes is what the Constitution is there for. I think there are people from all walks of life who say my brother was falsely accused or my brother was put in jail for 5 years or something, either they did not do it or it was an inappropriate sentence.

I think people understand the idea of wanting to be protected from false accusation, not only for something where you might be put in prison but for something, in this case, you might be killed for. We all understand. All you have to do is get online to read comments to any kind of story online to know people make all kinds of wild accusations and wild comments online. Do we want to have that be one of the indications for whether you might be targeted for surveillance or whether you might be targeted for a drone strike, that anything such as this could happen without you having your due process, that the fifth amendment somehow would be optional, that the executive branch would decide when they are going to apply the fifth amendment.

I am overwhelmed with the responses. I think it is something that unifies people. It has brought together both people from the Democratic side of the aisle as well as the Republican side of the aisle because, to me, this is not about whether the President is a Republican or Democrat. I have supported several of his nominees. I have supported people because I think he has the right to make political nominations, even though I do not agree with much of any of the nominees or the politics of the administration.

This is different. There is a constitutional principle. We are here today to filibuster against or for a constitutional principle not necessarily an individual. But it is something I think a lot of Americans believe strongly in. I thank Senator CRUZ very much for the comments I have gotten from the Senator and I would entertain any other questions.

Mr. CRUZ. Mr. President, I thank the Senator from Kentucky. I do indeed have additional questions. The heart of what the Senator is standing for, what some of the other Senators tonight are standing for, is liberty. I think that has always been the foundational value in the United States of America.

Our country was founded by Framers who understood that concentrated power is always inimical to liberty, that any time great power is undivided the freedom of the people is at jeopardy. As Lord Acton observed: Power tends to corrupt, and absolute power corrupts absolutely. It is for that reason that the Framers of our Constitution did what the Supreme Court has described as splitting the atom of sovereignty, taking what used to be one discrete indispensable concept of power and sovereignty and breaking it up, breaking it up between the three branches of the Federal Government and breaking it up between the Federal Government and the 50 States and the local government as well.

The purpose of doing all that is to prevent what James Madison in Federalist No. 10 described as factions. Today we would call them special interests that might take control of one branch of government. If all power were concentrated in the Executive, and one faction, one special interest was to gain influence in that Executive, then the liberty of the people would be at peril.

In Federalist 10, Madison explained the factions are never going to go away. Human nature is such that we will divide into factions with different interests. The genius of the Framers was not to imagine human nature was somehow different than it was but to recognize that it was. As the Federalist Papers explained: If men were angels, no government would be necessary. The great challenge in forming a government is to enable the governed to do what it must. Yet at the same time oblige it to govern itself.

For that reason, splitting the atom of sovereignty, separating power prevents any one branch of government from acquiring unchecked power. It is, indeed, the responsibility of this body to do what we are doing now. If a President of the United States decrees the power to take the lives of U.S. citizens on U.S. soil without due process of law, I would suggest it is integral to the oath of office of every Member of the Senate and every Member of the House of Representatives to stand and say: Mr. President, respectfully, no, you may not. The Constitution gives you no such power. Each of us on entering office—in my case just a few weeks ago standing on those steps, the Vice President asked me to raise my hand and take an oath to honor and defend the Constitution. Every Member of this body took that oath.

It is our responsibility, especially when one branch of the government is overreaching, is usurping power that the Constitution forbids him and that is threatening to the liberty of the people, it is the responsibility of all of us to stand and resist that.

One of my alltime heroes, Ayn Rand in ''Atlas Shrugged,'' described how the

parasitical class would put into place arbitrary power, standardless rules precisely so the productive citizens in the private sector would have to come on bended knee to those in government seeking special dispensation, seeking special favors, because that arbitrary and standardless rule empowers the political class and disempowers the people.

I could not help but think about Ayn Rand's observation this morning as I heard the Attorney General over and over refuse to say it would be unconstitutional for the Federal Government to kill a U.S. citizen on U.S. soil. He would say it would be inappropriate. He said that three times in response to direct questioning. It would be inappropriate and we should trust him. The Federal Government would not do so.

I found myself thinking of those arbitrary standards Ayn Rand talked about; that if the only protection we the people have against the Federal Government choosing to take the life of a U.S. citizen on U.S. soil is our trust that they would refrain from doing what is inappropriate rather than the protections of the Constitution, then I would suggest our liberty is fragile indeed.

Indeed, when we think about the concentration of power, no judicial opinion is more important than Justice Robert Jackson's concurring opinion in the Youngstown Steel seizure case. Justice Jackson, as the Senator from Kentucky knows, was a giant on the U.S. Supreme Court. My former boss, Chief Justice William Rhenquist, served as a law clerk to Justice Robert Jackson.

Indeed, Justice Jackson took time off from serving on the U.S. Supreme Court to serve as the chief prosecutor at the Nuremberg trials, during which he made the powerful observation following World War II, when the United States brought to trial the horrific war criminals in the Nazi regime.

Justice Jackson observed at Nuremberg that four great nations, flushed with victory and stunned with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law, is one of the most significant tributes that power has ever paid to reason.

I would suggest to the Senator from Kentucky, and I feel confident he would agree, that what we are talking about right now is the tribute that power must and should pay to reason and that unchecked power is always a threat to liberty.

As Justice Jackson opined in Youngstown Steel seizure ''that comprehensive and undefined Presidential powers hold both practical advantages and grave dangers for the country will impress anyone who has served as a legal adviser to a President in a time of transition and public anxiety.''

Those words could have been written as easily tonight as they were half a century ago. Justice Jackson continued:

While the Constitution diffuses power to better secure liberty, it also contemplates that practice will integrate the dispersed power into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending on their disjunction or conjunction with those of Congress.

When a President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.

Justice Jackson explains:

No. 2: When the President acts in absence of either a congressional branch or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which the distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least, as a practical matter, enable, if not invite, measures on independent Presidential responsibility. In this area, any actual test of power is likely to depend upon the imperatives of events and contemporary imponderables, rather than on abstract theories of law.

Now, perhaps, prior to 11:45 today, Eric Holder and John Brennan would have argued they fall into this second category, a category where Congress has been silent and, accordingly, they might presume some Presidential power. But as of 11:45 today, they can no longer claim that.

Justice Jackson explained the third category of Presidential powers.

When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain executive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

As we stand here tonight, later than the typical hour for the Senate being in session, indeed, later than many Members of this body had anticipated being in Washington, DC—many Members of this body had envisioned being on planes and returning home by now—it occurs to me that those Senators who have heeded the encouragement of the twitterers to stand with RAND, those Senators who have come here today, I am reminded of Henry the Fifth, as Shakespeare observed:

What's he that wishes so?
My cousin Westmoreland? No, my fair cousin;
If we are mark'd to die, we are enow
To do our country loss; and if to live,
The fewer men, the greater share of honour.
God's will. I pray thee, wish not one man more.
By Jove, I am not covetous for gold,
Nor care I who doth feed upon my cost;
It yearns me not if men my garments wear;
Such outward things dwell not in my desires.
But if it be a sin to covet honor,
I am the most offending soul alive.
No, faith, my coz, wish not a man from England.
God's peace. I would not lose so great an honour
As one man more methinks would share from me
For the best hope I have. O, do not wish one more.
Rather proclaim it, Westmoreland, through my host,
That he which hath no stomach to this fight,
Let him depart; his passport shall be made,
And crowns for convoy put into his purse.
We would not die in that man's company
That fears his fellowship to die with us.
This day is call'd the feast of Crispian.
He that outlives this day, and comes safe home,
Will stand a tip-toe when this day is nam'd,
And rouse him at the name of Crispian.
He that shall live this day, and see old age,
Will yearly on the vigil feast his neighbours,
And say ''To-morrow is Saint Crispian.''
Then he will strip his sleeve and show his scars,
And say ''These wounds I had on Crispian's day.''
Old men forget; yet all shall be forgot,
But he'll remember, with advantages,
What feats he did that day. Then shall our names,
Familiar in his mouth as household words—
Harry the King, Bedford and Exeter,
Warwick and Talbot, Salisbury and Gloucester—
Be in their flowing cups freshly remembered.
This story shall the good man teach his son;
And Crispin Crispian shall ne'er go by,
From this day to the ending of the world,
But we in it shall be remembered—
We few, we happy few, we band of brothers;
For he to-day that sheds his blood with me
Shall be my brother; be he ne'er so vile,
This day shall gentle his condition.
And gentlemen in England now-a-bed
Shall think themselves accurs'd they were not here,
And hold their manhoods cheap whiles any speaks
That fought with us upon St. Crispin's day.

I would observe to the Senator from Kentucky that those glorious sentiments expressed centuries ago are precisely applicable to the stand here tonight because it is a stand against, indeed it is a stand against an administration that refuses to acknowledge limits on its power. It is a stand for the same purpose, for liberty.

There is a frustration across this country, a frustration not with Democrats or Republicans, not with one party or another, a frustration with entrenched politicians in Washington who don't seem to work for anybody.

I am convinced there is something credible happening in this country when the people are standing and reminding the men and women of this body that every one of us works for ''we the people.'' It is our principal task to stand and defend liberty, especially when liberty is threatened.

Indeed, that St. Crispin's Day speech had a saying—and even in some ways a different manifestation. In one of the greatest movies of all time, Patton, the opening scene of Patton, I will confess to the Senator of Kentucky I have more than once in preparation for an oral argument in court simply watched George C. Scott marching out in front of a flag the size of North Dakota. Standing in front of the flag, General Patton observed in a tribute to that very same speech I just read—I am going to modify it slightly to make it PG.

I want you to remember that no ''fellow'' ever won a war by dying for his country. He won it by making the other poor ''fellow'' die for his country.

Men, all this stuff you've heard about America not wanting to fight, wanting to stay out of the war is a lot of horse dung. Americans traditionally love to fight. All real Americans love the sting of battle.

When you were kids you all admired the champion marble shooter, the fastest runner, big-league ball players, the toughest boxers.

Americans love a winner and will not tolerate a loser.

Americans play to win all the time. I wouldn't give a hoot in hell for a man who lost and laughed. That's why Americans have never lost and will never lose a war because the very thought of losing is hateful to Americans.

George C. Scott continues as Patton:

Now there's another thing I want you to remember. I don't want to get any messages saying we are ''holding our position.'' We're not ''holding'' anything. Let the Hun do that. We're advancing constantly. We're not interested in holding on to anything except the enemy. We're going to hold on to him by the nose and kick him in the ''posterior.'' We're going to kick the ''heck'' out of him all the time and we're going to go through him like crap through a goose.

Thirty years from now when you're sitting around your fireside with your grandson on your knee and he asks you, ''What did you do in the great World War II?'' You won't have to say, ''Well, I shoveled 'manure' in Louisiana.''

That same sentiment, the same sentiment in St. Crispin's Day speech, talked about a tradition that has been a tradition in America for centuries, of men and women rallying against hard odds, rallying against challenging obstacles.

(Ms. HEITKAMP assumed the chair.)

I would observe that fight should not be a partisan fight. This is not a question of Republican or Democrat, liberty, the right to life of every American citizen. Arbitrary taking at the hands of the Federal Government should not simply be a value that one side or another of this Chamber embraces.

Indeed, I would note during the hearings this morning with Eric Holder, some of the most enthusiastic audience participants in that hearing were self-identified members of Code Pink, who I would suggest are not ordinarily individuals who would be described as card-carrying members of the Republican Party.

But liberty does not have a partisan affiliation. Indeed, to the Senator from Kentucky, I think it is an interesting question what the reaction in this Chamber and outside would be if the very same statements that have been made were made by a President who happened to be Republican. I think there is little doubt the outcry would be deafening, and rightly so. I will say to the Senator from Kentucky, if a President made the identical representations and happened to have an ''R'' behind his or her name, I have not one shadow of a doubt that the Senator from Kentucky would be standing here 10 hours protesting the arbitrary assertion of power by a President regardless of whether we share his party or not.

Indeed, I would note to the Senator from Kentucky this is a scenario which is not entirely hypothetical. Prior to serving in this body, I had the great privilege of serving my home State of Texas as the solicitor general of Texas. During that time, we faced a tragic and epic battle in a case called Medellin v. Texas.

Medellin began with a crime that shocked the conscience. Two little girls were horrifically abused and murdered by a gang in Houston. They were apprehended, confessed, and they were convicted by a jury of their peers, quite rightly.

At that point, the case took a very strange turn because the World Court, which is the judicial arm of the United Nations, issued an order to the United States to reopen the convictions of 51 murderers across this country, including one of the murderers in this case, Jose Ernesto Medellin.

I will tell you, Jose Medellin wrote a four-page handwritten confession in that case. It is one of the most chilling documents I ever had the displeasure of reading. In it he bragged about hearing those little girls beg for their lives. A tiny detail he included in those letters was in many ways the most haunting, and I know it will remain with me for the rest of my life. He described how the youngest of those girls was wearing a Mickey Mouse watch and how he kept it as a trophy of that night because he was so proud of the atrocities they had committed. It is truly sickening what those young boys did that evening. And yet the World Court asserted a power that heretofore has never been asserted. It was the first time in history a foreign court has ever tried to bind the U.S. justice system. The World Court claimed the authority to reopen those convictions, so Texas stood up and fought the World Court.

I had the honor of arguing this case twice in front of the U.S. Supreme Court. On the other side, 90 foreign nations came in against the State of Texas—90 nations came in and argued the U.S. justice system should be completely subject to the authority of the World Court and the United Nations.

Also on the other side, most disturbingly, was the President of the United States. The President signed a two-paragraph order that attempted to order the State courts to obey the World Court. Again, that order, like the World Court's order, was unprecedented. It was the first time in history any President had ever attempted to order the State courts to do anything.

Unfortunately, the President at issue in that case was a Republican. It was President George W. Bush, a man for whom I worked, a man who, in many respects, I respect. Yet in that case, he asserted a power that could be found nowhere in the Constitution. And in consultation with my boss at the time, Attorney General Greg Abbott, I went before the U.S. Supreme Court and argued on behalf of the State of Texas that the President of the United States has no authority to give away U.S. sovereignty.

That was done notwithstanding the fact that he was a Republican, notwithstanding the fact the President was the former Governor of my home State of Texas. Because at the end of the day, defending liberty, defending sovereignty, defending the Constitution is not a partisan choice. It is not a game of dodge ball with shirts and skins; that if your team happens to have the ball, you stick together. Every one of us has taken an oath of office and we have an obligation to stand up.

So I stood before the U.S. Supreme Court representing the State of Texas and arguing that no President of the United States, be he Republican or Democrat, has the authority to give up U.S. sovereignty and make the State courts subject to the World Court.

I would note in that case the State of Texas had support from a number of unlikely sources. Indeed, we had a wide range of amicae—friends of the court—who came in and supported us. One brief was filed on behalf of law professors. It was joined by several law professors, one of whom, John Yoo, is widely considered the law professor with the most expansive view of Presidential authority. And, indeed, he was an individual who served in the Justice Department and had advocated under President Bush an expansive view of Presidential authority.

That very same brief was joined by Erwin Chemerinsky, the dean of the University of California at Irvine School of Law. Dean Chemerinsky is a very well-known and proud liberal academic. I suspect it may well be right that this is the only time ever that John Yoo and Erwin Chemerinsky joined a single brief before the U.S. Supreme Court. And both agreed, despite the fact they come from very different places in the legal academy, that unchecked power in the hand of the executive is fundamentally a threat to liberty.

Indeed, I would note for the Senator from Kentucky, in talking to both of them and asking for their support in Medellin, I made the point to each to imagine a President from the other side who might have the power that was being asserted.

To the friends of mine on the right, I suggested that if a President had the power to set aside State laws on grounds of international comity, which was the basis that was being asserted in that case—without any sanction from Congress, without any sanction from another branch of the Federal Government, but simply on his own unilateral authority—an activist President on the left could use that power to assert, for example, that in his or her judgment the marriage laws of all 50 States should be set aside.

It may well be that all 50 States will choose to set their marriage laws aside. That is a judgment right now that has

been in the hands of the voters in each State. But regardless of what the 50 States decide—and I suspect they will not decide the same thing—it seems to me clear that no President has the authority unilaterally, with the flick of a finger, to remove laws from the State books of all 50 States.

Likewise, to my friends on the left, I asked them to envision their nightmare of a rightwing President. They each had slightly different incarnations, but they all managed to do that. And I said: If this assertion of power is correct, that any President can set aside any State law if he or she deems it inconsistent with international comity, even though no treaty requires this—and, indeed, in Medellin the Justice Department maintained no treaty required this, this was simply a power that was being asserted to further comity, to further our relationships with foreign nations—I suggested if the President has that power, what is to stop a President on the right from saying: I am setting aside the punitive damages laws in all 50 States? It upsets comity when foreign companies are subject to punitive damages awards; therefore, tort reform shall be the law of all 50 States.

And for that matter, there are States such as California that persist in putting in place incredibly restrictive environmental laws. If the President has the authority to flick aside State laws, what would prevent a President on the right from saying those environmental laws are no more?

I would note for the Senator from Kentucky that my view on all those questions was very clear and very straightforward. No President may do so, whether he or she is of the right or of the left. If the Federal Government is to set aside a State law, it may do so only through exercise of the supremacy clause. The Framers required that in order to set aside a State law that had been adopted by the democratically elected legislature in the State, that two branches had to work together in concert, either through legislation that passes the House of Representatives, passes the U.S. Senate and is signed into law by the President or through the form of a treaty that is signed by the President and ratified by two-thirds of the U.S. Senate. But in both instances the Framers required two branches to work together.

Why? The same reason we discussed before. The reason from Federalist 10, that you do not want power unified in one branch of government, where a faction, a special interest, may seize control of it. You want it divided.

I will note that it was an unusual position for the State of Texas to appear before the U.S. Supreme Court and argue that an action by a Republican President and former Governor of the State of Texas was unconstitutional. Yes, I can tell you I was very proud to have the opportunity to do just that, and I was even more proud when the Supreme Court of the United States ruled by a vote of 6 to 3 in favor of the State of Texas, concluding, No. 1, that the World Court has no authority whatsoever to bind the U.S. justice system; and No. 2, the President has no authority under the Constitution to give away our sovereignty.

I would suggest that is the way our system is supposed to work; that all of us, regardless of party, should be standing together for liberty. And when I think of standing for liberty, some of the frustration people have across this country is they feel it doesn't do any good. It doesn't make a difference who they vote for. Whoever they vote for, they go to Washington and keep spending money, and spending more money, and more money, and more money, and the debt goes up and up and up, and the Federal laws get bigger and bigger and bigger and bigger, and the Federal regulations get more and more and more, and nothing seems to change. And I understand that frustration. It is a real frustration. It is a frustration I share, and I know it is a frustration the Senator from Kentucky shares.

I would suggest that part of the import of tonight is that the Senator from Kentucky is standing with millions of Americans who are frustrated by politicians in Washington who are unwilling to rock the boat, who are unwilling to stand for change. I am reminded that change can sometimes seem hopeless. Indeed, I mentioned that the desk I am standing at was previously occupied by Barry Goldwater. I have yet to acquire, but I intend to acquire, a leather-bound copy of ''Conscience of a Conservative,'' which I intend to keep in this desk.

When Barry Goldwater became a national leader, it was thought impossible for his views to receive a wide audience. The views that were in the ascendancy were the views of the left; that government control of the economy, of our lives, was the proper and right direction for our Nation.

I am reminded of someone else, as the Senator from Kentucky knows, who gave a speech on October 27, 1964. He said the following:

> I have spent most of my life as a Democrat. I recently have seen fit to follow another course. I believe that the issues confronting us cross party lines. Now, one side in this campaign—

And here he is referring to the campaign in 1964 for President.

> —has been telling us that the issues of this election are the maintenance of peace and prosperity. The line has been used, ''We've never had it so good.''
>
> But I have an uncomfortable feeling that this prosperity isn't something on which we can base our hopes for the future. No nation in history has ever survived a tax burden that reached a third of its national income. Today, 37 cents out of every dollar earned in this country is the tax collector's share,

Ah, those were the days.

> and yet our government continues to spend $17 million a day more than the government takes in.

Would that we could say today the government spends only $17 million a day more than it takes in.

> We haven't balanced our budget in 28 out of the last 34 years. We've raised our debt limit three times in the last 12 months,

I will remind you this speech was given in 1964, not last week.

> and now our national debt is one and a half times bigger than all the combined debts of all the nations of the world. We have $15 billion in gold in our treasury; we don't own an ounce. Foreign dollar claims are $27.3 billion. And we've just announced that the dollar of 1939 will now purchase 45 cents of its total value.

Again, a scenario with which we are quite familiar.

> As for the peace that we would preserve, I wonder who among us would like to approach the wife or mother whose husband or son has died in South Vietnam and ask them if they think this is a peace that should be maintained indefinitely. Do they mean peace or do they mean we just want to be left in peace? There can be no real peace while one American is dying someplace in the world for the rest of us. We're at war with the most dangerous enemy that has ever faced mankind in his long climb from the swamp to the stars, and it's been said if we lose that war, and in doing so lose this way of freedom of ours, history will record with the greatest astonishment that those who had the most to lose did the least to prevent its happening. Well, I think it's time we ask ourselves if we still know the freedoms that were intended for us by the Founding Fathers.

This next section is a section particularly dear to my heart. It was given before I was born.

> Not too long ago, two friends of mine were talking to a Cuban refugee, a businessman who had escaped from Castro, and in the midst of his story one of my friends turned to the other and said, ''We don't know how lucky we are.'' And the Cuban stopped and said, ''How lucky you are? I had someplace to escape to.'' And in that sentence he told us the entire story.

Turning and seeing the junior Senator from Florida, I know he and I both know, as I hope every Member of this body knows, just how precious and fragile the freedom is that we enjoy in this country.

As President Reagan continued in that speech:

> If we lose freedom here, there's no place to escape to. This is the last stand on Earth.

This idea that government is beholden to the people, that it has no other source of power except the sovereign people, is still the newest and most unique idea in all the long history of man's relation to man. This is the issue of this election: whether we believe in our capacity for self-government or whether we abandon the American revolution and confess that a little intellectual elite in a far distant capitol can plan our lives for us better than we can plan them ourselves.

> You and I are increasingly told that we have to choose between a left or right. I would like to suggest there is no such thing as left or right. There is only up or down—[Up] man's old-age dream, the ultimate in individual freedom consistent with law and order, or down, to the ant heap of totalitarianism. Regardless of their sincerity, their humanitarian motives, those who would trade freedom for security have embarked on this downward course.

Given the topic of this discussion, the asserted power of the President to take the life of a U.S. citizen on U.S. soil without due process of law, that last portion bears reading again. ''Those who would trade our freedom for security have embarked on this downward course to the ant heap of totalitarianism.''

In this vote-harvesting time, they use terms like the ''Great Society,'' or as we were told a few days ago by the President, we must accept a greater government activity in the affairs of the people. But they've been a little more explicit in the past and among themselves; and all of the things I now will quote have appeared in print. These are not Republican accusations. For example, they have voices that say, ''The cold war will end through our acceptance of a not undemocratic socialism.'' Another voice says, ''The profit motive has become outmoded. It must be replaced by the incentives of the welfare state.'' Or, ''Our traditional system of individual freedom is incapable of solving the complex problems of the 20th century.'' Senator Fullbright has said at Stanford University that the Constitution is outmoded. He referred to the President as ''our moral teacher and our leader,'' and he says he is ''hobbled in his task by the restrictions of power imposed on him by this antiquated document.'' He must ''be freed,'' so that he ''can do for us'' what he knows ''is best.'' And Senator Clark of Pennsylvania, another articulate spokesman, defines liberalism as ''meeting the material needs of the masses through the full power of centralized government.''

Well, I, for one, resent it when a representative of the people refers to you and me, the free men and women of this country, as ''the masses.'' This is a term we haven't applied to ourselves in America. But beyond that, ''the full power of centralized government''—this was the very thing the Founding Fathers sought to minimize. They knew that governments don't control things. A government can't control the economy without controlling people. And they know when a government sets out to do that, it must use force and coercion to achieve its purpose. They also knew, those Founding Fathers, that outside of its legitimate functions, government does nothing as well or as economically as the private sector of the economy.

Now, we have no better example of this than government's involvement in the farm economy over the last 30 years. Since 1955, the cost of this program has nearly doubled. One-fourth of farming in America is responsible for 85 percent of the farm surplus. Three-fourths of farming is out on the free market and has known a 21 percent increase in the per capita consumption of all its produce.

I am going to skip further along, to the end of the speech which, I will confess, not unlike the speeches given on this floor, was not a short speech. I will move to the end where President Reagan continued and said:

> Those who would trade our freedom for the soup kitchen of the welfare state have told us they have a utopian solution of peace without victory. They call their policy ''accommodation.'' And they say if we will only avoid any direct confrontation with the enemy, he will forget his evil ways and learn to love us. . . . We cannot buy our security, our freedom from the threat of the bomb by committing an immorality so great as saying to a billion human beings now enslaved behind the Iron Curtain, ''Give up your dreams of freedom because to save your skins we are making a deal with your slave masters.'' Alexander Hamilton said, ''A nation which can prefer disgrace to danger is prepared for a master, and deserves one.'' Let's set the record straight. There is no argument over the choice between peace and war, but there is only one guaranteed way you can have peace—and you can have it in the next second—surrender.
>
> Admittedly there's a risk in any course we follow other than this, but every lesson of history tells us the greater risk lies in appeasement, and this is the specter that we face. You and I know and do not believe that life is so dear and peace so sweet as to be purchased at the price of chains and slavery. If nothing in life is worth dying for, when did this begin?
>
> You and I have the courage to say to our enemies. ''There is a price we will not pay. There is a point beyond which they must not advance.'' And this, this is the meaning in the phrase of Barry Goldwater's ''peace through strength.''
>
> Winston Churchill said, ''The destiny of man is not measured by material computations. When great forces are on the move in the world we learn we are spirits—not animals. And he said, ''There is something going on in time and space, and beyond time and space which, whether we like it or not, spells duty.''
>
> You and I have a rendezvous with destiny.
>
> We will preserve for our children this, the last best hope of man on Earth or we will sentence them to take the last step into 1000 years of darkness.
>
> We will keep in mind and remember that Barry Goldwater has faith in us, he has faith that you and I have the ability and the dignity and the right to make our own decisions and to determine our own destiny.
>
> That path, the path of standing and fighting for freedom, even when it seems daunting, even when it seems the gestalt of the moment is on the other side, is a path with many honorable forebears.

I can tell you, speaking and echoing the sentiment of the millions on twitter, of the people following this stand for principle tonight, if the 100 Senators in this body stand together and say regardless of party, liberty will always prevail; regardless of party, the Constitution is the governing body, the governing document in this Nation, then we will be doing our jobs.

I commend Senator PAUL for a lonely stand that, as the night has worn on, has not proven quite so lonely. Indeed, were he the only Senator standing at his desk this evening, it would not be lonely in that circumstance either because he would be standing shoulder to shoulder with millions of Americans who do not wish the Federal Government to assert arbitrary power over our lives, over our liberty, over our property, but who, instead, want a government that remains a limited government of enumerated powers that protects the God-given rights each of us is blessed to have.

The question I ask: What in the Senator's judgment is America without liberty? Who are we, if we are not a free people?

Mr. PAUL. Mr. President, I thank the Senator from Texas for his remarks. I think he has hit it exactly on the head. The question is a very pertinent question. The question is really where do we go from here.

I see this as a struggle. I see that we are engaged in an epic struggle, but it is not a struggle between Republicans and Democrats; it is a struggle between the President and the Constitution.

The question is, Does the President have the power and the prerogative to have his way regardless of the Constitution?

The question is, Does the Attorney General get to say that he will adhere to the fifth amendment when he chooses to? Is there a choice for American citizens on American soil that they either get the fifth amendment protections or they don't get the fifth amendment protections? This really is a struggle not only between the President and the Constitution but between the Senate and the Congress and the President, to say whether the President gets to determine this policy or whether this is a policy that should come from Congress.

I think we should be asking not just for the President to give his memos on drones, we should be giving him our memos on drones. We need to be dictating the law to the President and not acquiescing and giving the President this authority. This should be a battle between the executive and the legislative. It should involve Republicans and Democrats trying to restrain the President from saying that he has the ability to decide when you get fifth amendment protections and when you do not.

At this time, I, without yielding the floor, would like to entertain a question from the Senator from Florida.

The PRESIDING OFFICER (Mr. SCHATZ). The Senator from Florida.

Mr. RUBIO. Mr. President, let me congratulate the junior Senator from Texas on a fantastic question. In that question he used Shakespeare references; he used references to the movie ''Patton.'' I didn't bring my Shakespeare book, so let me just begin by quoting a modern-day poet. His name is Wiz Khalifa, called ''Work Hard Play Hard.'' That is how it starts.

If you look at time, I think it is a time when many of our colleagues also expected to be back in the home State playing hard, but we are happy we are still here working hard on this issue. It is actually pretty stunning. If you watch from home you hear the audience of people watching on the news or whatever, what is going on here. I think it is important to explain what exactly is happening here. What is happening is pretty straightforward.

The Senator from Kentucky has asked a question of the administration. It is a pretty straightforward question. Is it constitutional for the Federal Government to kill a noncombatant citizen in the United States? We all have strong feelings about that program. We all have strong feelings about the war on terror. These are all legitimate issues, but this is a very direct question that has been asked.

What would have resolved this hours ago, from my understanding—and if I am incorrect the Senator from Kentucky will correct me in a moment—my understanding is he has offered two ways to bring this to a resolution. One is just a clear, unequivocal statement from the White House that says, of course, it is unconstitutional. That is not going to happen. Unconstitutional. Just a straightforward statement of that magnitude.

I have been watching on television the last few hours. I saw the Senator from Kentucky say they have reached out to the White House. They have been, I believe, unable to get a direct response.

The other is I heard he made a motion to have a resolution heard that made it clear that was the sense of this body. The sense of this body would be that this is unconstitutional. Again, pretty straightforward.

Let's just say there are those among us who believe this is important. I don't know anybody in this body who believes a noncombatant U.S. citizen in the United States who is not doing anything of imminent danger should somehow be killed by the U.S. Government, nor do people at home believe that either. It was the sense of the Senate that this was the case, and in exchange for that vote, of course the vote on Mr. Brennan would move forward, and that has been rejected. This doesn't make a lot of sense to me.

I actually went to a movie—one of the great American movies, ''The Godfather''—and there was a quote in that movie. I don't have the Patton quote, but I have ''The Godfather'' quote, and this is the best known one, ''I'll make him an offer he can't refuse.'' To me these are straightforward offers they can't refuse. Yet they have been refused. I think that is stunning.

The third thing I wish to say—I want you to imagine what this conversation would be like tonight if the President was George W. Bush and if this issue was about George W. Bush. Just imagine that for a moment now—if he had been asked this direct question and refused to answer—what this Chamber would look like and what the arguments being made would look like tonight. Imagine that for a moment.

That takes me back to another modern day poet by the name of Jay-Z from one of the songs he wrote: It's funny what seven days can change, it was all good just a week ago. I don't know if it was all good a week ago, but I can tell everyone that things have changed.

If the President was George W. Bush and this was the question asked of him and the response was the silence we have gotten, we would have a very different scenario tonight except I actually believe the Senator from Kentucky would make the exact same arguments he is now making on the floor.

I want everyone who is watching to clearly understand—and if I am wrong, the Senator from Kentucky is going to correct me—that what he is asking is a simple, straightforward response or, if we cannot get that, a simple and straightforward response from the Members of this body in a sense of the Senate resolution vote. Both have been rejected.

The last observation I would have tonight is that there have been pretty phenomenal legal analyses on the floor. That reminds me of the most famous quote from ''The Godfather'' that was never actually used in the movie. I don't know how that happened. Maybe they cut it out. Here is the quote: ''A lawyer with his briefcase can steal more than a hundred men with guns.'' I don't know how that is relevant to this, but I thought it was a very good quote. I thought I would bring it up because I went to law school. I am a lawyer. I was a land use and zoning attorney, which meant if I wound up in the courtroom, something went horribly wrong with the land use and zoning application.

The point is we have had good arguments on the constitutional issues with regard to this, and I think those are important to discuss. I am glad so much time has been spent on those. It is important for the people at home to fully understand the legal arguments here because I think they are important. They go to the heart of our Constitution. They go to the heart of our civil liberties. They go to the heart of the things that distinguish our Nation.

I think what is stunning to me—clearly the constitutional issue is important—is how simple and straightforward this issue is and how easily it could have been resolved. I don't know how many hours we are into this now—I think it is about 11 hours and 15 minutes—but we cannot get a straightforward answer. The Members of this body deserve that. The Members of this body deserve an answer. It doesn't matter what party you or the President is in. This is an important question that is being asked.

All of this could be over if we get a straightforward answer. I think that is something every Member of this body should care about. It is not a Republican question. It is not a conservative question. It is a constitutional question, a relevant question, and one that should be easy to answer.

They are refusing to answer it for some reason. I don't know if it is because of pride or it is beneath them or they have something else going on or the answer department was shut down. Either way I don't understand how they cannot answer this very straightforward question.

It reminds me of another line from ''The Godfather'' when Michael turns to Fredo and says: Fredo, you are my older brother, and I love you but don't ever take sides with anyone against the family again. That is kind of what is happening here. As an institution—as the Senate—we have a right to those answers. It doesn't matter who the President is. We have a job to do that we are held responsible for and that we are held accountable.

Thirty years from now, forty years from now, twenty years from now, ten years from now, these sorts of decisions will have ramifications long after we are gone. All of us here will be gone and there will be other people in these chairs. Maybe it will be our children, grandchildren or great-grandchildren who will visit this building, and they will read about the time we served here. If we make mistakes, history will record those mistakes and hold us accountable for those mistakes. If things are happening today that set the groundwork for future administrations—because that is the other thing we need to remember. No matter how anyone feels about the current President, he is not going to be President forever. The precedence he sets could very well guide what future Presidents do.

So the point is, if we are laying the groundwork and making mistakes by not asking certain questions, history will hold us accountable for that and that is all of us. It is not one of us, not five of us, not the Republican part of the Senate but all of us. We have a right to ask these questions and to get these questions answered. That is not being an obstructionist, that is not being partisan, that is being a Senator.

I have only been here 2 years, but I know enough of this process already to know that when the majority changes or when a new President is elected, at some point every single one of us is going to want to have an answer from the administration or some other branch of government and they are going to hold us off. They are going to give us the Heisman and stiff-arm us and not answer the question. I would sure hope at that moment—whether you agree with that person or not—that you would stand and defend their prerogative and right as a representative of their State to get legitimate questions answered in a straightforward way.

As I said earlier today when I came to the floor, this issue is about this institution as much as anything else. It is about the right of every single Member of this body to be able to ask legitimate questions of the administration or other branches of government and to get a straightforward answer.

I guess the question I have for the junior Senator from Kentucky is—just to clarify my understanding—that this issue could have been brought to a resolution quite a long time ago if the White House had made their feelings well known in a statement. They could

just put that out in a 30-second statement, and it would be done. Just come out and say it, that it is unconstitutional to kill U.S. citizens that are noncombatants who are in the United States. That is one route.

The other thing that could have ended this is the unanimous consent motion he made to have this body vote on the sense of the Senate, and that would have brought it to a vote. Is that accurate? Are those the options before us?

Mr. PAUL. Mr. President, that is exactly the sequence of things. We have been in contact with the White House throughout the night. We have made several phone calls to the White House. We told them we are willing to allow a vote on the Brennan nomination. All we ask in return is that we get a clear implication of whether they believe they have the authority under the Constitution to target Americans on American soil. I think it is a question that is fair to ask, and we have been willing to let them have the vote at any time either earlier tonight, obviously, as well as in the morning. All we ask in return from the White House is a clarification.

The last report I got from the White House is that they were done talking tonight. I hope that doesn't mean they are done talking tomorrow. I think this struggle is an important struggle, and I think there needs to be clarification from the White House before this goes forward. This is a point in time when the question has been raised. I think it is important for them to answer the question, and the fifth amendment is not optional. They don't get to choose to adhere to the fifth amendment. This applies to U.S. citizens on U.S. soil, and there are no exceptions to that.

Without yielding time, I would like to entertain a question from the Senator from South Dakota.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from South Dakota.

Mr. THUNE. Madam President, I thank the Senator from Kentucky for yielding for a question. I appreciate his diligence in continuing at this late hour to get an answer to some very important questions.

I think many of us when we got up and came in this morning were preparing and getting ready for the big blizzard of 2013 which, of course, never materialized here in Washington, DC. Evidently, there were a lot of agencies of government that were not here today. Perhaps when they get back, maybe the Senator from Kentucky will get an answer to his question. I think it is a straightforward question.

I am someone this evening who has supported the use of drones in fighting the war on terror. I think they have been very effective in killing terrorists, people who want to do harm to the people of this country. But I think the question that has been raised by the Senator from Kentucky—and the reason we are here this evening—has to do with a straightforward issue. He has a sense of the Senate on which he is prepared to have the Senate go on record, and it is very simple and very straightforward. It says: Resolved that it is the sense of the Senate that, No. 1, the use of drones to execute or target American citizens on American soil who pose no imminent threat clearly violates the constitutional due process rights of citizens.

No. 2, the American people deserve a clear, concise, and unequivocal public statement from the President of the United States that contains detailed legal reasoning including, but not limited to, the balance between national security and due process, limits of Executive power, and distinction between treatment of citizens and noncitizens within and outside the borders of the United States, the use of lethal force against American citizens, and the use of drones and the application of lethal force within the United States territory.

It is a very straightforward resolution, a sense of the Senate, and all that the Senator from Kentucky is simply doing is trying to get a response and get a vote on that and make that the statement of the Senate. He obviously wants to get the President of the United States, the White House, and Mr. Brennan—whose nomination is pending before us—to make a clarification on that point.

It is not like this issue popped up overnight. The Senator from Kentucky has been trying for some time to get an answer to this question. He has submitted numerous letters addressed to Mr. Brennan.

This is a letter from February 12 where he poses numerous questions, one of which is: Do you believe that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil? What about the use of lethal force against a non-U.S. person on U.S. soil? These are straightforward questions to which the Senator from Kentucky deserves an answer, and this is a perfectly fitting and appropriate time in which to try and get that answer.

The nomination of the CIA Director is an incredibly important and strategic position in this country, and under the Constitution of the United States, article II, section 2, the President has the power by and with the advice and consent of the Senate to make treaties provided two-thirds of the Senators concur. ''He shall nominate, and with the advice of the Senate, shall appoint ambassadors, other public ministers, counsels, judges of the Supreme Court, and other officers of the United States.''

It is the advise and consent power that the Senate has under the Constitution that the Senator from Kentucky is exercising on this nomination.

Again, it has been pointed out many times on the floor of the Senate today this is not something that is a partisan issue. It is not a Democratic or Republican issue. This is something that has ramifications. It is a constitutional question. It has to do with due process under the law. It has to do with the advise and consent power of the Senate under the Constitution. So when the Senator from Kentucky continues to press the administration for a straightforward answer, he continues to get sort of these vague, ambiguous answers, if you will. Again, these are questions that did not just pop up overnight. Back on January 25 of this year, 2013, the Senator from Kentucky posed to Mr. Brennan a series of questions at that time. The follow-on letter, which I quoted from earlier, was from February 12. He put forward questions, such as:

> Do you agree with the argument put forth on numerous occasions by the executive branch that it is legal to order the killing of American citizens and it is not compelled to explain its reasoning in reaching this conclusion? Do you believe this is a good precedent for the government to set?

He goes on to ask another question:

> Would it not be appropriate to require a judge or court to review every case before the individual in question is added to a targeting list? Please describe the due process requirements in place for those individuals being considered for addition to a targeting list. Would you agree it is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on U.S. citizens overseas but possibly not to order a lethal drone strike against the same individual? If not, please explain why you believe something similar to the FISA standard should not be applied in regard to lethal actions against citizens of the United States.

These are straightforward questions. These are questions to which I believe the Senator from Kentucky deserves an answer. Many of us this evening, at this late hour, are here to support him in that endeavor and his attempt at least to try—as this nomination moves through the process—to get the answers to the questions that would allow him to perform the advise and consent function that is in the U.S. Constitution as it applies to nominations and as it has been implemented here by the Senators in history.

I want to say to the Senator from Kentucky—and I have a question for him in a moment—that it is remarkable to see this process unfold. In my time here—and I came in the 2004 election; started my service in the U.S. Senate in January of 2005—I have not seen a time where we had a Senator who as a matter of principle stood down here for the number of hours he has today and insisted on getting some answers. I give him great credit for the job he has done in pressing this issue.

He has not been given that answer yet. It sounds as though it has kind of come up to the line a couple of times. It is very simple. They could put this thing to rest. All they have to do is come forward and answer that very simple question about the legal authority to target American citizens on American soil with drone attacks. It doesn't seem to me, at least, that it would be that hard of a question to answer. They say as a matter of policy

they have not done that and they don't have any intention of doing it in the future. Why don't we put this issue to rest once and for all, and the Senator from Kentucky will allow the process to go forward and Mr. Brennan can get his vote.

In the time I have been here, at least, it certainly is remarkable to me to see the amount of effort the Senator from Kentucky has put forward in trying to get an answer to a very straightforward question. I give him great credit for that, because a principled stand is something we don't see enough of around here. So to stand here and use his powers as a Senator in a way that is very fitting with the tradition and history of this great institution—we look at the U.S. Senate and those who have come before, the place of great characters of our history, including Calhoun and others who have graced the U.S. Senate and some of the great debates that have occurred in the past. It is nice to see a discussion and debate about a major constitutional issue, a major constitutional question.

I, as do many of my colleagues who are here this evening, support the Senator from Kentucky in his quest to get answers. I think it is certainly appropriate. I think it certainly should be expected that the administration respond to what are very straightforward questions with regard to the issue that has been raised by the Senator and I hope that answer will be forthcoming. If it is not, it is entirely possible, I suppose, that this could continue for some time into the future.

But in any event, I ask the Senator from Kentucky what it will take in terms of some sort of affirmation, some sort of answer, some sort of response from the White House, from the nominee, the Director of the CIA, to satisfy the question he has raised. It seems to me, at least as a Senator from South Dakota, that the question he poses is a straightforward and simple one and merely requires a very simple answer.

Mr. PAUL. Madam President, I thank the Senator from South Dakota for his remarks and would make the comment that I, as has he, have seen what drones can do to protect our soldiers and no one is arguing against that. No one is arguing against drones or any other kinds of force to defend the country against any kind of an attack. What we are arguing for is that noncombatants—people not engaged in combat in our country—are due fifth amendment protections, and that the White House should acknowledge this. This is important because the drone strikes overseas, when looking at the category and looking at the way they are being done and under what standards, there are some of those standards that we don't think are appropriate for U.S. citizens on U.S. soil. So we are asking for a clarification. We think Attorney General Holder got close to that today, under the duress of cross-examination. We wish to see him do it voluntarily in a nice, concise statement and we would be happy to vote on the Brennan nomination as early as tomorrow morning.

I wish to yield time to the minority leader.

Mr. MCCONNELL. I thank my colleague from Kentucky. First let me say I think our mutual constituents will certainly learn——

Mr. DURBIN. Madam President, was there a unanimous consent request?

Mr. MCCONNELL. Would the Senator from Kentucky yield for a question?

Mr. PAUL. Yes.

Mr. MCCONNELL. First let me thank my friend from Kentucky for his courage and conviction. Having been here a while in the Senate, we have only rarely, as Senator THUNE pointed out, had extended debate on any matter. A body that came into existence for the purpose of lengthy discussions of weighty issues has, in recent years, had very little lengthy discussion of weighty issues.

If I understand the issue the Senator from Kentucky feels so passionately about, it is that the administration should answer a question that is pretty easily stated, as I understand it, as follows: Does the administration take the view that a drone strike against a U.S. citizen on U.S. soil would be an appropriate use of that weapon? Am I correct that is the question the Senator from Kentucky hopes to get an answer to from the administration?

Mr. PAUL. Yes.

Mr. MCCONNELL. And I assume the Senator from Kentucky shares my view that it is a pretty easily understood question. It strikes me that the question again is pretty easily understood and has to be something the administration has given some thought to, given the development of this new weapon.

I heard Senator BARRASSO earlier today talking about how this technology has changed—we would never have thought of this a few years ago—this technology has actually changed warfare in a very dramatic way. So as I understand it, what the Senator from Kentucky is looking for is how this dramatic new weapon applies to the U.S. Constitution—how the use of it applies to the U.S. Constitution on American soil.

So I think it is entirely appropriate that the Senator from Kentucky engage in an extended debate with the support of his colleagues to get the answer to this question. I wanted to congratulate him for his tenacity, for his conviction, and for being able to rally the support of a great many people, as well as people who have come over from the House of Representatives who feel also, I gather, that this is a legitimate question the administration ought to be answering.

I might say, at whatever point we get to a cloture vote to extend debate on the nomination of Brennan, it is my view cloture should not be invoked. This is a controversial nominee. Should cloture be invoked, I intend to oppose the nomination.

I congratulate my colleague from Kentucky for this extraordinary effort.

Mr. PAUL. Madam President, I wish to thank the minority leader for his remarks and for his insightful questions. The question about whether the President has actually gotten involved with what the rules will be has actually been somewhat broached. He was asked at Google about whether this could occur and he said, Well, the rules would have to be different outside than inside. So it implies they have thought about what the rules should be outside, but to my knowledge no one in the Intelligence Committee has been informed what the rules are inside.

It troubles me that they think they have the authority to do targeted drone strikes inside, particularly when there are examples of the Twin Towers and 1941 Pearl Harbor. Those would be attacks we would repulse no matter who we knew was coming in. There wouldn't be a targeted strike on an individual at a designated time. We would repulse those attacks militarily and they wouldn't even fall into the category of what we are talking about here as targeted drone strikes. We might use drones, but they wouldn't be what we are talking about. These are questions we have been asking all day. So they have answered a question, just not the question we asked.

Mr. MCCONNELL. I thank my friend from Kentucky.

Mr. PAUL. Madam President, I wish to yield for a question to the Senator from Pennsylvania.

Mr. TOOMEY. Madam President, I wish to spend a couple of moments here revisiting the context in which this discussion occurred. I want to commend the Senator from Kentucky for raising what I think is an extremely important issue and forcing the attention of this body to this issue at an appropriate time, which he has done, and, I might add, at great personal inconvenience to himself.

This arose from a letter the Senator from Kentucky sent to Mr. Brennan, the nominee for the Director of Central Intelligence, and the response he got. These are short letters. I want to review this so it is very clear exactly what was posed and what the response was and where we are at the moment in this debate.

The letter from the Senator from Kentucky begins:

> Dear Mr. Brennan: In consideration of your nomination to be the director of the Central Intelligence Agency, I have repeatedly requested that you provide answers to several questions clarifying your role in the approval of lethal force against terrorism suspects, particularly those who are U.S. citizens. Your past actions in this regard as well as your view of the limitations to which you are subject are of critical importance in assessing your qualifications to lead the CIA. If it is not clear that you will honor the limits placed upon the executive branch by the Constitution, then the Senate should not confirm you to lead the CIA.

Clearly, this is the idea that is under scrutiny this evening.

The letter goes on to say:

During your confirmation process in the Senate Select Committee on Intelligence, committee members have quite appropriately made a request similar to questions I have raised in my previous letter to you, that you expound on your views on the limits of executive power in using lethal force against U.S. citizens, especially when operating on U.S. soil. In fact, the chairman of the SSCI—

The Senate Select Committee on Intelligence

Senator Feinstein, specifically asked you in post-hearing questions, for the record, whether the administration could carry out drone strikes inside the United States. In your response, you emphasize that the administration ''has not carried out'' such strikes, and ''has no intention of doing so.'' I do not find this response sufficient.

Let me just add editorially, I do not know how anyone could find that sufficient. It clearly is an evasion of the question. That doesn't answer the question that was posed by Senator FEINSTEIN, just as we haven't been able to get an answer to the question posed by the Senator from Kentucky.

The letter goes on to say:

The question that I and many others have asked is not whether the administration has or intends to carry out drone strikes inside the United States, but whether it believes it has the authority to do so. This is an important distinction that should not be ignored.

And this, of course, goes to the heart of the question: Does this administration believe it has the authority to carry out a lethal strike by a drone against an American citizen on American soil.

The letter goes on to say:

Just last week, President Obama also avoided this question when posed to him directly. Instead of addressing the question of whether the administration could kill a U.S. citizen on American soil, he used a similar line that ''there has never been a drone used on an American citizen on American soil.''

The evasive replies from the administration to this valid question have only confused the issue further without getting us any closer to an actual answer.

I would say that is—again, this is my editorial comment—I think that is a generous assessment. When a direct question is asked and the party to whom the question is directed repetitively evades the question, it makes one seriously wonder what their intentions are.

The letter goes on to say:

For that reason, I, once again, request you answer the following question: Do you believe that the President has the power to authorize lethal force such as a drone strike against a U.S. citizen on U.S. soil and without a trial? I believe the only acceptable answer to this is no. Until you directly and clearly answer, I plan to use every procedural option at my disposal to delay your confirmation and bring added scrutiny to this issue and the administration's policies on the use of lethal force.

The American people are rightly concerned and they deserve a frank and open discussion on these policies.

Sincerely, Rand Paul, M.D., United States Senator.

I have to say, this is a very straightforward and simple question. It has been posed clearly. It has been posed repeatedly.

Now I want to share with my colleagues the answer, such as it is, that we have received, the most recent answer that was directed to the Senator from Kentucky which, again, I would suggest is not responsive to the question.

A letter dated March 4, addressed to Senator PAUL, says:

On February 20, 2013, you—

Referring to Senator PAUL—

wrote to John Brennan requesting additional information concerning the Administration's views about whether ''the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial.''

The letter goes on to say:

As members of this Administration have previously indicated, the U.S. government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter, moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. We have a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests abroad. Hundreds of individuals have been arrested and convicted of terrorism-related offenses in our federal courts.

The question you have posed is therefore entirely hypothetical, unlikely to occur, and one we hope no President will ever have to confront. It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States. For example, the President could conceivably have no choice but to authorize the military to use such force if necessary to protect the homeland in the circumstances of a catastrophic attack like the ones suffered on December 7, 1941, and September 11, 2001.

Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of his authority.

Sincerely,
Eric H. Holder, Jr.
Attorney General

The reason I read the entire letter is because I did not want anyone to think any part of this was taken out of context or anything was being left out.

When you read the entire letter, in response to the entire letter that was sent as a request, I think it is very clear. This administration refuses to answer a simple and very important and very legitimate question.

Our Attorney General suggests that under a certain set of circumstances—which he will not specify any guiding principles or rules that would allow us to understand those circumstances—he would examine the facts and circumstances and then advise the President on the scope of his authority.

There is no suggestion of what legal authority he has to do this. There is no description of the constitutional authority. I find this very disturbing. We have all observed the very new developments that we are experiencing in national security. The minority leader alluded to this in some respects.

As I mentioned earlier today, there is no question we have a relatively new phenomenon in our national security challenges. It is only in very recent times that we have come to understand the nature of a whole new kind of enemy. It is not just a nation state anymore, which has historically been the nature of military threats. But now there is a very different kind of threat—dispersed, somewhat affiliated, sometimes affiliated, hard to discern—a geographically widespread network of terrorists. That is very different than the traditional nation state. That is a different kind of threat, and we have spent a lot of time trying to come to terms with how best to address this.

In an overlapping period of time, a new technology has emerged. We have developed it. It is an amazing technology that gives us the ability from vast distances away to send out a very sophisticated unmanned aircraft that is quite lethal and quite capable of destroying a target. I think most of us probably feel that there are many cases where this is an appropriate tool under an appropriate set of circumstances. But, frankly, I think it should be the subject of an ongoing discussion: How would we use this? Under what circumstances? Does the President have unlimited unilateral authority? That is a discussion we ought to have about the use of this technology overseas where I think, as I say, it has a very important, very useful, very legitimate function.

But when we are talking about using this, the American Government using this military asset to kill American citizens on American soil, I am a little shocked that there is not an automatic presumption that that is not permissible—certainly not legal. I cannot understand the constitutional basis for this. I would certainly suggest that the burden ought to be on those who would suggest that that is permissible.

So what the Senator from Kentucky has said is: Just tell us the answer to this question. Do you believe you actually do have this authority? And could you tell us that? If they believe they have this authority—and since they will not answer unequivocally that they lack the authority, it is hard to infer anything other than that perhaps they think they do have this authority.

It obviously raises a whole lot of very important questions, such as under what circumstances would you feel you have the authority to exercise this power? And exactly who would be targeted? And how would you decide whom to target? And in the event you are carrying out a strike using lethal force of this magnitude on American soil against an American citizen, what kind of criteria would govern your judgment about the risks that would be imposed on innocent people who are in the vicinity? And what about any judicial review at all? Would there be any appropriate role for it because, of

course, we have a very long tradition of due process.

There are a lot of Americans who have serious reservations about the idea of indefinite detention on American soil. Indefinite detention is pretty tame compared to being destroyed by a drone.

So I would suggest the failure of the administration to answer this basic question of whether they believe they have the authority to do something that is completely unprecedented is a very fundamental and important question and completely legitimate. And it is completely appropriate for this body to insist on an answer to this question before we would go ahead and confirm a person who would have enormous power and authority over a variety of national security issues.

I want to commend the Senator from Kentucky for putting a bright light on this issue. This is a very important issue, and, as I mentioned earlier, he has done it at great personal inconvenience to himself because he has a passionate commitment to the liberty of the American citizens. He manifests that all the time in many ways, and this is one of the ways he is doing it. I commend him for that.

I would conclude my question by addressing the Senator, through the Presiding Officer. My question for the Senator is, has there been any change in the status of the lack of response from the administration since the last time we have heard from the administration?

Mr. PAUL. Madam President, we have been asking the question of the White House all day, and we have said all along that we would allow the vote to proceed, but we have not gotten any response from the White House. The consideration of whether we will get a response tonight I think is unlikely. We will still keep pressing the issue in the morning as well.

But with regard to the Senator's remarks, I think one of the things I hope will come out of this debate will be that we will reassert our authority as a function of the separation of powers, where our body will say to the President: We not only would like your drone memos on how you think you can do this, but we should reassert our authority and tell the President, this is how we think you should do it, and this is the law that is going to dictate and circumscribe how you will do this.

That is an authority that I think has been long necessary and we have been letting go by the side and I think we should reassert.

At this time, Madam President, I wish to yield to——

Mr. DURBIN. Madam President, will the Senator yield for a question?

Mr. PAUL. Without relinquishing the floor, I will yield for a question.

Mr. DURBIN. I thank the Senator from Kentucky, and I apologize to my friend from Wisconsin. I know he has been waiting. But the question asked by the Senator from Pennsylvania prompted me to recall a specific set of circumstances which I think address his concerns, our mutual concerns, about the use of lethal force.

I know we are talking about this in the context of drones, but a drone is a weapon, and there are other weapons by which our government can use lethal force to kill people.

So I think, going to the question the Senator asked Mr. Brennan, in a more generic sense, the question is, When can our government use lethal force in the United States against perhaps U.S. citizens? I think it is a legitimate question.

I was not misleading the Senator earlier when I said there is a scheduled hearing—the only scheduled hearing—on this question coming up before the Judiciary Subcommittee on the Constitution, which I chair. And the ranking member is Senator CRUZ of Texas who was here earlier.

So I think it is important, and it is an important constitutional question, but, while my colleague from Pennsylvania is here, I wish to recount a set of circumstances for him, and then pose a question to the Senator.

The circumstances were September 11, 2001. Some of us were in this Capitol Building, in fact, just outside this door. As we came to work, we heard that some plane had crashed into the World Trade Center in New York. As we were watching on television, a few minutes after 9, a second plane crashed into the World Trade Center—the adjoining building. We all know what happened following that.

As we were in our meeting here, just a few feet away, we started seeing black, billowy smoke coming across the Mall right outside our window here. A third plane, taken over by these terrorists, was crashing into the Pentagon. What we did not know at the time was that there was a fourth plane. But we evacuated the Capitol. All of us, literally every one, raced out of this building to stand on the lawn outside. It was not a safe place, but we did not know where to go—all the tourists, all the staff, and all the rest.

It was not but a few minutes that we were out there, and we heard something that sounded like a shot, a discharge of a weapon. In fact, it was fighter planes that were being scrambled to protect the United States Capitol. At that time, the order had gone out to all commercial airplanes in the United States: Land immediately, so that we would know who was in our airspace and not responding to that command.

It turns out there was a fourth plane involved, and that plane crashed in Pennsylvania, we believe because of the heroism and bravery of the passengers on board; that when they realized what was happening, they tried to take control of that plane before it could be used as a weapon.

Many people believe that plane was aimed for this building or for someplace in Washington, DC. We had scrambled our military planes. And had that plane not crashed into the countryside in Pennsylvania and come within the airspace of this Capitol, I think we know what would have happened. Our government would have used lethal force—military lethal force—to shoot down a civilian airplane that was threatening, we believed, the lives of innocent Americans. It would have been the use of lethal force on our soil to stop a person or persons whom we believed were terrorists about to kill innocent Americans.

So when I listened to the response from Attorney General Holder in hypothetical and put it in the context of 9/11, I can imagine that President Bush might have been called on in an instant to make a decision as Commander in Chief to bring down the fourth plane before it crashed into another building and killed innocent people.

That is a circumstance, I would say to the Senator from Pennsylvania and the Senator from Kentucky, which I fully understand and expect the Commander in Chief to respond to.

So I do not think this is such a clear and easy situation. It is important that we have this hearing and explore the many possibilities—the possibility of a terrorist overseas who threatens our safety and the use of lethal force, drones or otherwise, the possibility of a non-U.S. terrorist in the United States and use of lethal force to deter them. And then obvious questions: What if it is a U.S. citizen overseas? What if it is a U.S. citizen in the United States?

I joined 10 other Senators asking for the same legal memos, which I think the Senator would like to see as well, justifying whatever course of action this administration has used. I think it is a legitimate constitutional responsibility of the Senate and the House and this Congress.

But I also understand, having lived through—as all of us did in some respect—9/11, the complexity of those decisions that have to be made in such a fashion.

So my question to the Senator—as I said before, we have to end with a question mark—don't you consider the situation of 9/11 and the use of lethal force, even military force, to shoot down a civilian plane—if it had survived the passenger effort in Pennsylvania and was headed for the U.S. Capitol—to be a legitimate exercise of a Commander in Chief to protect the United States?

Mr. PAUL. Madam President, absolutely. My answer to the question the Senator raised is absolutely. We have the right to defend ourselves. It would have been a decision that has to be made imminently because a lethal threat needs to have a lethal response immediately.

My whole problem with this whole debate is, none of us disagrees with that, I do not think. We all agree that you can repel an imminent attack. We all agree if someone is outside the Capitol with a rocket launcher or grenade launcher, lethal force can be used

against them. None of us disagrees on that.

We are talking about a targeted drone program where we target individuals. Overseas, the standard seems to include people who are not actively engaged in combat who we think either might be in the future or have been in the past. I do not think that standard can be used in the United States. I think when you are in a battlefield, you do not get due process. If you are shooting at Americans, drones can hit you anytime, missiles can hit you. There is no due process in a battle.

This is a big debate because many have said the battlefield is here. But if the battlefield is here, that would imply the fifth amendment does not apply here. The President has said he will use the fifth amendment in the process of deciding drone attacks overseas, but he does not get the option to kind of use it privately. Using the fifth amendment privately to me is not using the fifth amendment.

I will say, I have a great deal of respect for the Senator from Illinois. We have often been on the same side on civil liberties issues. I do not question that he and I may well see eye to eye on this issue, that targeted killings of people in restaurants, in their house, in a hotel, are not something we can or will tolerate. It contravenes the Constitution. It is a simple question. The President should simply answer that question. I think Attorney General Holder was coming in the direction of that. But why is it so hard? Why is it like pulling teeth to get them to admit they do not have this power? Presidents need to more easily say: By golly, no, the Constitution says you cannot do that. The fifth amendment does apply. There are no exceptions to the fifth amendment for American citizens on American soil. That is all we are asking.

But I think the 9/11 comparison and Pearl Harbor is a red herring in the sense that none of us disagrees with repelling a lethal attack, an imminent lethal attack, an ongoing lethal attack with lethal force. No one disagrees with that.

Mr. DURBIN. Will the Senator yield further for a question?

The white paper that has been presented to us by the Justice Department concludes that the right to national self-defense and the 2001 authorization to use military force gave the U.S. Government legal authority to kill a U.S. citizen in a foreign country that is not an area of active hostilities, if the target is a senior operational leader of al-Qaida or an associated force. So it is qualified in that regard.

The white paper argues, such an attack does not violate the constitutional rights of a U.S. citizen in this circumstance, ''if he poses an imminent threat of violent attack against the United States.'' Imminent threat. No. 2, ''his capture is not feasible,'' or the Justice Department white paper goes on to say, ''and the operation complies with the law of war principles, such as the need to minimize collateral damage.''

I will say to the Senator, I stand with him. I want an answer to his question. I think we should pursue it on a bipartisanship basis, as we have many issues together in the past. I think it is a legitimate question. But I would say that the white paper we have been given relative to this U.S. citizen overseas has some fairly narrow circumstances in terms of the use of force.

When it comes to the use of that force in the United States, I believe the circumstances should be just as narrow, if not more. I would say to the Senator, I am genuine in my concern for bringing these issues out in a full hearing of our constitutional subcommittee. I think I have answered the question. I hope he appreciates my sincerity.

Mr. PAUL. Madam President, in very quick response to that, one of the few problems with that is they also go on to say that imminent does not need to be immediate. You are also implying that you can kill this American citizen in a noncombat situation, not an active battlefield. I do not accept that standard for the United States. It is another debate whether we accept the standard overseas. I think it is an important debate. But the debate about whether that is a sufficient standard for America, it is not. To kill someone not in combat—one, it is not wise. You are not going to get any information. When someone is eating dinner, why do you not send the police over and arrest them? To kill someone who is in a noncombat situation in America is unacceptable in America under any circumstances. I think we need to come to an agreement on that.

I wish to yield for a question to the Senator from Wisconsin.

Mr. JOHNSON of Wisconsin. Madam President, all of us have come down here to support a very legitimate request to have a legitimate question answered. I think the Senator deserves those answers. If not an answer from the White House, he at least deserves a vote.

I started watching here this morning. The Senator started about 11:57. It is now past midnight. I think my primary action is one of just being puzzled. I have been here for 2 years. I have never served in any kind of legislative body. I certainly came to the Senate thinking this was the world's greatest deliberative body. What I found is a body that is utterly dysfunctional. Even though this is actually one of the best examples of how this body ought to work, it is also an example of that dysfunction. I cannot believe this issue has not been resolved within a half hour, within an hour. Just take a vote.

We have a number of our colleagues from the House coming here in support of the Senator from Kentucky. The House is operating, I believe, as our Founders intended. They are passing budgets. They are debating issues. They are passing real pieces of legislation that, unfortunately, are being dropped over here in the Senate, where those good pieces of legislation die. That is a real shame.

For example, I serve on the Budget Committee of the Senate. I have been on that Budget Committee for 2 years. We have not yet voted on a budget in the Budget Committee. This is, by the way, when this Nation is facing a fiscal crisis unlike anything we have ever faced in our history. We have racked up 4 years now where our debt exceeds $1 trillion. There is no end of that in sight. We have not passed or even brought to the floor an appropriations bill all year long. How can we function as a body if this is how it operates?

A number of Republican Senators joined the President at his gracious invitation for dinner tonight. It was an excellent dinner. It was a genuine, sincere, open discussion of the fiscal problems facing this Nation. I was part of a group of 44 Senators a year and a half ago, almost 2 years now, who also joined the President prior to the final debate on the first debt ceiling in the summer of 2011. The President of the United States leaving that meeting should have come away with a very strong understanding that those 44 Republican Senators were incredibly sincere in their desire to work with the President, to work with our colleagues across the aisle, to solve these problems. I will tell you, I am one Senator who ran for office not to become a Senator but because we are losing this country. We are bankrupting it.

One of the things I do when I talk around the country, I make it a point that fortunately I do not know of any parent who would willingly max out their credit cards, get in debt way over their heads never intending ever to pay it off, but fully intending to pass it off to the children and the grandchildren. I do not know any parent that way, fortunately. But as a society that is exactly what we are doing.

Frequently in this political town, Republicans are accused of waging a war on women, waging a war on immigrants. None of that is true. What Washington is doing is we are waging a war on our children. We are mortgaging their future. It is absolutely immoral. Americans have got to stop and consider what it is we are actually doing to future generations.

So I felt good at the dinner with the President tonight—I think all of my colleagues did. I hope the President did—with a pretty strong sense, once again, that there is a great deal of sincerity, a great deal of desire to roll up our shirt sleeves, put down partisan bickering, put down partisan differences, work together to solve this problem.

I think there has got to be a realization that neither side is going away. If we are going to start solving these problems, we have got to start working together. We have got to return the Senate into that deliberative body that

our Founders intended it to be. We have got to be willing to be held accountable. We have got to take votes. It should not be that hard. We should not be afraid.

I would ask the Senator from Kentucky—as I understand it, this is puzzling that we are here now after midnight. I applaud the Senator for his resolve here. That is why he sees every Member coming down here and providing the support. But I think all he wanted was either unanimous consent or possibly a vote on this simple question:

Resolved, that it is the sense of the Senate that:

No. 1, the use of drones to execute or to target American citizens on American soil who pose no imminent threat clearly violates the Constitutional due process right of citizens.

That seems like a pretty simple question, seems like one most Senators would want to express their opinion by taking a vote, or allowing this resolution to pass by unanimous consent. So I guess my only question is, is that all the Senator is looking for, either an answer from the White House or a simple unanimous consent agreement or a simple vote?

Mr. PAUL. Madam President, I thank the Senator from Wisconsin. Yes, we had two simple requests tonight. The first was for a vote on a nonbinding resolution to express our opinion that it is unconstitutional to kill Americans on American soil. That was denied by the majority party.

The second request we have had, in communication with the White House, is for the White House to say or clarify their opinion that they are not going to be doing targeted drone strikes on noncombatants in America. We have not had much success with either one. We will continue to ask that question.

I have told them I will remove myself from the blockage of John Brennan's nomination as soon as we get some clarification from the White House. I am still hopeful in the morning that they will do that, and by doing that, we can move forward with it.

But I have been more than willing to compromise, because I do not think it is so much about John Brennan as it is about a constitutional principle, that I want the President to publicly acknowledge the fifth amendment does apply to Americans in our country, and that we are not going to cherry-pick when we apply the fifth amendment.

At this time, I wish to yield for a question from the Senator from South Carolina.

Mr. SCOTT. The drone issue is not an issue. It is not a question about Democrats versus Republicans or the DNC versus the GOP. It is not a question about the executive branch versus the legislative branch. It is not a question about conservatives versus liberals. It is a question about the Constitution.

Another one of our friends said that this Nation, our great Nation, needs to stand and recognize what RAND PAUL is doing today for Americans. All of our aspirations mean nothing, nothing at all without our rights.

Another said you do not have to like our political party. You did not even have to like Senator RAND PAUL to stand with RAND. You only need to be against the assassination of Americans without due process on U.S. soil.

I will close with the question that we have heard many times already. Why will this administration not simply state it is unconstitutional and illegal—unconstitutional and illegal—for the government to kill Americans in the United States on our soil or, as I think about it, it is illegal on the soil of Greenville, SC, it is illegal in Oconee County, SC.

It is illegal in Charleston, SC. It is illegal throughout the coast of South Carolina, without due process, to kill an American citizen. Is that what you are asking?

Mr. PAUL. Madam President, I think it is an easy question to have answered, and it boggles my mind. I think the President in general, though, and other Presidents in general, hang on to their power with a tenacious grip, and they don't want to allow that there is any possibility that by saying they don't have this power, they have given up some power.

I think that is a mistake for Presidents. I think it goes against what the candidate, Barack Obama, was for and the Senator, Barack Obama. I hope in the morning when they wake up they will think about what Candidate Barack Obama said in 2007 and what Senator Barack Obama once stood for as a Senator; that is, the power of the Presidency is limited and checked by the Constitution.

Madam President, at this time I would like to yield for a question from the Senator from Arizona.

Mr. FLAKE. I thank the Senator for yielding, and I want to commend the Senator for this 12-hour long quest.

I think it is now. It is an important topic. I recently traveled to Afghanistan and received a briefing there about the drone program and how it is working in Afghanistan. After seeing that briefing, seeing examples of how it is being used, I have to tell you, I was awed by it. I thought what a powerful weapon, what a great weapon, in this case, to use against terrorists.

My second thought is what happens when that is in the hands of our enemy. I can tell you, it is a sobering thought to think of what happens when our enemies get this kind of technology. It is also sobering to think of what could happen if we use this technology here domestically. I think the question you have asked is totally right and proper. Where does the President derive authority? Does he believe he has the authority to use these weapons or any kind of weapon for lethal means when there is no imminent threat?

I think the question the Senator is asking, if I understand that question correctly, is right and proper. My understanding is all you want to find out is does the President believe the administration has the authority to use lethal means in this manner domestically; is that correct?

Mr. PAUL. Madam President, that is correct. It is a simple question. I think we are not asking for any heavy lifting here. We are asking the President: Do you have the authority.

I think it is important that it is a legal question in the sense we want to ask and get a legal, constitutional response. We are not asking—we probably won't do it, we don't intend to do it, or it is not appropriate, or it is not, as a policy matter we don't like doing it. We want the constitutional answer: Do you really believe you have the constitutional authority to do this.

Mr. FLAKE. I thank the Senator.

Mr. ROBERTS. Mr. President, I rise today, in support of Senator PAUL's filibuster on the nomination of John Owen Brennan, to be Director of the Central Intelligence Agency. I have stated my opposition to Brennan's nomination from the beginning.

During my time on the Intelligence Committee and as chairman, I presided over hearings before which Mr. Brennan testified.

His inability to give a straight yes or no answer was greater than any other witness I experienced. But his approach is exactly what we see from the Obama administration today.

Senator PAUL has asked a very simple question to which the President refuses to give a direct answer. The appropriate question is: Will the administration clarify any circumstance when it is acceptable to target and kill American citizens on American soil?

Senator PAUL is only asking for a clear, unwavering statement that protects Americans' fifth Amendment rights as well as our national security. All Americans await the answer.

The Senate's duty is to conduct oversight and ensure our government is protecting its people and the Constitution. In that regard Senator PAUL's filibuster has been true to our oversight, obligations and duties; and I congratulate him.

Mr. PAUL. Madam President, at this point I would like to recognize for a question, without yielding the floor, the Senator from Utah.

Mr. LEE. A question I have with regard to an issue that was raised by my friend a few minutes ago, my friend, my distinguished colleague, the senior Senator from Illinois, touches upon an important point, upon a principle of law which dates back centuries and has application in myriad contexts, one that deals with the concept of imminence.

My friend from Illinois is certainly correct in pointing out the white paper leaked by the Obama Department of Justice to the news media recently does include some analysis that talks about imminence.

It is significant, however, to point out, on page 7 of that white paper the

administration goes on to essentially eviscerate that concept of imminence. In fact it makes clear that this condition, that is the condition dealing with imminence, with the idea of protecting an imminent threat of violent attack against the United States ''does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.''

That is at the top of the first full paragraph on page 7 of the very same white paper that my friend from Illinois was quoting.

In response to that question, it is important to point out that they have taken the imminence out of imminent. There is no more imminence in this standard. So if, in fact, we are to believe the white paper is the correct assessment of the administration's position, it is no longer an imminent standard. It is something else. It is something of a new development. It is something that was created out of whole cloth by this administration that has nothing to do with the traditional imminent standard.

I ask my friend from Kentucky whether this is consistent with time-honored notions of due process.

Mr. PAUL. Madam President, this is exactly what I understand. It is a significant problem. I will be happy to yield if there is a question from across the aisle or a question that is in the form of an explanation as well on his understanding, if we understand this incorrectly, this is a real problem. Because the idea of imminence that people think of is someone leveling a weapon at you, you are in a battlefield, and all of these things which none of us disagrees there should be a response.

The problem is it really is. I am not an attorney, so it is easy for me to disparage attorneys even though I am standing among two I admire—more, probably. The whole point is that sounds like a bunch of government attorneys got together and tried to write some gobbledygook no one could understand and doesn't make sense; that imminence now means something that is not immediate.

I would be happy to entertain a question without yielding the floor.

Mr. DURBIN. This is getting perilously close to a debate, and I am sorry, for those observing, it looks like the Senate is actually in a debate.

The obvious question is was bin Laden an imminent threat to the United States when we took him out? I think he was.

Was he hatching a plot to cause harm to the United States in an imminent manner? Probably not.

Mr. PAUL. Madam President, I would say touche, a good response, I think well worth thinking about and difficult in the sense that I don't think there are any of us who really were opposed to getting bin Laden. There is a question, you are right, exactly whether there was imminence involved.

I think, though, when we start talking about standards, whether we have standards in battlefields, standards overseas, and standards at home, I think the standard at home has to be incredibly high. I don't believe we are involved in a battlefield here. I don't believe you have given up due process here. I don't know that bin Laden had any due process.

I yield for a question from the Senator from Texas.

Mr. CRUZ. I thank the Senator from Kentucky.

I would point out that the questions of imminence, I don't think, are difficult as has been suggested. Indeed, I would like to thank the senior Senator from Illinois for braving this long evening and for expressing his equal and heartfelt concerns about the limitations on the power of the executive to take the lives of U.S. citizens on U.S. soil.

I would point out that at the hearing we had yesterday with the Attorney General there was a series of questions exploring in further depth what the position of this administration was because, in response to the inquiry of the Senator from Kentucky, Attorney General Holder put in writing that he could imagine circumstances in which it would be permissible to take the lives of U.S. citizens on U.S. soil.

The two examples he gave were Pearl Harbor and 9/11. As the Senator for Kentucky responded, and I think everyone here agrees, those examples are unobjectionable. Both of those instances were instances of grievous military attacks. I think nobody doubts that if Kamikazi planes are coming down on our ships in Pearl Harbor, the United States can use lethal force to take out those planes and to save the lives of our service men and women. There is no question about that, legal or otherwise.

Likewise, I think nobody doubts if terrorists have taken over an airliner and are steering it into a building, that tragic a decision would be as heart-rending as the decision on 9/11 must have been for the President to give the order to shoot down that fourth commercial airline—if it began approaching yet another target where it could inflict thousands of deaths—I think nobody disputes that stopping an imminent, immediate, act of violence, and indeed, a military act of war is fully within the authority of the Federal Government.

The question posed to the Attorney General was the question Senator PAUL had asked originally—not that question—rather, it was if there is an individual, a U.S. citizen on U.S. soil who is suspected of being a terrorist, and for whom we can say arguendo there is abundant evidence to demonstrate this individual as a terrorist, and if this individual is on U.S. soil and is not currently an imminent threat of violence—if he or she is sitting in a cafe in rural Virginia having a cup of coffee, the question I posed to the Attorney General is, in those circumstances, would it be constitutional for the U.S. Government to send a drone to kill that U.S. citizen on U.S. soil with no due process of law if that individual did not pose an imminent threat?

In my judgment that was not a difficult question. I think the answer, frankly, I expected was, of course not. Of course the Federal Government cannot kill a U.S. citizen on U.S. soil who does not pose an imminent threat. That has been the state of the law from the day our Constitution came into effect and from before.

Instead, the first response of the Attorney General was it wouldn't be appropriate to use lethal force there, and we wouldn't do so. I pressed the question again on the Attorney General and said: With respect, the question is not whether it is appropriate, it is not a question of prosecutorial discretion. Do we trust you would not choose to exercise lethal force in those circumstances? Rather, it is a question would it be constitutional to kill a U.S. citizen on U.S. soil with a drone if that individual did not pose an imminent threat?

The second time the Attorney General said: I don't believe it would be appropriate. Yet a third time I asked the Attorney General: I am not asking about appropriateness. As the Attorney General of the United States, you are the chief legal officer for this Nation. Does the Department of Justice have a legal opinion as to whether it is constitutional for the U.S. Government to kill a U.S. citizen on U.S. soil if he or she does not pose an imminent threat? Yet a third time the answer was it wouldn't be appropriate.

Then, finally, when asked a fourth time, the Attorney General said: When I say ''appropriate,'' I mean it wouldn't be unconstitutional.

Finally, after asking four times, the Attorney General agreed.

My response to that questioning was: General Holder, I am very glad you have stated that position. I emphatically agree with that position. I don't understand why it took such gymnastics to get to that position. I wish you had simply said that in response to Senator PAUL now 2 days ago. It would have been a very straightforward and simple thing to say.

What I also said to the Attorney General is Senator PAUL and I have drafted legislation which will make explicitly clear the U.S. Government may not kill a U.S. citizen on U.S. soil who does not pose an imminent threat.

I hope, based on the Attorney General's representations, the Department will support that legislation. That ought, in my judgment, be legislation which should be bipartisan legislation that should pass this body 100 to 0 because it is truly phrased with as unobjectionable a legal truism as I could come up with.

I will admit I have been flabbergasted as these days have gone on why John Brennan, when asked by Senator PAUL this question, did not simply say no. Why didn't Eric Holder, when

asked repeatedly, simply say no—at least not at the first. Why now, over 12 hours since this filibuster has proceeded, the White House has not put in writing the absolutely correct statement of constitutional law the Federal Government cannot kill U.S. citizens on U.S. soil if they do not pose imminent threats.

I would note, with the hypothetical that the Senator from Illinois posed to Senator PAUL, even in that situation, Osama bin Laden was a horrible enemy of the United States who committed a grievous act of terror and was the mastermind behind it. I am very glad that after a decade-long manhunt, we were able to find him and we were able to, on a military battlefield, take him out. I would suggest that if he were not in Pakistan, if he were living in an apartment in the suburbs of Chicago, and if he were asleep in bed—and even if he were Osama bin Laden, a really, really, really bad guy—there is nothing in the Constitution that gives the Federal Government the authority to fire a missile at an apartment with a sleeping person in it in the United States of America if that individual was a U.S. citizen. And if he was in the United States, what we would do is what we would expect to do with any other really, really, really bad guy, which is go in and apprehend him.

Behind enemy lines, you can't always do that. There are things that happen on the battlefield that we would never do at home. But I would suggest that any argument that says someone sleeping at home in bed presents an imminent threat is an argument that stretches the bounds of the word ''imminence'' beyond where its natural meaning should lie.

If an individual is pointing a bazooka at the Pentagon or robbing a bank or committing another crime of violence, there is no doubt that force—and lethal force—can be used to stop that crime of violence. But I think that there likewise should be no doubt that the Federal Government lacks the authority to kill U.S. citizens on U.S. soil if there is no imminent threat of death or grievous bodily harm.

So I am hopeful that the results of this extended discussion will be several. I am hopeful, No. 1, it will prompt the White House to do what the White House has heretofore refused to do, which is, in writing, explicitly answer the question posed by Senator PAUL now over a week ago and expressly state as the position of the United States of America that the Federal Government cannot kill a U.S. citizen on U.S. soil if that individual does not pose an imminent threat of death or grievous bodily harm.

I also hope that a consequence of this extended discussion is that we will find widespread agreement in this body behind passing legislation to make clear that the Constitution does not allow such killings. I am hopeful that legislation will command wide support on the Republican side of the aisle but likewise wide support on the Democratic side of the aisle.

I would hope for and would certainly welcome the support of the senior Senator from Illinois and, indeed, every Member of the Democratic caucus. And should this body come together in a bipartisan way or, even better, in a unanimous manner and clarify that the Constitution prohibits killing U.S. citizens on U.S. soil absent an immediate threat, I would suggest this debate will have accomplished a great deal because it will have made clear the limits of the Executive power, and it would be, indeed, carrying out the finest traditions of this body—serving as a check on unchecked government power.

So I would ask the Senator from Kentucky, does he agree that if those were the outcomes of these proceedings, this would have indeed been a beneficial proceeding for helping focus the American people on these issues and helping draw a line that the Executive cannot cross consistent with the Constitution?

Mr. PAUL. Mr. President, I am hopeful that we have drawn attention to this issue; that this issue won't fade away; that the President will tomorrow come up with a response. I would like nothing more than to facilitate the voting and the continuation of the debate tomorrow. I hope the President will respond to us. We have tried repeatedly throughout the day, and we will see what the outcome of that is.

I would like to thank my staff for being here for a long day, for their help. I would like to thank fellow Senators for being supportive of this cause. I would like to thank the Members of Congress who came over to support this cause, as well as the clerks, the Capitol Police, the staff of the Senate, the doorkeepers—who, apparently, I may have gotten in trouble—and anybody else who came to support us, and even the senior Senator from Illinois, for better or worse, for being here to support the cause. The cause here is one that I think is important enough to have gone through this procedure.

I sit at Henry Clay's desk, and they call Henry Clay the ''Great Compromiser.'' When I came to Washington, one of my fellow Senators said to me: Oh, I guess you will be the great compromiser. I kind of smiled at him and laughed. I learned a little bit about Henry Clay and his career.

People think some of us won't compromise, but there are many compromises. There are many things on which I am willing to split the difference. If the Democrats will ever come to us and say: We will fix and we will save Social Security, what age we change it to, how fast we do it—there are a lot of things on which we can split the difference. But the issue we have had today is one on which we don't split the difference. I think you don't get half of the fifth amendment. I don't think you acknowledge that the President can obey the fifth amendment when he chooses. I don't think you acknowledge that the fifth amendment, due process, can somehow occur behind closed doors.

So while I am a fan of Henry Clay, I have often said I am a fan of Cassius Clay. Cassius Clay's weapons of choice were said to be his pen and his Bowie knife. He was said to be so good with the first, that he often had recourse to the latter. He was a fierce abolitionist. He didn't suffer fools, and he didn't compromise often.

But what I would say is that it is worth fighting for what you believe in. I think the American people can tolerate a debate and a discussion. There has been nothing mean-spirited about this debate for 12 hours. I think, in fact, more of it would be even better. I wish we had more open and enjoined debate. The senior Senator from Illinois has brought up good points, and I think there is much discussion. I just hope that this won't be swept under the rug and that this isn't the end of this but that it is the beginning of this.

I would go for another 12 hours to try to break Strom Thurmond's record, but I have discovered there are some limits to filibustering, and I am going to have to go take care of one of those in a few minutes here. But I do appreciate the Senate's forbearance in this, and I hope that if there are some on the other side of the aisle who have been listening and feel they may agree on some of these issues, they will use their ability to impact the President's decision and will, No. 1, say the Senate should be trying to restrain the executive branch, Republican or Democratic, and, No. 2, will use their influence to try to tell the President to do what I think really is in his heart, and that is to say: Absolutely, we are not going to be killing Americans not in a combat situation. We will obey the fifth amendment; that the constitution does apply to all Americans and there are no exceptions.

I thank you very much for your forbearance, and I yield the floor.

The PRESIDING OFFICER (Mr. SCHATZ). There will be order. Expressions of approval or disapproval are not permitted in the Senate.

The Senator from Illinois.

Mr. DURBIN. Mr. President, let me first, on a personal note, thank the Senator from Kentucky. He and I have agreed on many things and worked together on many more, and there is much common agreement on what we hope to achieve with this issue, as important as it is, and I thank him for his spirited defense of his position today in these 12 hours. I want to excuse him from the floor whenever he wishes.

NOMINATION OF JOHN OWEN BRENNAN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Mr. DURBIN. Mr. President, I move to proceed to consideration of Calendar No. 43.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.