Since the official end of the recession in June of 2009, the median household income in America has fallen by more than $2,400. Meanwhile, since the President took office the cost of family health insurance has increased by $2,300. So not only has household income for most Americans—the median household income, that is—dropped by $2,400, they are seeing an additional burden of $2,300 because of ObamaCare.

The bottom line is the American people are tired of the ''Chicken Little'' stories and they are tired of the fear mongering. They look at what is happening in Washington—I know my constituents in Texas do—and they almost want to turn their eyes in another direction to avert their gaze because they understand that Washington is not serving their interests. If President Obama wants real change, it is time for him to get behind real tax reform and real reform of Social Security and Medicare, something his own bipartisan fiscal commission—Simpson-Bowles—recommended.

After all, the American people did not send us here to kick and scream over a 2.4-percent budget cut. They sent us here to make some hard decisions to ensure long-term economic health and economic prosperity and it is time for the President as the leader of our country and the leader of the free world to take that message to heart.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN). The Senator from Kentucky is recognized.

BRENNAN NOMINATION

Mr. PAUL. Madam President, I rise today to begin to filibuster John Brennan's nomination for the CIA. I will speak until I can no longer speak. I will speak as long as it takes until the alarm is sounded from coast to coast that our Constitution is important, that your rights to trial by jury are precious, that no American should be killed by a drone on American soil without first being charged with a crime, without first being found to be guilty by a court. That Americans could be killed in a cafe in San Francisco or in a restaurant in Houston or at their home in Bowling Green, KY, is an abomination. It is something that should not and cannot be tolerated in our country.

I do not rise to oppose John Brennan's nomination simply for the person. I rise today for the principle. The principle is one that, as Americans, we have fought too long and hard for to give up on, to give up on the Bill of Rights, to give up on the fifth amendment protection that says no person shall be held without due process, that no person shall be held for a capital offense without being indicted. This is a precious American tradition and something we should not give up on easily.

They say Lewis Carroll is fiction; Alice never fell down a rabbit hole, and the White Queen's caustic judgments are not really a threat to your security. Or has America the beautiful become Alice's Wonderland?

> ''No, no!'' said the Queen. ''Sentence first—verdict afterwards.''
>
> ''Stuff and nonsense!'' Alice said loudly. ''The idea of having the sentence first.''
>
> ''Hold your tongue!'' said the Queen, turning purple.
>
> ''I won't!'' said Alice.
>
> [''Release the drones,''] said the Queen, as she shouted at the top of her voice.

Lewis Carroll is fiction, right? When I asked the President: Can you kill an American on American soil, it should have been an easy answer. It is an easy question. It should have been a resounding and unequivocal no. The President's response: He hasn't killed anyone yet.

We are supposed to be comforted by that. The President says: I haven't killed anyone yet. . . . He goes on to say: and I have no intention of killing Americans, but I might.

Is that enough? Are we satisfied by that? Are we so complacent with our rights that we would allow a President to say he might kill Americans, but he will judge the circumstances, he will be the sole arbiter, he will be the sole decider, he will be the executioner in chief if he sees fit?

Some will say he would never do this. Many people give the President consideration. They say he is a good man. I am not arguing he is not. What I am arguing is that the law is there, set in place for the day when angels don't rule government. Madison said that the restraint on government was because government will not always be run by angels. This has nothing, absolutely nothing, to do with whether the President is a Democrat or a Republican. Were this a Republican President, I would be here saying exactly the same thing: No one person, no one politician should be allowed to judge the guilt—to charge an individual, to judge the guilt of an individual, and to execute an individual. It goes against everything we fundamentally believe in our country. This is not even new to our country. There is 800 years of English law that we founded our tradition on. We founded it upon the Magna Carta from 1215. We founded it upon Morgan of Glamorgan from 725 A.D. We founded it upon the Greeks and Romans who had juries. It is not enough to charge someone to say that they are guilty.

Some might come to this floor and they might say: What if we are being attacked on 9/11? What if there are planes flying at the Twin Towers? Obviously we repel them. We repel any attack on our country. If there is a gentleman or a woman with a grenade launcher attacking our buildings or our Capitol, we use lethal force. You don't get due process if you are involved with actively attacking us, our soldiers, or our government. You don't get due process if you are overseas in a battle, shooting at our soldiers. But that is not what we are talking about.

The Wall Street Journal reported and said that the bulk of the drone attacks is signature attacks. They do not even know the name of the person. A line or a caravan is going from a place where we think there are bad people to a place where we think they might commit harm and we kill the caravan, not a person. Is that the standard we will now use in America? Will we use a standard for killing Americans to be that we thought you were bad, we thought you were coming from a meeting with bad people and you were in a line of traffic and so therefore you were fine for the killing?

That is the standard we are using overseas. Is that the standard we are going to use here? I will speak today until the President responds and says: No, we won't kill Americans in cafes. No, we won't kill you at home in your bed at night. No, we won't drop bombs on restaurants.

Is that so hard? It is amazing that the President will not respond. I have been asking this question for a month. It is like pulling teeth to get the President to respond to anything and I get no answer. The President says he hasn't done it yet and I am to be comforted. You are to be comforted in your home. You are to be comforted in your restaurant. You are to be comforted in online communicating in your e-mail that the President has not killed an American yet in the homeland. He says he has not done it yet. He says he has no intention to do so.

Hayek said that nothing more distinguishes arbitrary government from a government that is run by the whims of the people than the rule of law. The law is an amazingly important thing, an amazingly important protection. For us to give up on it so easily doesn't speak well of what our Founding Fathers fought for, what generation after generation of American soldiers has fought for, what soldiers are fighting for today when they go overseas to fight wars for us. It doesn't speak well of what we are doing here to protect the freedom at home when our soldiers are abroad fighting for us that we say our freedom is not precious enough for one person to come down and say: Enough is enough, Mr. President, come clean, come forward and say you will not kill Americans on American soil.

The oath of office of the President says that he will, to the best of his ability, preserve, protect and defend the Constitution. He raises his right hand, he puts his left hand on the Bible, and he says ''will.'' The President doesn't say, I intend to if it is convenient; I intend to unless circumstances dictate otherwise. The President says, ''I will defend the Constitution. I will protect the Constitution.''

There is not room for equivocation here. This is something that is so important, so fundamental to our country that he needs to come forward.

When Brennan, whose nomination I am opposing today, was asked directly: Is there any limit to your killing? Is there any geographic limitation to

your drone strike program? Brennan responded and said: No, there is no limitation.

So the obvious question would be, if there is no limitation on whom you can kill and where you can kill and there is no due process upon whom you will kill, does that mean you will do it in America? The Senator from Oregon asked him that question directly, in committee. And this so-called champion of transparency, this so-called advocate of some kind of process, responded to the Senator from Oregon by saying: I plan to optimize secrecy and optimize transparency.

Gobbledygook. You were asked: Will you kill Americans on American soil? Answer the question.

Our laws forbids the CIA from doing that. It should have been an easy question. The 1947 National Security Act says the CIA doesn't operate in our country. We have the FBI, we have rules, we have separated powers to protect your rights. That is what government was organized to do. That is what the Constitution was put in place to do, to protect your rights. So when I asked, he says: No answer. He says: I will evade your answer, and by letting him come forward we let him get away with it.

I have hounded and hounded and finally yesterday I get a response from Mr. Brennan, who wishes to be the CIA chief, and he finally says: I will obey the law.

Well, hooray. Good for him. It took a month to get him to admit that he will obey the law. But it is not so simple. You see, the drone strike program is under the Department of Defense, so when the CIA says they are not going to kill you in America, they are not saying the Defense Department won't. So Eric Holder sent a response, the Attorney General. His response says: I haven't killed anyone yet. I don't intend to kill anyone. But I might.

He pulls out examples that are not under consideration. There is the use of local force that can always be repelled—if our country is attacked, the President has the right to protect and defend the country. Nobody questions that. Nobody questions if planes are flying toward the Twin Towers whether they can be repelled by the military. Nobody questions whether a terrorist with a rocket launcher or grenade launcher is attacking us, whether they can be repelled. They do not get their day in court.

But if you are sitting in a cafeteria in Dearborn, if you happen to be an Arab American who has a relative in the Middle East and you communicate with them by e-mail and someone says your relative is someone we suspect of being associated with terrorism, is that enough to kill you? For goodness sake, wouldn't we try to make an arrest and come to the truth by having a jury and a presentation of the facts on both sides of the issue?

See, the real problem here is one of the things we did a long time ago is we separated the police power from the judicial power. This was an incredibly important first step. We also prevented the military from acting in our country because we did not want to have a police state. One of the things we greatly objected to of the British is they were passing out general writs or writs of assistance. These were warrants that allowed them to go into a house but allowed them to go into anyone's house. What we did when we wrote our Constitution is we made the Constitution—we made the fourth amendment specific to the person and the place and the things to be looked for. We did not like the soldiers going willy-nilly into any house and looking for anything. So we made our Constitution much more specific.

I think this is something we should not give up on so easily. I think the idea that we could deprive someone of their life without any kind of hearing, essentially allowing a politician—I am not casting any aspersions on the President. I am not saying he is a bad person at all. But he is not a judge.

He is a politician. He was elected by a majority, but the majority doesn't get to decide whom we execute. We have a process for deciding this and we have courts for deciding this. To allow one man to accuse a person in secret and to never get notified that they have been accused—their notification is the buzz of the propellers on the drone as it flies overhead in the seconds before they are killed. Is that what we want from our government? Are we so afraid of terrorism and so afraid of terrorists that we are willing to just throw out our rights and our freedoms and what we have fought for and have gotten over the centuries? We have at least 800—if not 1,000—years' worth of protections.

Originally, the protections were against a monarch. We feared a monarch. We didn't like having a monarch. When we came to this country and set up our Presidency, there was a great deal of alarm. There was a great deal of fear over having a king, and so we limited the executive branch. Madison wrote in the Federalist Papers that the Constitution supposes what history demonstrates, which is that the executive branch is the branch most prone to a war, most likely to go to war, and, therefore, we took that power to declare war and vested it in the legislature. We broke up the powers.

Montesquieu wrote about the checks and balances and the separation of powers. He was somebody whom Jefferson looked toward. They separated the powers because there is a chance for abusive power when power resides in one person. Montesquieu said there can be no liberty when the executive and the legislative branches are combined.

I say something similar; that is, there can be no liberty when the executive and the judiciary branches are combined, and that is what we are doing here. We are allowing the President to be the accuser in secret, we are allowing him to be the judge, and we are allowing him to be the jury. No man should have that power. We should fear that power not because we have to say: Oh, we fear the current President. It has nothing to do with who the President is. It has nothing to do with whether someone is a Republican or Democrat. It has to do with whether we fear the consolidation of power, whether we fear power being given to one person, be it a Republican or a Democrat. This is not necessarily a right-left issue.

Kevin Gosztola, who writes at firedoglake.com, writes that the mere fact that the President's answer to the question of whether you can kill an American on American soil was yes is outrageous. However, it fits the framework for fighting a permanent global war on terrorism without any geographic limitations, which President Obama's administration has maintained it has the authority to wage.

What is important to note is that we are talking about a war without geographic limitations, but we are also talking about a war without temporal limitations. This war has no limit in time. When will this war end? It is a war that has an infinite timeline. If we are going to suspend our rights, if there is going to be no geographic limits to killing—which means we are not at war in Afghanistan, we are at war everywhere. Everybody who pops up is al-Qaida. Whether they have heard of al-Qaida or whether they have had any communication with some network of al-Qaida, it is al-Qaida. There is a new war going on everywhere in the world, and there are no limitations.

Glenn Greenwald has also written about this subject, and he was speaking at the Freedom to Connect conference. He said there is a theoretical framework being built which posits that the U.S. Government has unlimited power. Some call this inherent power. ''Inherent'' means it has not been defined anywhere; it has not been expressly given to the government. They have decided this is their power and they are going to grab it and take what they get.

This is not new. The Bush administration did some of this too. When the Bush administration tried to grab power, the left—and some of us on the right—were critical when they tried to wiretap phones without a warrant. Many on the right and many on the left raised a raucous. There was a loud outcry against President Bush for usurping, going across due process, not allowing due process, and not obeying the restraints of warrants. Where is that outcry now?

Glenn Greenwald writes:

> There is a theoretical framework being built that posits that the U.S. Government has unlimited power, when it comes to any kind of threats it perceives, to take whatever action against them that it wants without any constraints or limitations of any kind.

As Greenwald suggests—and this goes back to Gosztola's words—answering

yes to the question that you can kill Americans on American soil illustrates the real radicalism the government has embraced in terms of how it uses its own power.

We were opposed to them listening to our conversations without a warrant, but no one is going to stand and say anything about killing a person without a warrant, a judge's review or a jury? No one is going to object to that? Where is the cacophony who stood and said: How can you tap my phone without going to a judge first? I ask: How can you kill someone without going to a judge or a jury? Are we going to give up our rights to any politician of any stripe? Are we going to give up the right to decide who lives and who dies?

Gosztola goes on to say the reason the administration didn't want to answer yes or no to this question—can you kill Americans on American soil—is because he says a ''no'' answer would jeopardize the critical, theoretical foundation they have very carefully constructed that says there are no cognizable constraints on how U.S. Government power can be asserted.

Civil libertarians once expected more from the President. In fact, it was one of the things I liked about the President. I am a Republican. I didn't vote for or support the President either time, but I admired him. I particularly admired him when he ran in 2007. I admired his ability to stand and say: We will not torture people. That is not what America does.

How does the President's mind work? The President—who seemed so honorable, so concerned with our rights, so concerned with the right not to have our phone tapped—now says he is not concerned with whether a person can be killed without a trial. The leap of logic is so fantastic as to boggle the mind. Where is the Barack Obama of 2007? Has the Presidency so transformed him that he has forgotten his moorings and what he stood for?

Civil libertarians once expected more from the President. Ask any civil libertarian whether the President should have the right to arbitrarily kill Americans on American soil, and the answer is easy. Of course no President should have the right or that power under the Constitution.

Brennan has responded in committee that now the CIA does not have the right to do it on American soil. The problem is that this program is under the Department of Defense, so it is, once again, an evasive answer. They are not answering the true question: Will the Government of America kill Americans on American soil?

Gosztola, from firedoglake.com, writes that there may never be a targeted killing of a U.S. citizen on U.S. soil—and the question of whether a U.S. citizen could be targeted and killed on U.S. soil may remain a hypothetical question for some time—but the fact that the Obama administration has told a U.S. Senator there is a circumstance where the government could target and kill an American citizen on American soil without charge and without trial is a stark example of an imperial Presidency.

This is what our Founding Fathers wanted to fight against. They wanted to limit the role and the power of the President. They wanted to check the President's power with the power of the Senate, the power of the House, and the power of the judiciary. We have three coequal branches. Not one of them should be able to run roughshod on the other.

The problem is we have allowed this to happen—not me personally, but Congress in general has allowed the President to usurp this power. If there were an ounce of courage in this body, I would be joined by many other Senators in saying we will not tolerate this, that we will come together, in a bipartisan fashion, and tell any President that no President will ever have the authority to kill Americans without a trial. When the President says he does intend to do so, we have to think that through.

One year ago, the President signed a law that says a person can be detained indefinitely and that they can be sent from America to Guantanamo Bay without a trial. He wants us to be comforted by that. He wants us to remember and think well of him because he says: I don't intend to do so. It is not enough. I mean, would we be able to tolerate a Republican who stood and said: I like the first amendment, I am quite fond of the first amendment, and I don't intend to break the first amendment, but I might.

Would conservatives tolerate someone who said: I like the second amendment, I think it is important and I am for gun ownership and I don't intend to violate the second amendment, but I might. Would we tolerate that he doesn't intend to do so as a standard?

We have to think about the standards being used overseas. Google interviewed him not too long ago and asked him if he could kill Americans at home. He was evasive. He said there are rules. He said the rules outside would be different than inside. I certainly hope so. Outside the United States the rules for killing are that someone can be killed through a signature strike. We don't have to know what that person's name is, who they are or whom they are with. If a person is in a line of traffic and we think they are going from talking to bad people to talking to other bad people, we can kill that person.

Is that going to be the standard in America? When they are asked if they have killed civilians in their drone strikes, they say no. However, a person is not counted as a civilian if they are male or if they are between the ages of 16 and 50. They are considered a potential and probable combatant if they are in the 16-to-50 age range.

My question is: If you are not a civilian, if you are in proximity to bad people, is that the standard we are going to use in the United States? If we are going to kill Americans on American soil and the standard is going to be signature strikes of a person who is close to bad people or in the same proximity of bad people, is that enough? Are we happy with that standard? Are we happy we have no jury, no trial, no charges, and nothing done publicly?

Eric Holder, the Attorney General's response to me is that they maintain they are not going to do this. We should just trust them. It is not about them, though. It is about the law. The law restrains everyone equally, regardless of their party or whether they are Republican or Democrat. The law is out there for the time when somebody inadvertently elects a truly bad person.

When World War I ended, the currency was being destroyed in Germany. In 1923, paper money became so worthless that people wheeled it in wheelbarrows; they burned it for fuel. It became virtually worthless overnight. At the beginning of September 1923, I think it was like 10 or 15 marks for a loaf of bread. On September 14, it was 1,000 marks. On September 30, it was 100,000 marks. By October 15, it was a couple of million marks for a loaf of bread. It was a chaotic situation. Out of that chaos, Hitler was elected democratically. They elected him out of this chaos.

My point is not that anybody in our country is Hitler. I am not accusing anybody of being that evil. I think it is an overplayed and misused analogy. What I am saying is that in a democracy we could someday elect someone who is very evil, and that is why we don't give the power to the government. It is not an accusation of this President or anybody in this body; it is a point to be made historically that occasionally even a democracy gets it wrong. So when a democracy gets it wrong, we want the law to be there in place. We want this rule of law.

As I mentioned, Hayek said that this is what distinguished us. Nothing distinguishes us more clearly from arbitrary government and a government of whims than a rule of law, and a stable and consistent government is the rule of law.

Heritage has an author who has written some about the oath of office. His name is Kesavan. He writes that the location and the phrasing of the oath of office for the President—this is something I mentioned earlier, that the President says he will protect and defend and preserve the Constitution—words are important. The oath doesn't say, I intend to preserve, protect, and defend; it says, I will.

Kesavan writes, though, that the location and phrasing of the oath of office strongly suggests that it is not empowering but limiting. So the President doesn't take an oath of office that says: I intend to preserve, protect, and defend the Constitution, but I also feel that I have inherent powers that were never mentioned by anybody that I will be the sole arbiter of interpreting what those powers are.

That sounds more like a king. That is not what we wanted. We did not want an imperial Presidency. What Kesavan suggests is that the oath of office is not empowering but that it is limiting, that the clause limits the President and how the President can execute or how the Executive power can be exercised.

One unanswered word in that Constitution includes the Fifth Amendment to the Constitution. What does the Fifth Amendment say? The Fifth Amendment says that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. It is pretty explicit. The Fifth Amendment protects us. It protects us from a King placing a person in the tower, but it also should protect us from a President who might kill us with a drone.

We were granted due process. It is not always easy to sort out the details of who is a threat to the country and who is not a threat to the country. If it were people with grenade launchers on their shoulders, that is easy. In fact, I agree completely. A person does not get due process if they are actively attacking America. But we have to realize there have been reports that over half of the drone strikes overseas are not even directed toward an individual, they are directed toward a caravan of unnamed individuals.

Overseas, I have no problems. If people are shooting at American soldiers overseas, by all means, they get no due process. But we also have to realize that many—we don't know because they won't tell us the number, but many of the drone strikes overseas are done when a person is walking, whether to church, a restaurant, or along the road; they are done when a person is in a car driving; they are done when a person is in a house eating or in a restaurant eating; or they are done when a person is in a home sleeping. I am not even saying all those people didn't deserve what they got, but I am saying they were not actively involved in something that is an imminent threat, and if they were in America, they would be arrested.

If we think a person is a terrorist in America, we should arrest them. But here is the question: Who is a terrorist? That is why I have been so concerned with a lot of people around here who want to say if you are associated with terrorism. The reason is that our government has already put out things that I think are of a questionable nature.

The Bureau of Justice put out a bulletin within the last year describing people we need to be worried about. These are the people we are supposed to say something about if we see something. Who are these terrorists who live among us? People who might be missing fingers on one hand; people who might have stains on their clothing; people who might have changed the color of their hair; people who like to pay in cash; people who own more than one gun; people who own weatherized ammunition; people who have 7 days of food in their house—these are people we should be afraid of and we should report to our government, so says our government. Are they going to be on the drone strike list? I think we need to get an answer from the President.

If you are going to kill people in America, we need rules, and we want to know what your rules are because I certainly don't want to have 7 days of food in my house if that is on the list of terrorism. There are some governmental Web sites that advise us to have food in our house. If we live in a hurricane-prone area, we are supposed to keep some extra food around. Who is going to decide when it is OK to have food in our house and when it is not?

There is something called a fusion center. Fusion centers are supposed to coordinate between the Federal Government and the local government to find terrorists. The one in Missouri a couple of years ago came up with a list, and they sent this to every policeman in Missouri. This kind of concerns me. The people on the list might include me. The people on the list from the fusion center in Missouri whom we need to be worried about and whom policemen should stop are people who have bumper stickers that might be pro-life; people who have bumper stickers that might be for more border security; people who support third-party candidates; people who might be in the Constitution Party. And isn't there some irony there—people who might be in the Constitution Party, who believe in the Constitution so much, they might be a terrorist.

So I think we need to be concerned about this. Things are not so black and white. If someone is shooting a gun at us—a cannon, a missile, a rocket, a plane—it is pretty easy to know what lethal attacks are and to repel them, and there should be no due process. But we are talking about people in their home. We are talking about people in a restaurant or a cafe that someone is making an accusation against.

If the accusation is based on how many fingers you have on your hand, I have a problem with that standard. If the standard to be used for killing Americans is whether a person pays in cash, I have a problem with that. If the standard to be used in America is being close to someone who is bad or the government thinks is bad is enough for you to be killed and not even to count you as an accidental kill but to count you as a combatant because you were near them—see, here is the problem, and this is no passing problem, this is an important problem. There was a man named al-Awlaki. He was a bad guy. By all evidence available to the public that I have read, he was treasonous. I have no sympathy for his death. I still would have tried him in a Federal court for treason, and I think he could have been executed. But his son was 16 years old, and he missed his dad, who had been gone for 2 years. His son sneaks out of the house and goes to Yemen. His son is then killed by a drone strike. They won't tell us if he was targeted. I suspect, since there were other people in the group—there were about 20 people killed—that they were targeting someone else. I don't know that. I don't have inside information on that, but I suspect that.

Here is the real problem. When the President's spokesman was asked about al-Awlaki's son, do my colleagues know what his response was? This I find particularly callous and particularly troubling. The President's response to the killing of al-Awlaki's son—he said he should have chosen a more responsible father. It is kind of hard to choose who your parents are. That is sort of like saying to someone whose father is a thief or a murderer or a rapist—obviously a bad thing, but does that mean it is OK to kill their children? Think of the standard we would have if our standard for killing people overseas is that you should have chosen a more responsible parent. It just boggles the mind and really affects me to think that would be our standard.

There is absolutely no excuse for the President not to come forward on this. I have been asking for a month for an answer. It is like pulling teeth to get any answer from the President. Why is that? Because he doesn't want to answer the question the way he should as a good and moral and upstanding person—someone who believes in the Constitution should—that absolutely no American should ever be killed in America who is sitting in a cafe. No American should ever be killed in their house without a warrant and some kind of aggressive behavior by them. There is nothing American about being bombed in one's sleep. There is nothing constitutional about that.

The President says to trust him. He says he hasn't done it yet. He says he doesn't intend to do so but he might. That is just not good enough. It is not enough for me to be placated. It is not enough for me to be quiet.

So I have come here today to speak for as long as I can. I won't be able to speak forever, but I am going to speak for as long as I can to draw attention to something that I find really to be very disturbing.

People have asked about this nomination process because I have actually voted for a couple of the President's nominees, some of whom I have objected to, some of whom I have had personal differences with as well as political differences with. This is not about partisanship.

I voted for Secretary of State John Kerry. I have almost nothing in common with him politically. I have disagreed with him repeatedly on the floor. But I gave the President the prerogative of choosing his Secretary of State because I think the President won the election and he deserves to get

to make some choices on who is in his Cabinet.

I voted for the very controversial Secretary of Defense, Chuck Hagel. There were things I liked about him and things I disliked about him. I filibustered him twice before I allowed him to go forward, and people have given me a hard time. Conservatives from my party have blasted me for doing that, but I gave the President that prerogative.

So I am not standing here as a Republican who will never vote for a Democrat. I voted for the first three nominees by the President. This is not about partisanship. I have allowed the President to pick his political appointees, but I will not sit quietly and let him shred the Constitution. I cannot sit at my desk quietly and let the President say he will kill Americans on American soil who are not actively attacking a country. The answer should be so easy. I can't imagine that he will not expressly come forward and say: No, I will not kill Americans on American soil.

The Fifth Amendment says that no person shall be held for a capital or otherwise infamous crime unless on the presentment or indictment of a grand jury. It goes on to say that no person will be deprived of life, liberty, or property without due process. Now, some hear ''due process,'' and if a person is not a lawyer—I am not a lawyer—when we first hear it, we think, what does that mean? What does it mean to have due process?

What it means is we are protected. We get protections. Is our justice system perfect? No. Sometimes a person goes all the way through due process in our country, and we have actually convicted people who are innocent. Fortunately, it is very rare, but we have actually convicted people who are innocent. What are the chances that our President, going through a PowerPoint slide show and flashcards, might make a mistake on innocence or guilt? I would say there is a chance. Even our judicial system, which goes through all of these processes, including a judge reviewing the indictment, a jury reviewing it, and then a sentencing phase and all of that going forward—we sometimes make mistakes. What are the chances that one man, one politician, no matter what party they are from, could make a mistake on this? I think there is a real chance that exists. That is why we put these rules in place.

Patrick Henry wrote that the Constitution wasn't given or written or put down to restrain you; the Constitution was to restrain us. There has always been, since the beginning of the time we first had government, this desire to restrain the government, to try to keep the government from growing too strong or to try to keep the government from taking your rights.

It is interesting that when we look at the Constitution, the Constitution gave what are called enumerated powers to government. Madison said these enumerated powers were few and defined. The liberties we were given, though, are numerous and unlimited. So there are about 17 powers given to government which we have now transformed into about a gazillion or at least a million new powers—we don't pay much attention to the enumerated powers or to the Constitution anymore. But the Constitution left our rights as unenumerated; they aren't limited. Your rights are limitless.

So when we get to the 9th and 10th Amendments, they say specifically that those rights not granted to your government are left to the States and the people respectively. It didn't list what those rights are. The 14th Amendment talks about privileges and immunities being left to you also. They are to be protected.

I don't think there is a person in America—that is why I can't understand the President's unwillingness to say he is not going to kill noncombatants. Think about that. He is unwilling to say publicly that he is not going to kill noncombatants, because that is what we are talking about here. I am not talking about someone with a bazooka or a grenade launcher on their shoulder. Anyone committing lethal force can be repelled with lethal force. No one argues that point. I am talking about whether you can kill noncombatants because many of the people being killed overseas are noncombatants. Are they potential combatants? Maybe. Maybe the standard can be less overseas than it is here for people involved in a battle, but it is getting kind of murky overseas as well.

For goodness' sake, in America we can't just have this idea that we are going to kill noncombatants. We are talking about people eating in a cafe, at home, in a restaurant. I think we need to be a little more careful.

The power that was given by the Constitution to the Senate was that of advise and consent. This constitutional provision provides us with the power to consent to nominations or withhold consent. It is a check on the executive branch, but it only works if we actually use it.

I am here to speak for as long as I can hold up to try to rally support from people from both sides to say: For goodness' sake, why don't we use some advise and consent? Why don't we advise the President he should come forward and say he will not condone nor does he believe he has the authority to kill noncombatants?

As a check on the executive branch, this power that is granted to the Senate is the right to withhold consent. The Constitution does not provide Senators with the specifics or the criteria of why we withhold consent. That is left to us to decide.

I withhold my consent today because I am deeply concerned the executive branch has not provided an answer, that the President refuses to say he will not kill noncombatants.

The President swore an oath to the Constitution. He said he will protect, defend, and preserve the Constitution. He did not say: I intend to when it is convenient. He said: I will defend the Constitution. It is inexcusable for him not to come forward.

There is an author who writes for The Atlantic who has written a lot about the drone program by the name of Conor Friedersdorf. He recounts the tale of al-Awlaki's son who was killed. He said when the President's spokesman was asked about the strike that killed him, the President's spokesman replied: Well, he would have been fine if he ''had a more responsible father.''

If that is our standard, we have sunk to a real low.

Cornered by reporters after this, White House Press Secretary Robert Gibbs attempted to defend the kill list, which is secret, of course. We have to remember, if we are going to kill noncombatants in America or people we think might someday be combatants, the list will be secret. So one will not get a chance to protest: Hey, I am not that bad. I might have said that at one time, but I am not that bad. All right. I have objected to big government, not all government. I am not fomenting revolution. I was critical at that meeting. I was at a tea party meeting, and I was critical of the President, but I am not a revolutionary. Please, don't kill me.

Should we live in a country where we have to be worried about what we say? Should we live in a country where we have to worry about what we write? What kind of country would that be? Why is there not more moral outrage? Why is there not every Senator coming down to say: You are exactly right. Let's go ahead and hold this nomination and why don't we hold it until we get more clarification from the President.

Conor Friedersdorf of The Atlantic writes:

> . . . it's vital for the uninitiated to understand how Team Obama misleads when it talks about its drone program. Asked how their kill list can be justified, Gibbs—

The President's spokesman—

> replies that ''when there are people who are trying to harm us, and have pledged to bring terror to these shores, we've taken that fight to them.'' Since the kill list itself is secret, there's no way to offer a specific counterexample.

It is one thing to say: Yes, these people are going to probably come and attack us, which, to tell you the truth, is probably not always true. There are people fighting a civil war in Yemen who probably have no conception of ever coming to America.

Friedersdorf goes on to say:

> But we do know that U.S. drones are targeting people who've never pledged to carry out attacks in the United States.

So we are talking about noncombatants who have never pledged to carry out attacks are being attacked overseas. Think about it, if that is going to be the standard at home: people who have never truly been involved with combat against us.

Friedersdorf continues:

Take Pakistan, where the CIA kills some people without even knowing their identities. ''As Obama nears the end of his term, officials said the kill list in Pakistan has slipped to fewer than 10 al-Qaeda targets, down from as many as two dozen. . . . ''

Yet we are killing hundreds of people in Pakistan.

There is a quote that I think sort of brings this and makes this very poignant. There is a quote from an ex-CIA agent—I think it is Bruce Riedel—who says: The drone strike program is sort of like a lawnmower. You can keep mowing them down, but as soon as the lawnmower stops, the grass grows again.

Some people have gone one step further and said: For every 1 you kill or for maybe every 1 you accidentally kill whom you did not intend to kill, 10 more spring up.

Think about it. If it were your family member and they have been killed and they were innocent or you believe them to be innocent, is it going to make you more or less likely to become involved with attacking the United States?

I have written a couple letters to John Brennan, who has been put up for the CIA nomination. I think it looks like the first letter was sent January 25. So here we are into March, and I only got a response when he was threatened. So here is a guy whom the President promotes as being transparent and wanting to give a lot of information to the American people, he will not respond to a Senator. They treat the Senate with disdain, basically—will not even respond to us, much less the American people, when I asked him these questions. He finally responded only when his nomination was threatened.

So when it came to the committee and it appeared as if I had bipartisan support for slowing down his nomination if he did not answer his questions, then he answered his questions. It does not give me a lot of confidence that in the future, going forward, if he is approved, that he is going to be real forthcoming and real transparent about this.

I do not have a lot of anticipation or belief that we are going to get more information after this nomination hearing. Some are now saying: You have gotten your pound of flesh. Let him go, and we will keep working on this. The problem is, once he is gone, the discussion is over.

Others in my party have been trying to get information about what went horribly wrong in Benghazi and have gotten some of that information but only by using it as leverage to try to get the President to do what is the honorable thing; that is, to be more transparent with his ways.

In the first letter I sent to Brennan, I asked him the question: Is it legal to order the killing of American citizens and that you would not be compelled to even give your reasoning—not even specific to the case but any of your reasoning?

Finally, as these questions came forward, some of the things were leaked out. One of the most troubling things that came out is when Brennan and the President finally began to talk about the drone strike program, which, according to the former Press Secretary, they were to deny that it existed for years.

When they finally came out, they told us a couple things about their interpretation of it. One, they have no geographical limit to their drone strikes. The second thing is they told us what they thought was imminent. This is pretty important because a lot of Americans, myself included, believe if we are being attacked, we can respond with lethal force. But a lot of Americans think that we have to actually be engaged in that to respond with lethal force. But they told us the way their lawyers interpret ''imminent'' is imminent does not have to mean ''immediate.''

Only a bunch of lawyers could get together, government lawyers could get together and say imminent is not immediate. You have to understand, and what we should be asking the President is, Is this your standard for America? If you are going to assert that you have the right to kill Americans on American soil, are you going to assert—are you going to assert—that your standard is that an imminent threat does not have to be immediate?

I am quite concerned, when I hear this kind of evasiveness, with this sort of nonresponse to questions.

We also asked: Would it not be appropriate to require a judge or a court to review this?

See, here is the real interesting thing. We had a President who ran for office saying your phone should not be tapped without a warrant. I happen to agree with Candidate Obama. But what happened to Candidate Obama, who wanted to protect your right to the privacy of your phone, who does not care much about your right not to be killed by a drone without any kind of judicial proceeding?

I think we should demand it. The way things work around here, though, is people kind of say: Yes, we will demand it, and maybe later on this year we will talk about a bill or talk about getting something. What they should do is just say: No more. We are not going to move forward until we get some justice. We are not going to let the President—any President, Republican or Democratic—do this.

One of the other questions I asked the President was: It is paradoxical that the Federal Government would need to go before a judge to authorize a wiretap on U.S. citizens even overseas but possibly not have any kind of oversight of killing an American here in America.

We have asked him how many citizens have been killed. We have not gotten an answer to that. They say not many, and hopefully it has not been many. But I think it is important to know. I think it would be important to know, if we are going to target Americans in America, if that list exists. I think it would be important to know if being close to someone is also justified. What if you just happen to live in the neighborhood of somebody who is a suspected terrorist? Is it OK because you were close to them? What if you happen to go to dinner with a guy you did not know or a woman you did not know and the government says they are a terrorist? Just because you are having dinner with them and you are a male between the ages of 16 and 50, does that make you a combatant?

We also asked the question: Do you condone the CIA's practice of counting civilians killed by U.S. drone strikes as militants simply because they are of the same age? Similar to every other question, no answer.

We asked him whether al-Awlaki's son was a target. No answer.

We asked how many people have been targeted? No answer.

Part of the problem with this is that we are—or Congress in general is sloppy about writing legislation in general.

I will give an example. When the ObamaCare legislation was written—it is over 2,000 pages—but it leaves up to the Secretary of Health, I think 1,800 times, the power to decide at a later date what the rule would be. So since ObamaCare, of 2,000 pages, has been written, there have been now 9,000 pages of regulations.

Dodd-Frank is kind of the same way. Dodd-Frank is a couple thousand pages. It now is going to wind up with 8,000 or 9,000 pages of regulations.

We abdicate our responsibility by not writing legislation. We write shells of legislation that are imprecise and do not retain the power. Because of that, the executive branch and the bureaucracy, which is essentially the same thing, do whatever they want.

This happened also with the authorization of use of force in Afghanistan. This happened over 10 years ago now—12 years ago. I thought we were going to war against the people who attacked us, and I am all for that. I would have voted for the war. I would have preferred it to have been a declaration of war. I think we were united in saying: Let's get those people who attacked us on 9/11 and make sure it never happens again.

The problem is, as this war has drug on, they take that authorization of use of force to mean pretty much anything. They have now said the war has no geographic limitations. So it is not a war in Afghanistan; it is a war in Yemen, Somalia, Mali. It is a war in unlimited places.

Were we a body that cared about our prerogative to declare war, we would take that power back. But I will tell you how poor—and this is on both sides of the aisle—how poor is our understanding or belief in retaining that power here.

About 1 year ago, I tried to end the Iraq war. You may say: I thought the

Iraq war was already over. It is. But we still have an authorization of use of force that says we can go to war in Iraq anytime. Since they think the use of force in Afghanistan means limitless war anywhere, anytime in the whole world, for goodness' sake, wouldn't we try to take back an authorization of force if the war is over?

But here is the sad part. I actually got a vote on it. I think I got less than 20 votes. You cannot end a war after it is over up here. It has repercussions, because these authorizations to use force are used for many other things. So the authorization of force says you can go after al-Qaida or associated terrorists.

The problem is that when you allow the executive branch to sort of determine what is al-Qaida, you have got no idea. For the most part I will not be able to determine that either. All the information is classified. There are a lot of bad people. There is a war going on in Yemen. I do not know how much it has to do with us, you know, or how much there is an al-Qaida presence there trying to organize to come and attack us. Maybe there is. But maybe those are also people who are just fighting their local government.

How about Mali? I am not sure. In Mali, they are probably worried more about trying to get the next day's food than coming over here to attack us. But we have to ask these questions. We have to ask about limitations on force, because essentially what we have now is a war without the geographic boundaries.

We have many on my side who come down here and say, the battlefield is here in America. Be worried. Be alarmed. Alarm bells should go off when people tell you that the battlefield is in America. Why? Because when the battlefield is in America, we do not have due process. What they are talking about is they want the laws of war. Another way of putting that is, they call it the laws of war. Another way to put it is to call it martial law. That is what they want in the United States when they say the battlefield is here.

One of them, in fact, said, if they ask for a lawyer, you tell them to shut up. Well, if that is the standard we are going to have in America, I am quite concerned that the battlefield will be here and that the Constitution would not apply. Because to tell you the truth, if you are shooting at us in Afghanistan, the Constitution does not apply over there. But I certainly want it to apply here. If you are engaged in combat overseas, you do not get due process. But when people say, oh, the battlefield has come to America, and the battlefield is everywhere, the war is limitless in time and scope, be worried because your rights will not exist if you call America a battlefield for all time.

We have asked him whether the strikes are exclusively focused on al-Qaida and what is the definition of being part of al-Qaida. In 1947, the National Security Act was passed. It said the CIA does not operate in America. Most people—most laypeople know that. The CIA is supposed to be doing surveillance and otherwise outside the United States of foreign threats. The FBI works within the United States. They do some of the same thing. But they are different groups. The CIA operating in Iraq or Afghanistan does not get a warrant before they do whatever they do to snoop on our enemies. The FBI in our country does. They operate under different rules, and for a reason. We do not want them to operate in the United States. We are not saying the CIA are bad people, we just do not want them operating with no rules or the rules we allow them to operate with overseas. We do not want them operating in our country.

The disappointing thing is that a month ago when I asked John Brennan this question, as his nomination came forward, I could not get an answer. He would not answer the question about the CIA operating in the United States. Only after yanking his chain, browbeating him in committee, threatening not to let him out of committee does he finally say he is going to obey the law. We should be alarmed by that. Alarm bells should go off when we find that what is going on here is it takes that much for him to say he is going to obey the law.

The President has said: Don't worry, because he is not going to kill you with a drone unless it is infeasible to catch you. Now that sounds kind of comforting. But I guess if our standard for whether we kill you is whether it is practical, that does bother me a little bit. It does not sound quite strict enough. I am kind of worried that maybe there is a sequester and the President says we cannot have tours in the White House. Maybe he has not got enough people to go arrest you. He had policemen by him. He is saying he is going to lay off the policemen. Of course, he does not have anything to do with the policemen, so do not worry about that. But he had the policemen by him that he is going to lay off, so maybe it is infeasible because he has laid off the policemen so it is going to be easier to kill you.

I know that sounds as though we have gone a slippery slope beyond what he is asking for. But if his standard is it is infeasible to capture you and that is what you are hanging your hat on, I would be a little concerned that that may not be enough protection for Americans on American soil.

There is a law called posse comitatus. It has been on the books since shortly after the Civil War. It is once again one of those things a lot of people do not think about, but it is an important thing. It says the military does not operate on U.S. soil unless there is a declaration of an insurrection or a civil war. There has to be a process that Congress goes through. We have had this law for a long time.

Once again, the reason we do it is not because we think our military are bad people. I am proud of our soldiers. I am proud of our Army. I am proud of what they do for our country. But they operate under different rules. It is a much more dangerous environment they operate under. It is different. It is still dangerous in America, but policemen have different rules of engagement than your soldiers have. There are more restrictions and restraint on what we do in our country. So that is why we say the military cannot operate here.

So when we asked the President, can you kill Americans on American soil with your drone strikes, which is part of the military, it should be an easy answer. In fact, I hope someone is calling him now and asking him for an answer. It would save me a lot of time and breath. My throat is already dry and I just got started. But if they would ask him for an answer: Can the military operate in the United States? Well, no, the law says the military cannot operate in the United States. It is on the books. He should simply do the honorable thing and say he will obey the law. It is simple. But I do not get why they refuse to answer it. It worries me that they refuse to answer the question. Because by refusing to answer it, I believe they believe they have expansive power, unlimited power. The real irony of this is is that many on the left, Senator Barack Obama included, were very critical of the Bush administration. They felt as though the Bush administration usurped power. They felt the Bush administration argued invalid aggrandizement or grasping for power. John Yoo was one of the architects of this, believing basically that the President just says, hey, I am going to protect you, I can do whatever the hell I want.

Many on the left objected to that. Some of us on the right also objected to this usurpation of power by the Republican President. But the thing is, now that the shoe is on the other foot, we are not seeing any of that. We are now seeing a President who was worried about wiretaps not at all worried about the legality of killing Americans on American soil with no judicial process.

But the law of posse comitatus prevents this from happening. It is very clear. It has been on the books for 150-some-odd years. I think it would be pretty easy for the President to go ahead and say that he will obey the law. We asked Brennan the question on this and we got no answer.

The answers we have gotten are almost more disturbing than getting an answer, really, to tell you the truth. Because when the President responds that I have not killed any Americans yet at home, and that I do not intend do so, but I might, it is incredibly alarming and goes against his oath of office. He says in his oath of office that I will preserve, I will protect, and I will defend the Constitution. It does not say I intend to or that I might.

Can you imagine the furor if people were talking about the second amendment? Can you imagine what conservatives would say if the President said, well, you know, I kind of like the second amendment and I intend to, when convenient, when it is feasible, protect the second amendment? Or what about those who believe in the first amendment, if the President were to say, I have not broken the first amendment yet, I intend to follow it, but I might break it, or I intend to follow it when it is feasible? So I have all of those rules, and this is what the President answered when he was at Google Campus a couple of weeks ago. They asked him the question: Can you kill Americans on American soil? He said: Well, the rules will probably be different outside the United States than inside. That basically means, yes, he thinks he can kill Americans on American soil, but he is going to have some rules. Do not worry about it, because he will make some rules and there will be a process, but it will not be due process. It will be a process that he sets up in secret in the White House, and I do not find that acceptable.

The only answer really acceptable, you know, we ask a question that could be yes or no: Can you kill an American on American soil? It is a yes-or-no question. They have been very evasive. They have never really answered the question. But when asked it, we pretty much knew only one answer was acceptable. That answer is no. I mean, if you do not answer it, basically by not answering it you are saying yes. I was actually a little bit startled when I finally got the answer: Yes, we can kill Americans on American soil. I thought for sure that they would be evasive to the end, try to get their nominee through without opening Pandora's box.

But they have opened Pandora's box. It would be a mistake for us to ignore it. It would be a mistake for us to ignore the ramifications of what they have done. When we separate out police power from judicial power, it is an important separation. You know, the police can arrest you. They are allowed to do certain things. But the policeman that comes to our door and puts handcuffs on you does not decide your guilt. Sometimes we do not always think about how important the separation is. But it is incredibly important that those who arrest you are not the ones who ultimately accuse you. The court, through the people, accuses you, and then you are given a trial to determine your guilt.

It is complicated. It is not always clear who is innocent and who is guilty. Judges and juries make mistakes. But at least we have a process. You get appeals most of the time. We have a significant process going on that has a several-hundred-year tradition at the least. So what gets me about the process that the President favors is, it is the ''trust me'' process. You know, I have no intention of doing bad things. I will do good things. I am a good person.

I am not disputing his motives or saying he is not a good person. But I am disputing someone who is naive enough to think that is good enough for our Republic, that his good intentions are good enough for our Republic. It never would have been accepted. It would have been laughed out of the Constitutional Convention. The Founding Fathers would have objected so strenuously that that person would probably never have been elected to office in our country.

Someone who does not believe that the rules have to be in place, and that we cannot have our rights guaranteed by the intentions of our politicians—think about it. Congress has about a 10-percent approval rating. Think the American people want to face whether they are going to be killed by a drone on a politician? I certainly do not. It does not have anything to do with whether he is a Republican or Democrat. I would be here today if this were a Republican President, because you cannot give that much power to one person. We separated the police power from the adjudication or from the jury power from the decisions on innocence and guilt. It is separate from the police power, purposefully so, with great forethought.

Some transform this—and the President has tried—Brennan has tried to transform this into: Oh, well, we need to reserve this power for when planes are attacking the Twin Towers. Well, that is not what we are talking about, Mr. President. I think you misunderstand or you purposefully obfuscate or you purposefully mislead. No one is questioning whether the United States can repel an attack. No one is questioning whether your local police can repel an attack. Anybody involved in lethal force, the legal doctrine in our country, and has been historically, has always been, that the government can repel lethal attacks.

The problem is that the drone strike program is often not about combatants. It is about people who may or may not be conspiring but they are not in combat. They are in a car. They are in their house. They are in a restaurant. They are in a cafe. If we are going to bring that standard to America, what I am doing down here today is asking the President to be explicit. If you are going to have the standard that you are going to kill noncombatants in America, come forward and please say it clearly so we know what we are up against. If you are not going to do it, come up with what the easy answer is: I am not going to kill noncombatants. That would have been easy for him to say.

He could have said the military at some point in time needs to repel invasions. We know that. We are not questioning that. We are questioning a drone strike program—we don't know, because nobody will tell us the numbers. The numbers are secret. One Senator said in a public meeting that 4,700 people had been killed overseas. If I had to venture a guess, a significant amount of them weren't involved in shooting at American soldiers. If they were, by all means kill them. If we are fighting a war in Afghanistan—which we have been—and if there are soldiers around the bend who are a threat to our soldiers, there is no due process at that point. This is not what we are arguing about. We are arguing about targeted strikes of people not involved in combat. That is my concern.

My concern also is who is and what is a terrorist, who is associated with terrorism. The government has put out many documents now which tell you if you see something, say something. The documents you see, I am not so sure these people are terrorists. If you see somebody paying in cash or if you have a store, such as one of your customers comes in frequently and they pay in cash, should you report them to the government? I can't imagine that is the kind of standard we are going to have in our country for deciding drone strikes.

When it comes to some of these people, though, I think some of the drone strikes have probably been justified. Al-Awlaki, I think, was a traitor. This is not from looking at classified documents, this is from reading the lay press. By all means, he gave up on his country, renounced his citizenship, went overseas, consorted with and aided the enemy.

One of the interesting questions about aiding the enemy is what exactly that means and what are the standards to be. Kevin Williamson writes for the National Review. He wrote an article on drones that I think truly brings this home if you are going to talk about and want to know who are the people who potentially could be killed. In some ways al-Awlaki was a sympathizer, someone who aided and abetted through Internet talk and chatter. That was the main thing he was accused of. Actually, after the fact, they said he had more direct association. I don't know if that is true. I haven't seen the secret information on that.

What I would say is he was initially brought up as a sympathizer. Here is the problem. Many writers have said if you take up arms against your country, you are an enemy combatant. I think that is true. If you are in Afghanistan, have a grenade launcher on your shoulder and are shooting at Americans, you are an enemy combatant. You don't get due process.

Here is the question: If you are in Poughkeepsie and you are on the Internet, and you say I sympathize with some group around the world that doesn't like America, and say bad things about America, are you a traitor? I mean, you can try someone for treason for that. I am not sure if it will rise up to that if you are politically opposed to what your government is doing in favor of another. Kevin Williamson gets it pretty clearly:

If sympathizing with our enemies and propagandizing on their behalf is the equivalent of making war on the country, then the Johnson and Nixon administrations should have bombed every elite college in America.

During the 1960s, that is all that came out was anti-America, antiwar. Is objecting to your government or objecting to the policy of your government sympathizing with the enemy?

Some were openly sympathetic. No one will ever forget Jane Fonda swiveling around in North Vietnamese armored guns, and it was despicable. It is one thing if you want to try her for treason, but are you going to drop a drone Hellfire missile on Jane Fonda? Are you going to drop a drone Hellfire missile on those at Kent State?

Our country objected to what happened at Kent State, which was not good—but it was accidental since they were shooting over the heads of these people. Can you imagine we have gone from a country that was rightfully upset about the deaths at Kent State to a country which now is going to say, if you are in college and you are rabble rousing because you don't like the government's foreign policy or the government's war actions, you are sympathizing? There are a lot of questions that aren't being asked, because sympathizing appears to be used as a standard for the drone strike program.

We actually had students, apparently during the Vietnam war, who were actually raising funds for the Vietcong. That does to me sound like treason. It sounds to me something like we are fighting an enemy and you are giving comfort to the enemy. That does sound like treason. I have no problem with some people actually being tried for treason, but they get a day in court. They don't get a Hellfire missile sent to their house. There is a difference, though, between sympathizing and taking up arms. Most people around here who want to justify no rules, America is a battlefield, no limits to war—they really want to blur it all together. It is easier to say, oh, you don't want to stop anybody who is shooting at Americans, but it is not true. I think lethal force may be used against those engaged in lethal force.

What troubles me about the drone strike program is quite a few—I don't know the number—the Wall Street Journal says the bulk of the attacks in Afghanistan has been signature attacks. This means nobody was named, nobody specifically was identified, and civilians aren't really counted. This is because anybody, any male between the age of 16 and 60, is a combatant unless otherwise proven. If those are the standards, I think we need to be alarmed. I think there is a difference between sympathizing and taking up arms.

One of the interesting things Kevin Williamson and the National Review brings out, and it is sort of a conundrum for conservatives—because saying someone was involved and just taking the government's words, like saying al-Awlaki was involved with these other people and taking the government's word, we have no way of ascertaining or questioning whether the secret information is true or not true. A few years before this—and a lot of people don't remember this—al-Awlaki, who was killed a couple years before this, was brought to the Pentagon to speak as a part of a group of moderate Islamic preachers. They thought him to be an Islamic voice of reason. He even came to the Capitol and said prayers in the Capitol. This is the guy who the government said was a good guy for a while and later said he was a bad guy. I think ultimately the evidence he was a bad guy is pretty strong. Most of his crime was sympathizing.

It wasn't enough of a standard. I think in a court, in a treasonous court, al-Awlaki would have been convicted of treason if I were a juror. I would have voted he was committing treason, and I wouldn't have had trouble at all with a drone strike on him.

If we are going to take by extension the standard we used in putting him on the list that he was a sympathizer, agitator, and a pain in the royal you-know-what on the Internet, there are a lot of those people in America if that is going to be our standard.

That is why I would feel a little more comforted if it weren't an accusation by a politician who unleashes Hellfire missiles. I would be a little more comforted—and I think we would all sleep a little better in our houses at night—if we knew that before the Hellfire missile comes down, a policeman would come to your door and say we accuse you of this. They might put handcuffs on you and take you to jail, but they don't get to summarily execute you.

That is all I am asking. I am asking for the President to admit publicly he is not in favor of summary executions. That is really all I am asking, about summary executions of noncombatants. It seems like a pretty easy answer.

We could be done with this in a moment's notice if someone will call the President and ask the question. We could be done with this because that is what I want to hear, not that he is going to use the military to repel an invasion. Nobody is questioning the authority of the President to repel an invasion. I am questioning the authority of the President to kill noncombatants asleep at home, eating in the restaurant, or what-have-you.

One of the things Williamson brings up in his National Review article again—which is a little bit off the subject but somewhat related—we were fearful and we didn't do a very good job with 9/11, frankly. September 11 occurred because of a lot of mistakes, and some of you could look back as a Monday-morning quarterback and say, oh, we should have done this.

One of the things that sort of bothered me about 9/11 was no one was ever fired. In fact, they gave medals—the head of the FBI, the CIA, everybody gets a medal. No one was ever fired.

Some of you may remember there was a 20th hijacker. His name was Moussaoui. He was in Minnesota, and they captured him a month in advance of 9/11. When they captured him, the FBI agent there—who was spot on—was doing an excellent job. The agent who should have received the medal was the FBI agent who caught Moussaoui and was asking his superiors to get a warrant. He asked repeatedly. He sent 70 letters to headquarters, saying: May I have a warrant to open this guy's computer, to investigate him? He was turned down. He got no response. It was a horrible and tragic human error.

What do we do? We promote and give medals to the people who were in charge. That agent should have received a medal, but anybody above him who made the decision not to even ask for a warrant shouldn't have gone anywhere within the department.

Williamson makes the point if our law enforcement and intelligence agencies—particularly the State Department—had been doing a minimally competent job vis-a-vis visa overstays and application screenings, at least 15 of the 9/11 hijackers would have been caught. They were all on student visas, and they were all overstaying their student visas. Nobody was paying attention. I still ask that question today. I ask, do we know where all the students are, particularly from about 10 Middle Eastern countries? The students who aren't from our own country, do we know where they are? I think we have not a good enough system to know where they all are, whether they have come and gone. This is a real problem.

Had we actually looked at Moussaoui's computer? They did; they looked at it on September 12. The day after 9/11 they looked at his computer. I think it, within hours, led them and linked them up to several hijackers in Florida and ultimately would have perhaps exposed the whole ring.

The same thing was going on in Arizona at the same time. They had somebody in Arizona saying there are guys who want to fly planes and don't want to learn how to land them.

There were horrible and tragic occurrences that happened, human breakdown. How do we fix it? We fix it the same way we do everything in Washington: We threw a ton of money at it, and I mean a ton of money. Billions upon billions and into the trillions of dollars have now been spent. Really the main problem with 9/11 was a lack of communication, lack of trying, lack of doing a good job at what you were already supposed to be doing.

When we look at this issue, and as we go forward from here, I think what is most important to me is we not let this go. This is the first time I have decided to come to the floor and speak in a true filibuster. People talk about filibuster all the time. They say the filibuster is overused and it is abused. A

lot of times the filibuster in our country and in the Senate is actually requesting 60 votes happen and we need to do everything by unanimous consent, so it almost never happens. I have been here 2 years, and I don't think I have ever seen anybody come to the floor and speak in a filibuster as I am doing today. I think it is important, though, and I think the issue rises to such an occasion. There are a lot of things we disagree on, Republicans and Democrats. I think there are a lot of things we could actually pass up here, a lot of things we could actually agree to we could pass if we get together, try to do smaller bills, work on what we agreed and get away from some of the empty partisanship.

The reason I came to the floor today to do this is because I think certain things rise above party politics. Certain things rise above partisanship.

I think you are right to be secure in your person, the right to be secure in your liberty, the right to be tried by a jury of your peers. These are things that are so important and rise to such a level we shouldn't give up on them easily. I don't see this battle as a partisan battle at all. I don't see this as Republicans versus Democrats. I would be here if there were a Republican President doing this.

Really, the great irony of this is President Obama's position on this is an extension of George Bush's opinion. It basically is a continuation and an expansion of George Bush's opinion. George Bush was a President who believed in very expansive powers, some would say unlimited. He was accused of running an imperial Presidency. The irony is this President we have currently was elected in opposition to that. This President was one elected who, when he was in this body, was often very vocal at saying the President's powers were limited.

When I first came here, one of the first votes I was able to receive was a vote on whether we should go to war without congressional approval. The interesting part is that the war was beginning in Libya. It turned out to be a small war, but small wars sometimes lead to big wars. In fact, that was one of Eisenhower's admonitions, to beware of small wars, that you may find yourself in a big war. Fortunately, the Libya war didn't turn out to be a big war, although I think it is still a huge mess and it is still yet to be determined whether Libya will descend into the chaos of radical Islam. I think there is a chance they may still descend into that chaos.

But when the question came up about going to war in Libya, there was the question of, well, doesn't the Constitution say you have to declare war? And so we looked back through some of the President's writings as a candidate, and one of the President's writings I found very instructive and I was quite proud of him for having said it. The President said that no President shall unilaterally go to war without the authority of Congress unless there is an imminent threat to the country. I guess we should be a little wary of his ''unless'' now, since we know imminent doesn't have to be immediate and imminent no longer means what humans once thought imminent meant. But Candidate Obama did say that the President doesn't go to war by himself.

I think it would be fair to say that Candidate Obama also felt the President didn't have the authority to imprison you indefinitely without a trial. And I think it is also safe to say that Barack Obama of 2007 would be right down here with me arguing against this drone strike program if he were in the Senate. It amazes and disappoints me how much he has actually changed from what he once stood for.

But I forced a vote on his words. I took his exact words. We quoted him and put those words up on a standard next to me, and we voted on a sense-of-the-Senate that said: No President shall go to war without the authority of Congress—which basically just restates the Constitution. Now, you would think that would be a pretty easy vote for people. I think I got less than 20 votes. That is the sad state of affairs we are in. There were some who actually probably believed that but refused to vote for it because they said: Well, he is a Republican, and I won't vote with a Republican. But I honestly tell you, were the shoe on the other foot, were there a Republican President here and I a Republican Senator, I would have exactly the same opinion. My opinion today on drone strikes would be exactly the same opinion under George Bush. And I was critical of George Bush as well. Were there a Republican President now, I would have the same instinct and the same resolution to carry this forward. And on the issue of war, it is the same no matter which President.

One of the complaints you hear a lot of times in the media is about there being no bipartisanship in Congress. Well, the interesting thing is, actually, there is a lot of bipartisanship in Congress. If you look at people who don't really believe in much restraint of government as far as civil liberties, it really is on both sides. So you will find that often on these votes on whether the Constitution says we have to declare war in the Congress, Republicans and Democrats vote overwhelmingly against that.

Now, you need to realize the implications of that. What they are voting for is to say we don't retain that power and we don't want it. The Constitution gave it to us, but we are giving it back. And this has been going on for a long time, really, probably for over 100 years, starting with Woodrow Wilson, who sort of grabbed for Presidential power, and Presidents have been getting more and more powerful for over 100 years, Republican and Democratic.

There was at one time—point in time in our history a pride among the Senate and a pride among the Congress that said: These are our powers, and we are not giving them up. There were people on both sides of the aisle who would stand firm and say: This is not a power I am willing to relinquish; this is not something that is good for the country. And by relinquishing the power of Congress, we relinquish something very fundamental to our Republic, which is the checks and balances that we should have—checks and balances to prevent one body or one part of the three parts of government from obtaining too much power. So there was a time when we tried to keep that power.

Unfortunately, the bipartisanship we have now, many in the media fail to understand. They see us not getting along on taxes and on spending, but they fail to understand that on something very important—on whether an individual has a right to a trial by jury, whether an individual has the right to not be detained indefinitely—there is quite a bit of bipartisanship, although usually in the wrong direction.

Now, I will say there is some evolution and some trend toward people being more respectful of this, and there has been some work on both sides of the aisle that has brought together some of us who believe in civil liberties.

There was a bill last year called the national defense authorization bill. In that bill, there was a clause that said Americans can be indefinitely detained. What does that mean? Well, it means forever, basically, or without a trial, no sort of sentence, no sort of adjudication of guilt or innocence, an American citizen can be held. So there was another Republican Senator on the floor, and I asked the question: Does that mean an American could actually be sent to Guantanamo Bay from here, someone who is accused of something but never gets a trial? And his answer was yes. His answer was yes, if they are a danger to the country.

The problem with that kind of thinking is, who gets to determine whether you are a danger? Who gets to determine whether you are guilty or innocent? It sort of begs the question of what our court system is set up to do, which is to try to find guilt or innocence. Guilt or innocence isn't always apparent, and sometimes an accusation is a false accusation. Sometimes accusations are made because people politically don't like your point of view. So the question becomes, should we have a process where we try to determine innocence or guilt?

So in the national defense authorization bill, there was an amendment that said you can be indefinitely detained, an American could be sent to Guantanamo Bay, and we had a big fight over it. We lost the first time around in 2012. We had an amendment that tried to protect American citizens. This was a good example of bipartisanship on our side. We had 45 votes, and I would say it was probably about 38 Democrats

and about 7 Republicans. So that was an example of both sides kind of working together. But we fought and we lost.

The next year, we came back and we fought for the same amendment again and we beat them. Interestingly, we beat them. We had 67 votes to say that you cannot detain an American. An American can't be sent to Guantanamo Bay without a trial, without an accusation, without a jury, without the Bill of Rights. You can't do that to Americans. We won the battle with 67 votes. So the bill passes, the House passes their version without our amendment in it, it goes to the conference committee, where they work out the differences, and they strip out our language. So sometimes when you win around here, you lose.

But with the 67, there was a pretty good mix—maybe 35, 40 Democrats and 15, 20 Republicans. So there is some emerging consensus or some kind of emerging group. One of the other Senators has called it the checks and balances caucus, and I think that is a very accurate term because that is part of what we are arguing for. We are arguing that no one person should get too much power or no one body will get too much power.

Some people see all that fighting and disputing between the different branches of government, and they see it in a bad light. They say: Oh, with all that fighting and bickering, that is gridlock. But in some ways, our Founding Fathers weren't too opposed to a little gridlock, particularly if it were gridlock that said: You know what, we are not going to make it easy to get rid of the first amendment.

It is not easy to get a constitutional amendment in our country. We have added some through the years, but it is not easy to do. We make it hard to amend the Constitution. In fact, we make it such that we are not really a country that is majority rule. And I am sort of a stickler for talking about the differences between a democracy and a republic. I think some people are sloppy with their words and they love the idea that America is a democracy. Woodrow Wilson said we were going to war in the world war to make the world safe for democracy. Well, No. 1, we are not a democracy, and we were never intended to be a democracy.

When Franklin came out of the Constitutional Convention, a woman went up to him and asked him: What will it be? Will it be a monarchy or a democracy? And he said: It is a republic. It is a constitutional republic, if you can keep it. He was already worrying about whether democratic action would lead to people straying away and giving a government too many powers.

So we are a republic, and it is important to know the differences between a republic and a democracy, particularly with our history and our country. In our country, we had a period of time where majorities passed some very egregious and unfair and unjust laws. These were called the Jim Crow laws. They passed laws based on race or the color of your skin, and these were passed by majorities.

The important thing about the Constitution and about rights and one of the reasons I am here today talking about the fifth amendment and how it gives you the right not to be committed to prison or be killed without due process is that our Founders thought it was very important, this whole concept between a republic and a democracy, and also considering the idea that majority State legislatures were voting on things such as the Jim Crow laws that would say that a White person can't sell a house to a Black person or vice versa. Those laws were passed by majority rule.

So any time someone comes up to me and says they want a democracy, this is my first question to them: You are OK with Jim Crow, then? Because democracies did bad things. But if you believe that rights are protected and that rights should be protected and that these individual rights are not something a democracy can overturn, then you do truly believe in a protection that is more important than any democratic rule.

There has been some dispute over this. There was a Supreme Court case by the name of Lochner back in 1905. The President doesn't like Lochner at all. He is very much opposed to it. But the one thing about Lochner I like is that Lochner really expands the 14th amendment. The 13th, 14th, and 15th amendments were passed after the Civil War and usually over Democratic objection.

In my State, the Democrats ruled the State legislature in Kentucky for many, many years, and they voted against the 13th amendment, the 14th amendment, and the 15th amendment. The great champions of emancipation, of voting rights, of all of the postwar amendments were the Republicans.

Every African American in the country was a Republican before 1930—virtually every African American. In 1931, in Louisville, there were 25,730 Black Republicans, and there were 129 Black Democrats. Every African American was a Republican at one point in time.

I try to tell people, even though the numbers have been, unfortunately, reversed, we are the party that believes in the immutability of rights. We don't believe that the democracy can take away your rights, that a majority rule can take away your first, your second, or your fourth amendment rights. And I think if we got that message out, we might change some of what is going on.

But the President is an opponent of the Lochner decision. In the Lochner decision, a State legislature decides something, and it is not really of importance what the decision is so much as that it is about judicial deference, about whether the courts should say: Well, the State legislature decided this, and majorities should get to rule.

Many believed as Oliver Wendell Holmes did, who was a dissenter in the Lochner case. He basically said majorities should get to rule.

Herbert Croly, one of the founders of the New Republic, wrote that we can get trapped up in all of this support for Bill of Rights and all these ancient individual rights. If we get too carried away with this whole idea of rights thing, we will have a monarchy of the law instead of a monarchy of the people.

It was for good reason that we established a republic and not a democracy. One of the best contrasts—it may not be a perfect contrast, but I think it has some truth and validity—is that our Revolution worked. In our Revolution we established a constrained government. In France, the mob came into power. They had mob rule. The French Revolution was a disaster.

Now, we had some things going for us. We had a colonial government with English common law and adjudication, and we had adopted practices. We were Englishmen, and we believed in the rights of Englishmen. We had that for several hundred years in our country, so it was easier for us to have a revolution. They didn't quite have that going on in France, so it was different.

But one of the differences I see between America and France is that we established a republic, and we weren't going to have majority rule where the majority was setting up a guillotine. Ours wasn't perfect, obviously. The Founders left and allowed slavery to still occur. Interestingly, though, if you read the Constitution, I think they were embarrassed by it. The word ''slave'' doesn't occur in our Constitution. In fact, there were many abolitionist writers, one by the name of Lysander Spooner, who actually wrote about the unconstitutionality of slavery even before the war. And if you read the Constitution and acknowledge that there is no word in there for ''slavery'' and nothing that says you have to be consigned to slavery—there are things in there that say you can't be kept without being presented with charges. ''Habeas corpus'' means ''present the body.''

In the old days in England and in different monarchies, they just snatched you up. If you were next in line to be King or you made them mad, they snatched you up and put you into the tower. So we came up with the right of habeas corpus. You had to present the body and say: He has been arrested, and these are the charges against him. We have gotten to where there is some concern in our country about that, but we have had that right all along.

So Lysander Spooner wrote and said: Why shouldn't a slave come forward and say, this guy is keeping me; he is telling me I have to work for him, but I haven't been charged with anything. What is my crime?

Eventually, one court case did come forward, and it was ruled incorrectly. I am not sure exactly how the arguments were, but in Dred Scott they ruled that you can't make the argument. I don't know if habeas corpus

was part of that case, but it should have been.

What I am trying to say, though, is that the rights of the Constitution—the rights of the individual that were enshrined in the Constitution—are important things that democracies can't overturn.

When you get to the Lochner case, which was in 1905, the majority ruled five to four that the right to make a contract is part of your due process. Someone can't deprive you of determining how long your working hours are without due process. President Obama is a big opponent to this. But I would ask him—among the other things I am asking him today—to rethink the Lochner case because the Lochner case really is what precedes and what the case Buchanan v. Warley is predicated on.

Buchanan v. Warley is a case from 1917—interestingly, it comes from my State, Louisville, KY. There was a young African-American attorney by the name of William Warley. He was a Republican, like most African Americans were in Louisville in those days. He was a founder of the NAACP and, like most founders of the NAACP, a Republican.

What they did in 1914 was they sued because the Kentucky Legislature—by a majority rule, by democratic action—passed a law that said a White person couldn't sell to a Black person in a White section of town or vice versa. This was the first case the NAACP brought up.

Moorfield Storey was the first president of the NAACP, a famous attorney. He and an attorney by the name of Clayton Blakely went forward with this case, and they won the case. It actually passed overwhelmingly. But, interestingly, this case to end Jim Crow was based on the Lochner decision. So those who don't like the Lochner decision, I would say go back. We need to reassess Lochner. In fact, there is a good book by Bernstein from George Mason talking about rehabilitating Lochner.

The thing is, with majority rule—if you say we are going to give deference to majority rule or we are going to have judicial restraint and we are going to say that whatever the majority wants is fine, you set yourself up for a diminishment of rights.

I go back to the discussion of the Constitution limits power that is given to Congress, but it doesn't limit rights. The powers are enumerated; your rights are unenumerated. The powers given to the government are few and defined; the freedoms left to you are many and undefined. And that is important.

What does this have to do with Lochner? The case in Lochner is whether a majority rule—a State legislature—can take away your due process, your due process to contract. Can they take away your life and liberty without due process? And the Court ruled no. I think it is a wonderful decision. It expands the 14th amendment and says to the people that you have unenumerated rights.

Now, there is some dissension on how we look at these cases. But when you go forward to Buchanan v. Warley, the case about Jim Crow laws and housing segregation, one of the people who was going to dissent—and I think he thought better of it when he thought about that he would be the first Justice in probably 70-some-odd years to say that he believed in the Jim Crow laws and was upholding the Jim Crow laws—was Oliver Wendell Holmes. He actually writes an opinion that has been found but was never presented to the Court, and he ended up voting to get rid of the Jim Crow laws, but he actually wrote an opinion in favor because he believed so strongly in majority rule.

Some may think these are idle questions. I don't think it is an idle question whether or not you have a democracy or a republic. I think these questions—from Lochner, from Buchanan v. Warley, all the way through to the present—are important.

In the last couple years, we had two cases on gun rights, the second amendment, called Heller and McDonald. I think both of them can be seen as, once again, an expansion of the 14th amendment to say: Your privileges and immunities which are part of the 14th amendment include the second amendment, and they include certain rights. In fact, I think any power or any right not given up to the government or limited by the enumerated powers is yours. So when they say the privileges and immunities of the 14th amendment, I believe that means everything else. What does that mean? It means I believe in a very circumscribed view for the government.

One of the side benefits of having a circumscribed view of the government would be that a government that is not allowed to do much wouldn't get in many problems. For example, if your government wasn't allowed to spend money it didn't have or if your government wasn't allowed to spend money on programs that were not enumerated as being within the purview of the Federal Government, you wouldn't have these massive deficits. We would have never gotten in this fix if we believed in a republic and not a democracy.

Now, what proof do I have that the current officials believe in democracy versus republic? When ObamaCare came forward, the comments from then-Speaker of the House NANCY PELOSI were: A majority passed this. We passed this by majority. It is the law. Why would anybody question the constitutionality?

The President said the same thing. The President said: A majority passed this. What right has the court to overturn this?

The question has been written about by many brilliant scholars who have looked at the Constitution and looked at what it means. Some of this has to do with whether you presume liberty—and Randy Barnett has written about restoring the Constitution—whether you have a presumption of liberty or whether you have a presumption of constitutionality. That may sound a little esoteric, but what does that mean? It is whether or not, when they pass a law up here, you just presume it is fine because it is the law and the judges should give deference to it because it is a law.

It may sound confusing because you might think I am arguing for judicial activism. In a way, I kind of am because if the Congress usurps the Constitution, if the Congress takes away from your rights, the judges should stop them in their tracks. I am not arguing for deference to the legislature; I am arguing for deference to the Constitution.

I am also arguing that there is a presumption of liberty. This goes back to the way we want to look at the 14th amendment. The 14th amendment says we have unenumerated rights. I guess, by extension, when you go from the 14th amendment to the 9th and 10th amendments is the best way to look at this.

The 14th amendment talks about privileges and immunities, and when you look at what the 9th and 10th amendment do, they say those freedoms you didn't relinquish or those powers you didn't give to the government are left to the States and the people respectively, and it says they are not to be disparaged. I always loved the way that was worded—not to be disparaged. Not only is the Federal Government not to trample on your rights, they are not to be disparaged. But these rights are unlimited. They are yours. You got them from your Creator. These are natural-born rights, and no democracy should be able to take these away from you.

Now, by changing the Constitution, they could literally take away your freedom of speech or your freedom to practice your religion. I don't think I will see that ever happen, and it is difficult to change our Constitution, but it is incredibly important that our Founding Fathers put it in there and made it difficult.

I always kind of joke that if you go to a conservative meeting and you talk about the second amendment, everybody pats you on the back and they all love you—until you get to the fourth amendment. But if we are going to have the second amendment, I think you have to have the fourth amendment—the right to be free in your person from unreasonable searches and seizures, that a judge should have to have a warrant to come in your house. How are your guns going to be protected if they can come in your house without a warrant? You have to have the fourth amendment.

But you also have to have the fifth amendment. We don't talk about the fifth amendment very much. Everything is about the second amendment.

It has been all over the news. You can't turn on a channel without hearing about the second amendment. But I think today is as good a day as any to talk about the fifth amendment.

I have come here to filibuster the nomination of John Brennan because I think the fifth amendment is important. But I think we shouldn't be cavalier. I don't think we should be casual in our disregard for the Constitution.

I think that to allow the President to trample on and shred the Constitution and say that the fifth amendment no longer applies is a travesty, and it is something we should not do lightly. So I think it is worth a discussion. So far, it is sort of a one-way discussion, but we will see. But it is worth a discussion that we talk about the fifth amendment. It says that no person shall be deprived of their life or their liberty. That is what it means. It is pretty clear, and it is pretty plain. You can't take away someone's life and liberty without due process or an indictment.

So it should trouble every American. I can't imagine that there wouldn't be an American in our country who would not be troubled that we are talking about killing noncombatants in America with drone strikes. We have to get the President to respond to this. I don't think it is good enough for the President to say: I haven't done it yet. I don't intend to do it, but I might.

His oath of office says he will preserve, protect, and defend the Constitution. The oath of office doesn't say: Well, I intend to when it is convenient. I have never seen a President go out on the lawn with the Chief Justice and say: I intend to follow the Constitution when it is convenient. Because what he says is he won't drop a Hellfire missile on you unless it is infeasible to capture you. That is what they are doing overseas. If that is going to be the standard for America, if you are not going to get a Hellfire missile dropped on you unless it is infeasible—to me, that sounds like unless it is convenient; if it is inconvenient. ''Not feasible'' sounds like inconveniency is the standard.

I asked Secretary Kerry about this in his nominating process. I said: Can you go to war without Congress approving of it, without a declaration of war, like the Constitution says? And he said: No. I intend to obey the Constitution—except for when I don't intend to obey the Constitution. It is hard to get things through Congress, and it is Congress's fault. There are too many squabbles and so many fights. So most of the time we will come to Congress and we will ask for a declaration of war—which, by the way, we have not done since World War I, and when we did, it was voted on nearly unanimously.

But this is the standard we get to: We don't intend to kill anyone and we don't intend to go to war without a declaration of war unless it is impractical to get your approval.

That was the point. If you do not get the point of the Constitution, if you don't get the point of what kind of system our government set up, what kind of system our Founders set up, it was to make it impractical. It was to make it difficult to go to war. It was to make it difficult and make it important: There would be debate and checks and balances. If inconveniency is our standard for going to war without Congress, inconveniency is our standard for killing Americans on American soil with drones, I think we have sunk to a new low. I just cannot imagine as a country that is the standard you want to have.

I want to reiterate. This doesn't have anything to do with the President being a Democrat. Whether he was a Democrat or Republican, I don't question his motives. I met the President several times. I really don't think he would do this. But the thing is, I am troubled by the fact he will not tell us he will not.

If he is a good man and we believe him to be a good man who would never kill noncombatants in a cafe in Houston, sitting out in a sidewalk cafe smoking—oh, that's right, you are not allowed to smoke cigarettes anymore—let's say they are sitting out in a cafe. If the President is not going to kill them, why would he not say he is not going to kill them there? That is the troubling aspect of this, if the President will not acknowledge he is not going to kill noncombatants in America.

The real problem with this is we are now engaged in a limitless war. A lot of Americans may not know this but people all the time up here are saying it. You have to read between the lines sometimes to hear what they are saying. They are saying there is no geographic limit to the war. That is what Brennan has said. What does that mean? I thought we went to war in Afghanistan. I really thought that even at the time. I was not here, but I would have voted to go to war. I thought they were voting to go to war to get the people who attacked us on 9/11. I was all for it. I still am all for that. But we are now using that resolution to go to war to have no geographic limit for drone strikes anywhere in the whole world; and not only no geographic limit, no temporal limit, which means no timeline. There is no end to the war in Afghanistan. The war will never end.

If you have no geographic limit—many on my side say the battlefield is everywhere, and the battlefield is in the United States. It is one thing to say that, but realize what they mean by that. They say because the battlefield is here, the laws of war apply. That is what a drone strike is. A drone strike is not something you do domestically. They are saying the laws of war apply.

If you change the words around, what are the laws of war? Martial law. I think if you ask Americans are you in favor of martial law by the President, I don't think many would be. But many in this body would gladly give up their power, would gladly say America is now the battlefield so the laws of war should operate.

The laws of war are that there really is no due process in war. I am not arguing for due process in war; I think it is, frankly, impossible. If you have gone as an American to Afghanistan and you are fighting against us, you don't get due process. You don't get your Miranda rights. It is an impossibility to have the Constitution operating in a battlefield. So I am not for that.

But I am against defining the battlefield as being everywhere, including my house, my office, including everywhere in America. If it is a battlefield, you have no rights. The war zone is a zone where you do not get due process, you do not get Miranda rights, you do not get an attorney. But it should be different in our country. If our country is a battlefield, if our country is a war zone, what is left? I thought we were fighting to preserve our way. I thought we were fighting to preserve and protect our Constitution. What are we fighting for if we are not going to protect our rights at home?

The Bill of Rights is too important to scrap it. The Bill of Rights is too important to let any President, Republican or Democrat, simply come forward and say: Well, I have not broken the Constitution yet, and I do not intend to break the Constitution, but I might because they are everywhere and the battlefield is everywhere and we are so frightened that we must do anything.

I think it is good to be angry, upset, really to want vengeance sometimes against people who attack you. I was all for punishing those who attacked us after 9/11. But I think, also, at the same time we need to not let that get in the way of what is our way of life and what we are protecting here. When we look at this and we look at what is going on with terrorism, we need to keep in perspective that these people can do us harm, but they are incredibly weak people. They are incredibly cowardly, in a way. You know, they have no armies. They have the ability to inflict terrorism, which is what weak people do. People who have no armies and no strength attack the civilians. It is a weak and cowardly way to attack your enemies. But it is not something that we should cower so much that we say: Gosh, someday they may come and blow up the Senate, which would be terrible.

I think the things terrorists do are terrible, but I am not saying that because we are so frightened of them coming that we should say: Why don't we just have camps again, you know? Why don't we just round up—the Japanese Americans were a threat in the war and we just rounded them up and, guess what. No Japanese Americans attacked us, so it must have worked. I think it was an abomination what we did, one of the worst and most tragic episodes in our history, and the fact that the courts upheld it. But are we so frightened we are going to give up on

our Bill of Rights? Are we so frightened the next thing we are going to do is round up people of a different skin color because we think they have cousins who live in Lebanon?

We cannot really give up on what makes America special. What makes America special is the Bill of Rights. What makes us special is really that we are not a democracy. There are a lot of democracies around the world. We are a republic. We are a constitutional republic. We are a country that enshrined our rights, took care and deliberation and wrote down our rights, and they are not supposed to be usurped by any majority. So it is important that we know we are not a democracy, we are a constitutional republic. It is important for me to know and say that my rights came from my Creator. You don't have to agree with me on that. Some people think they came naturally to them, but they think there is a natural state of being that is free.

We do give up some freedom. We give up some freedom to pay taxes. If I work, all of my labor is mine, and I give up some of my labor and some of my wages to a government. To live in a civilized world you do give up a little bit. But what I have always argued for is that we should minimize what freedom we give up. That is why you should always minimize taxes. You should minimize the size of your government because everything you give up in taxes or everything you give up to your government is loss of your sweat equity, your labor. It is yours. It is nobody else's. So you give up the very minimum of it.

There is another argument. That is sort of the freedom argument for why we should keep government minimized. The other argument for why we should keep government minimized is more of an efficiency argument. This comes from Milton Friedman, but I think he put it very succinctly. He said nobody spends somebody else's money as wisely or as frugally as you spend your own.

It is a simple statement, but I think in one statement, one simple sentence, it sort of brings forward something about government that is very true. People up here just do not spend it wisely. The reason they don't spend it wisely is because it is not theirs. In fact, they have a perverse and wrong-headed incentive that says: I need to spend all of my money or I won't get it next year, so government agencies incredibly want to spend all the money and more to make sure there is nothing left at end of the year.

If you listen to some people, they would say: Oh, no, government is just here to help people. Without government it would be—without this massive huge government—we have to have the debt because we need all the things we get from government. Will Rogers once wrote and said: ''You're lucky you don't get all the Government you are paying for.''

George Will recently wrote, and he sort of put a twist on it, and he said that used to be true, but now I think you are getting more government than you pay for. That is sort of the truth. We get a ton of government. Our taxes cover about 60 or 70 percent of what we spend up here. What kind of country gets rich borrowing 30 cents on every dollar? What kind of family can spend 30 percent more than comes in?

Some things are pretty simple. Wealth accumulation for you or wealth accumulation for a country is by savings. You don't get wealthy by spending more money than comes in. So as we look to these things, I think we need to be cognizant of the reasons we would want to have smaller, not bigger, government. But we would have smaller government if we paid attention to the rules.

The rules are very important, and when people talk about ''oh, that would be a monarchy of the law,'' or they say ''that would be too rigid to live under the laws, we need a living, breathing, evolving Constitution,'' I think things change over time. You get new technologies; drone strikes and things are new technologies. But I think what does not change are certain freedoms that are going to be the same now as they will be in 10,000 years.

I think the freedom for people to worship is something that I don't want majority rule to decide. You say: What does the freedom to worship have to do with drone strikes? It is hard to worship after a Hellfire missile has been launched on you.

So all of our rights—there is a panoply of rights that are all interconnected, and they come from the basic right to life. If you don't have the right to be secure in your person, you don't have any other rights. So as we diminish one right we attack at the foundation. But if we are at a foundation where we are saying we can strike a person in America with no trial, with no accusation, I think we have come a long way from where we began.

I worry about it. I worry about it not just in the abstract sense, not just in the sense that these are a right in abstract and that we lose something we cannot actually touch or feel. I worry really about it in the sense that I don't know how you continue to exist as a country if you do not believe in some fundamental right, some fundamental right and wrong.

After ObamaCare passed and there were some questions about its constitutionality, they asked a Representative from the House side—he was asked: What about constitutionality? He said: Why would I care? Most of the things we do up here have no constitutional justification.

We have gotten to the point where people care more about having enough votes. They think it is right if you have a majority vote as opposed to that there are certain immutable rights and wrongs; that there are certain immutable rights that were there at the founding of our country that will be there in 100 years or 1,000 years from now: Your right to be secure in your person, the right that the government cannot take away these privileges.

This is not a new fight. Really, from the beginning of time there has been a struggle with the people versus the leaders. The leaders always want more. The amazing thing is it is sort of like a contagion. Not many people get to be President in this country. One person gets to be. We have had in the forties—44 or 45 Presidents. We have not had many Presidents. But there is something contagious about the office. It is that power corrupts, I think.

Lord Acton said it is not just that power corrupts, but that absolute power corrupts absolutely.

I think people can become intoxicated with power. I don't know if that is the explanation for President Obama's about-face. He was one who at a time when he was in this body believed in some restraint, believed in Senate authority, believed in—actually he did not even believe in raising the debt ceiling when he was here. The thing is, what we would hope for is someday we have a President who believes, even after assuming office, that the powers of the office should be protected. I think we run the risk, as we allow more and more power to gravitate to the President, we run the risk of living under an imperial Presidency.

I have said some inflammatory statements: that the President is acting like a king. Some of that is inflammatory and provocative, but some of it has some ring of truth to it or I would not get so much push-back. Kings operate by edict. They say it is so; make it so. There is no give-and-take. There are no checks and balances between the legislature and the Presidency.

This has been going on for a long time. It is a titanic struggle and, frankly, I wish more people were interested in it. I wish we had a dozen people down here saying: No President should assume such authority. No President has the right to say he is judge, jury, and executioner. No President should be allowed to say that.

It is not enough for him to say: My motives are good. I don't intend to do so. I haven't done so yet, but I might.

If that is the standard we are going to live under, we have a great danger in our country. It is not enough. We live under the rule of law, and the law is quite explicit. The fifth amendment says no person shall be detained without an indictment or without due process.

I find the answer to be incredibly easy. I have asked the President an easy question. My question is, Can you kill an American on American soil, a noncombatant, with a drone strike? It should be an easy answer.

(Mr. HEINRICH assumed the chair.)

When a President will not answer a question or when they answer the question and it is an evasive answer, our

concern is if they answer yes. I thought they would never answer the question, but they finally did. They said: Yes, we can conceive of situations when we might. The situations they conceive of, though, are attacks on the country, which I don't disagree with, so they are talking about things that are not controversial.

If planes are attacking the Twin Towers, New York or DC, there is not any question on either side of the aisle among almost anybody in the country or the universe who doesn't believe we can repel lethal threats. What we are talking about are the noncombatants who are either eating dinner, sleeping in their house or walking down the street. A large percentage of the drone strikes have been people who were not carrying arms or in combat.

Were they bad people? I am not positive I could say one way or the other, but I don't want that sort of standard to be used in America. I don't want the standard to be that if someone is close to a bad person who happens to be a male between the ages of 16 and 50, that they are no longer a civilian but actually a militant. Is that the standard we are going to use in America?

I don't want the standard to be sympathizing. Has anybody ever been on the Internet? Has anyone ever seen crackpots who are on the Internet and say all kinds of crazy things? If someone is saying crazy things and they happen to be against our government, is that enough for a Hellfire missile to come down on their house? Is sympathizing enough? People have written and talked about this. During the Vietnam war there were some people who probably were treasonist and probably should have been tried for treason. Having said that, I would not kill them without some sort of due process or trial. The idea of a right to trial by jury has been the basis of our history for hundreds and hundreds of years. It is the basis of a foundational principle for our country. I cannot imagine we would be so cavalier as to let it go.

As we move forward with this nominating process, I have decided to occupy as much time as I can on the floor to bring attention to this issue. Ultimately, I cannot win. There are not enough votes. There would be if there was truly an uprising of bipartisan support that would come to the floor and say: It is not about John Brennan. It is about a constitutional principle and we are willing to delay this until the President can explicitly say noncombatants in America will not be killed with drone strikes. I think that is pretty easy to answer, but it has been like pulling teeth.

I have written letter after letter for weeks and weeks trying to get an answer on this and we have not had much luck. There have been people who have written about the lawfulness of these lethal operations directed against citizens, and there is a question both in the country and outside the country of what the standard will be. Will it be the same standard? Some say there is no standard once we get outside the country and that anybody can be killed whether they are an American citizen or not.

Frankly, I don't like the idea of no standard. For example, the most prominent American who was killed overseas was al-Awlaki. His name was publicly known to be on a kill list for months. I see no reason why he could not have been tried in a Federal court expeditiously—if he didn't return home, he would still be tried—given representation, and tried for treason. These are not frequent cases that occur overseas, so I see no reason why we would not use a Federal court. The Federal courts are adapted in such a way that we can go into secret session if there is classified material. The Federal courts in Washington, DC, Philadelphia, and New York have done this on occasion. I think we could do this in Federal court. We have convicted quite a few terrorists—I think that they number up to several hundred—in the United States in our courts.

The main thing I object to is people becoming so fearful they cavalierly give up their rights. We had two terrorists in Bowling Green, KY, my hometown, which has 50,000 people. Who would have thought we would have two terrorists? They were conspiring to either buy or send Stinger missiles to Iraq. I am glad they were caught and punished. They were tried in a court.

Many people said let's just send them to Guantanamo Bay forever. Once we go down that path where we are not going to have any due process—our courts have done a pretty good job. In fact, I think we have not let off anybody from one of our courts that should have been kept here and tried.

I do have a question as to how the terrorists got into the country. That goes back to the issue of not wanting terrorism to occur, but how should we combat it? Is it best if we combat it in Yemen, Mali, Somalia, Afghanistan, Pakistan or should we combat terrorism by knowing who is coming into and leaving our country?

For example, we have allowed 60,000 people from Iraq to come into this country in the last 2 or 3 years. Frankly, I think that is a lot. They come here under asylum. The problem with asylum is I thought asylum is when a county was escaping a dictatorship. We won the war in Iraq. They have a democratic government over there, and I would not understand why they would want to leave a democratic government. Also, the 60,000 who leave—other than maybe the two we captured in Bowling Green, we presume that most of them are pro-Western—are the people we want to run Iraq. There are all kinds of reasons to stay in Iraq to run the country.

In letting so many people come in, we didn't do a very good job because the two terrorists who were allowed to go to Bowling Green had their fingerprints on an IED that was in a warehouse somewhere. They did not find a match on any of the fragments with their fingerprints on a database until after we caught them. Once we knew their names and had their fingerprints, we checked some fragments for their fingerprints that had been in a warehouse for years and years. So we are not quite doing the job.

Sometimes we want to analyze so much information that we get overwhelmed with the information too. We collect millions and millions and billions of pieces and bits of information, but it cannot all be analyzed. Some of it, I fear, goes against our rights to privacy. Any of our e-mails that are over 6 months old can be looked at. We found out about this recently when we had an adulterous affair in our military.

I believe our third-party records are ours. I had an amendment recently on this, and I told people my Visa bill is pretty private. Just because I use my Visa card doesn't mean I have given up my information and that the government gets to look at my Visa bill every month, but that is what we have done. A lot of these things have been slipping away from us for a long time. It is not just President Obama; it is 40 or 50 years of court cases.

Thirty, forty or fifty years ago, we decided that once a third party had your records, they were not private anymore. I think that is absurd. Think of the age we live in and how a lot of people don't use cash at all. Our Visa cards have everything on it. We can look at a person's Visa card and find out if they have seen a psychiatrist, what kind of medicines they are on, what kind of magazines they get, what kind of books they get. We can look at a person's Visa bill and find out if they gamble or drink or what their travel plans are. We can find out a ton of information on a person's Visa bill.

Should people be allowed to look at a Visa bill, without asking a judge, and then say: We think he is involved in this. We are not saying we cannot do this for a terrorist, but what we should do is go to a judge and present some evidence and say we think he is a terrorist and we want to look at his Visa bill. People in America should not be able to have their Visa bill open to scrutiny, and that is basically what we have now. Our banking records, our Visa statements, and all our records that are held by a third party are not protected.

Some people may have heard about how they want to have cyber security. Everybody wants their computers to be secure, including the computer companies. They work nonstop trying to keep hackers out of computers, but the law they want to pass gives immunity to the computer companies. A lot of us don't think much of it. We check off the confidentiality button and hope that after we have signed the contract, they will not share it. They share it in a way that is anonymous, and we put up with that in order to get a search engine. I am OK with that.

What I am concerned about is when we pass the cyber security bill, we cannot sue them if they breach the policy. So then everybody's computer, searches, and reading habits are open to the Federal Government. Because we are fearful of people coming at us and fearful of attacks, we give up our rights. I thought we were fighting to preserve our rights.

So what are we fighting for? These battles are going on and on throughout the government. The interesting thing about these battles is that they are not always Republican v. Democrat. These are battles that are sometimes coalitions of people from the right and people from the left who have gotten together and fought over these issues.

In the case of trying to get the President to acknowledge he will not do drone strikes, there have been people on the Democratic side of the aisle who have aligned with me and helped me get this information. The President probably would have refused until Hell froze over to give me anything, but the fact is we had Democrats ask to get information also. Suddenly we were able to get a coalition and get the information, but it has not been easy. The fact that they don't want to acknowledge limitations as to the President's power worries me that they believe in an expansive Presidential power. In order to stop that, we have to be protective of our rights. We have to be able to not so easily give up on our rights.

There is a white paper that was written, and the title of it is ''The lawfulness of a lethal operation directed against a U.S. Citizen who is an operational leader of al-Qaida, foreign associated forces,'' and this is from the Department of Justice. This white paper sets forth a legal framework for considering the circumstances for which the U.S. Government could use lethal force. One of the things they do in the document—this was leaked repeatedly—is they tell of the criteria for when they can kill people overseas.

We don't know the criteria for killing people in this country. They make a contention that the rules will be different, but no one is acknowledging exactly whom they can kill or what the rules will be. For the people who are killed overseas by drone strikes, the thing they come up with is that they say it has to be an imminent threat, but it does not have to be immediate.

To my thinking, only a bunch of government lawyers could come up with a definition for imminent threat that says it is not immediate, so that is the first problem with it. Is that going to be the standard that is used in America, that there has to be an imminent threat, but it doesn't have to be immediate?

My next question is: What does that mean? Does that mean noncombatants who we think might someday be combatants are an imminent threat? It is a pretty important question. What is imminent. There is no question of what imminent lethal force is. If someone is aiming a gun, a missile or a bomb at you, there is an imminent threat, and no one questions that. No one questions using lethal force to stop any kind of imminent attack. We become a little bit worried when the President says imminent doesn't have to mean immediate. When that happens—and then we see from the unclassified portion of the drone attacks overseas—many of these people are not involved in combat. They might someday be involved in combat, they might have been involved in combat, but when we kill them, most of them are not involved in combat. So even overseas there is some question of this program, but my questions are primarily directed toward what we do in this country.

It says the U.S. Government can use lethal force in a foreign country outside the area of active hostilities. That is, once again, the point. We are not talking about a battlefield. But because the battlefield has no limits—since the battlefield is not just Afghanistan. The battlefield has no geographic limits so the battlefield is the whole world, and many in this body say the battlefield is the United States. So once we acknowledge and admit that the battlefield is the United States, this whole idea of what is imminent versus what is immediate becomes pretty important because we are talking about our neighbors now.

The other thing about this is we need to try to understand who these terrorists are. Members of al-Qaida. There are no people walking around with a card that says ''al-Qaida'' on it. There are bad people. There were bad people associated with the terrorists—and we have killed a lot of them—who were in Afghanistan training and part of the group that attacked us. But there are terrorists all over the world who are unhappy with their own local governments—some of them are unhappy with us too—but to call them al-Qaida is sometimes a stretch and sometimes open to debate as to who is and who isn't.

Then they use other words, and words are important. They are either a ''member of al-Qaida'' or ''associated forces.'' I don't know what that means. Does one have to talk to al-Qaida or commit terrorism or does a person have to be in a country where we are supporting the government and people are attacking the government? It is not always clear.

The other question we get to when it is either al-Qaida or people associated with al-Qaida is that now we get to the United States and we have the government defining what they say as terrorism. So the government has put out some documents, one by the Bureau of Justice, to warn us of who might be a terrorist. In fact, the government has programs where they want people to inform: If you see someone, tell someone. If you see these people, you are supposed to inform on them. So some of the characteristics of the people who might be terrorists—and I don't know, they don't have to be an imminent threat or an immediate threat, but some of these people might be terrorists. I don't know. If the President is going to kill these people, he needs to let them know. Some of the people who might be terrorists might be missing fingers. Some people may have stains on their clothing or some people may have changed the color of their hair, some people may have accumulated guns, some people may have accumulated weatherized ammunitions, which might be half the hunters in the South this time of year, or people who might like to pay in cash, or people who have seven days of food on hand. I know people who just for religious reasons are taught to keep food on hand. In fact, government Web sites sometimes tell us to keep food on hand for hurricanes. If you live along the coast, one government Web site says keep food on hand, and another one says if you do, you might be a terrorist. They are not saying you are, but if these are the characteristics of terrorism, would you not be a little concerned that if the government is putting this list out, we are going to drop Hellfire missiles from drones on people in America who might be on this list? I am particularly concerned about that.

So I think we can't be sloppy about this. We can't allow ourselves to be so I guess afraid of terrorism or afraid of our enemies that we give up on what makes us Americans. What makes us Americans are our constitutional rights that are enshrined in our Constitution. It is why we have gone to war, to defend these rights. Will we think the war still has purpose if we are no longer able to enjoy these rights at home?

The problem as I see it as we go forward is that I wish I could tell people there is an end to this, that there would be a grand battle for our constitutional rights or for what rights we lose overseas, what rights we lose here if we travel. The problem is they don't see an end to the war. They see perpetual war, perpetual war without geographic limits, and they see the battlefield here, so they want the laws of war to apply not only there but here. In other words, what they are saying is the laws of war are martial law. These are the laws of war. These are the laws that are accepted in war.

We accept a lot of things on the battlefield that we don't want to accept here. I acknowledge we accept that we don't get Miranda rights on the battlefield. We don't get due process. We don't get an attorney. If they are shooting at us, we shoot back and kill them. But the thing is if a person is sitting in a cafe in Houston, they do get Miranda rights, they do get accused of a crime, they do get a jury of their peers. That is what we are talking about here. The President should unequivocally come forward and state that noncombatants—people not involved with lethal force—will not have drones dropped on them.

The other thing he should acknowledge is the law—not only the constitutional law but the law since the Civil War—has said the military doesn't operate in the United States. There is a reason for the military not operating in the United States. Why? The military operates under different rules of engagement than policemen. The rules are stricter for policemen. We do it because we are not in a war here so the policemen have to call judges. A lot of people don't think this through, though, and they will say, These people are terrible, awful people who would cut your head off. They are right; they really are bad people. We have really bad people in our country too sometimes. We have murderers and rapists. But tonight at 4 a.m. if there is a rapist going around the neighborhood and you get to a house and there isn't an imminent thing going on but you are told he might be in this house, before the door is broken down, they call on a cell phone, they get a judge out of bed, and they say, we have chased him into this neighborhood, no one is answering, we want to break the door down, can we have a warrant. Most of the time the police have to call for a warrant. We have a process. But when he is arrested, they don't just string him up. We don't have lynchings in our country. We don't let mobs decide who is guilty and who is not.

I don't question the President's motives. I don't think the President would purposefully take innocent people and kill them. I really don't think he would drop a Hellfire missile on a cafe or a restaurant as I have been talking about. But it bothers me that he won't say he won't. It also bothers me that when he was a Senator in this body and when he was a candidate, he had a much higher belief and standard for civil liberties and he seems to have lost that since he has been the President.

I think this is an important issue. It goes beyond John Brennan. It goes beyond the President. It goes to an issue that rises above I think all other issues we consider here. I have voted for three of the President's nominees, not because I agreed with them politically; in fact, I disagreed with the vast majority, but I disagree with the President on a lot of political issues. I voted for his nominations because I think the President does get some prerogative in deciding who his political appointees are. I have chosen to make a stand on this one and not so much because of the person but the principle of this. I have nothing personally against Brennan. I have nothing personally against the President. But I have a great deal of concern about the rights that were enshrined in the Constitution. I have a great deal of concern about this slippery slope of saying there won't be accusations, there won't be trials, that we will summarily execute people, and the question is, will we execute noncombatants. If he is not going to, he ought to say so.

In this white paper that was released, they talked about the three different conditions. One of them was imminence, but then they qualified it by saying imminent doesn't have to be immediate. Another one was feasibility. They said it is not feasible to get some of these people overseas and so we kill them. But feasibility, to a certain extent, could be defined as convenience. So the question is, in America, what if they live up in the Rocky Mountains and there are no roads leading up to where they are; they are not very accessible; it is not very feasible; so we are going to do strikes based on convenience. Is that going to be the standard?

When we talk about standards, they say they have a process in place, but the process is very important. The standard is important, but it is also important that one group of people, one political group of people or one politician doesn't get to decide that standard. And part of the way the process in our country works is that there are checks and balances between the three branches of government so that one branch of government doesn't get to unilaterally decide what these standards are. Because some of the standards are a little bit loose—whether you are near someone. Apparently, we are not counting civilians who are killed by drone strikes if they are males between the ages of 16 and 50. If they were close to the people we are targeting, we just count them as other militants. Are we going to do that in the United States?

If you are eating with 15 of your family members and one of them may or may not be communicating by e-mail with somebody in a Middle Eastern country, can we kill all 20 of them, and because some of them are within the right age group, that is fine? Let's say you are eating with your cousin who is communicating with somebody in the Middle East and that person may or may not be a bad person, and then when you leave—let's say you are going to a wedding and you are going from a preparty and there are 20 cars all going to the wedding and they know or they think they know there may be a bad person among the group; why don't we just strike the caravan? These are called signature strikes. The Wall Street Journal said that the bulk of our drone strikes overseas are signature strikes. That is a good question for the President: Are signature strikes going to be the standard for killing Americans in America?

The President simply says the rules will probably be different for inside than outside. Well, I frankly don't think that is good enough. He says he has no intent to kill Americans in America. I frankly don't think that is good enough. I don't think it is good enough for the President to say I have no intention of breaching the fifth amendment. Intending not to is not the same as saying I won't. His oath of office says I will not—no, it says: I will protect, defend, and preserve the Constitution. It doesn't say I intend to protect, defend, and preserve the Constitution except for when it is infeasible or inconvenient. That is not what the rules are about. I think the rules are pretty absolute.

The rules are the Bill of Rights and they are ours. We got them from our Creator. They were enshrined in the Constitution. Nobody gets to take them from us. Nobody. No President from any party gets to be judge, jury, and executioner.

This decision to let this go, to let this nomination go without an answer is a big mistake for us. If we do this—if we let this nomination go without a debate, without significant opposition, without demanding more answers from the President—the problem is we are never getting any more answers. There will be some in this body who say, Well, just let it go. The snow is coming and we want to go home. The problem is that he is never going to answer these questions unless he is forced to. I suspect George Bush would have been the same. I suspect a lot of the Presidents would be the same. And I think it is unfortunate that they see their power and their sphere of power as being more important than our constitutional rights. But we won't get this by just the glad hand and the winning smile. That is not going to get any information from the President.

The only way this President would ever give us information is if we were to stop this nomination. I am not even saying stop it personally. My objection really is not so much to Brennan being in charge of the CIA as my objection is to the program and to the President not admitting that he can't do drone strikes in America.

I will continue to do what I can to draw attention to this and we will see where things lead. But I am disappointed in the President. I am one who while I am a Republican—I didn't vote for him in 2008 or 2012—I am one who has admired certain aspects of his policy. I admired his defense of civil liberties. I admired him in 2007 when he said Americans shouldn't be involved in torture. I admired him when he said we should follow the rule of law and we should have warrants before we tap people's phones and that we shouldn't be trolling through people's records. But I find a great irony and, frankly, a great hypocrisy in someone who would defend getting warrants before we tap your phone but won't defend a trial before we kill you. Tapping one's phone is a breach of privacy and it should only be done if a person has been accused of a crime and evidence has been presented and a judge grants a warrant. But killing someone with no due process, with no judicial oversight—some are saying, Oh, we will get to it. We are eventually going to set up a court, maybe a FISA court. Unfortunately, a FISA court probably won't be good enough because it will be in secret and a person should have a chance to confront their accusers and have a public trial if a person is going to be killed.

Typically what I am talking about is American citizens, but there needs to be some oversight. But the problem of waiting to do this and saying, Oh, we will do this sometime, we will get to it eventually, never happens. The same way with saying, Oh, we will get to—we will keep asking the President for more information, but it never happens. If we do not take a stand for something we believe in, it is going to slip away from us. I think our rights are gradually eroding. I think they are gradually slipping away from us. I think the understanding of the Constitution as a document that restrains the government, that restrains the size and scope of the government, has been lost on a lot of people. I think it is something we shouldn't give up on.

When the President goes through his three different items that were leaked through this memo, he says there has to be an imminent threat. He says their capture has to be inconvenient or infeasible. And he says the operation of killing the person has to be conducted within a manner consistent with the applicable law of war.

Here is the problem. That sounds fine if you are in Afghanistan and in the mountains fighting a war. But I am talking about downtown Washington, DC. I am talking about living in the suburbs of Houston or Atlanta. Are we going to have drone strike programs in America consistent with the applicable law of war?

See, the other way to put ''law of war''—and this is not a stretch, this is just turning the words around—''martial law.'' Now people, if you put it that way, might have a little different impression. Do we want martial law in our country?

If you go back to the battle we had over indefinite detention last year, where they are saying they can take a citizen without a trial and actually send them from America to Guantanamo Bay if they are accused of terrorism—accused, not convicted; accused of terrorism—you start to worry about some of the stuff happening in our country, that this could actually happen.

One of the sort of ironies of looking at different governments and looking at what makes people unhappy—in Tahrir Square in Cairo, there have been hundreds of thousands of people protesting. It is interesting what they are protesting. One of the large things they are protesting is something called an emergency decree, which I believe went in place by Mubarak 20-some-odd years ago. So you get leaders who come in, and they use fear to accumulate power, and you get a decree. So you get martial law. The martial law, ironically enough, in Egypt allows detention without trial. They do have the right to trial, but there is an exception, and it has been accepted for the last 20-some-odd years, and the people are hopping mad over it. So we get involved in their country and their politics and give them money and weapons, and we have some of the same debate and problems here at home—whether or not you can indefinitely detain.

The President's response to this was also pretty disappointing. It would not have become law without him. I think he threatened to veto it, and then he signed it anyway. Empty threats are of no value, and he struck no great blow for America or for American freedoms by not vetoing this. But when he signed it, he said something similar to what he is saying now. He said: Well, I have no intent to indefinitely detain people.

Am I the only one in America who is a little bit underwhelmed by the President saying he has no intent to detain somebody but he is going to sign it into law saying he has the power to? That is the same thing we are getting now in this drone strike program: Don't worry. Everything is OK. I am your leader, and I would never detain you. I would never shoot Hellfire missiles at noncombatants. I will not do that.

I can take him at his word, but what about the next guy and the next guy? In 1923, when they destroyed the currency in Germany, they elected Hitler. I am not saying anybody is Hitler, so do not misunderstand me. I am saying there is a danger, even in a democratic country, that someday you get a leader who comes in, in the middle of chaos, and says: Those people did it. Those people are the mistake. Those people are who we need to root out.

If the laws have been removed that prevented that from happening, if the laws have been removed and they say: We can indefinitely detain—in Hitler's case, he said: The Jews, those bankers, the Jews did this to us. And they were indefinitely detained. Now, am I saying this is going to happen in our country? Unlikely. I cannot imagine any of our leaders, for all of our disagreements, doing that. But if you do not have the law to protect you, you do not have that protection because you do not know who the next guy is and the next guy or the next woman.

When Madison wrote about this, he was very explicit. He said: We have these rules in place because we do not have a government of angels. If we had a government of angels, we would not need these rules.

I will never forget the discussion with somebody about the Kelo case. The Kelo case was a case where the government took private property and gave it to a richer person who had private property who wanted to develop it. Ironically, the justification they used was blight. So they take it from one middle-class person and give it to a rich corporation, and they say they are doing that to rectify blight. But when they did that and when they came down with the ruling, it was concerning the logic of the way they get to this ruling, that basically they really do not have this right to your property.

When the Kelo decision came down, it really bothered me. But I remember we started having the battle in our local government. In our local government, there was a battle over a resolution. The resolution said—it was in the city council—the resolution said the local city government cannot take private land and give it to another person. It was really like so many other things. The intention of eminent domain was to have highways and thoroughfares that you might not get otherwise, but it was never intended to take from a private owner and give to a corporation. That is what they did with the Kelo decision.

So, anyway, local governments began talking about this, and I was talking to one of my local government officials—this is probably 20 years ago, 15 years ago—and their response was, but I would never do that. I would never take private land through eminent domain and give it to another corporation. I would never do that.

And I believed that person. And I really, frankly, give the President the benefit of the doubt. I do not question his motives. I do not think he probably will kill noncombatants. But I certainly do not want him to claim that he has the authority to kill noncombatants. So this is a big deal. It is a huge deal.

So with the eminent domain, we finally passed it in our local commission. It was like 3 to 2, but in my town in Kentucky, you cannot take private property with eminent domain and give it to another private individual, because it is not about the individuals involved, it is about the fact that we do not always have angels running our government. We do not always know whom we are going to get.

If we ask the question, Do you want a government that is run by majority rule or a government that is restrained by its documents, it is a pretty important question. Ultimately, there are ramifications to majority rule, to basically whatever the majority wants.

One, the majority can vote upon minority rules they do not pass on themselves. In fact, Martin Luther King wrote—this is one of my favorite quotes from him—he said: An unjust law is any law that a majority passes on a minority but does not make binding on themselves. I thought it was a great statement because you could probably almost apply that to any law written on any subject. If the law excludes certain people and is not applied to everyone, then by definition it is an unjust law. What a great way to put it succinctly and a great way that we should look as far as trying to write rules.

But you have to decide as a country whether you want majorities or politicians to decide things or whether you want reliance on documents and on a process and on a rule of law that protects you.

If we rely on, basically, the whims of politicians, I think it is a big mistake. If we are going to rely on the politician basically sitting in the Oval Office going through flashcards and a

PowerPoint presentation to make the decision on life and death for Americans in America, I think it is a huge mistake.

Any people who watch trials and court cases realize that even courts are not perfect. It is actually amazing how we even get it wrong with courts and trials and juries. Many States and even many people who were for the death penalty have questioned their support of the death penalty because of the imperfection of our courts. Through DNA testing, we have found we do not always get it right even with that. I think in Illinois they stopped the death penalty after having so many DNA testings that showed there was an incorrect diagnosis of who had committed the crime.

So the question becomes, even with all the checks and balances of the court, are you worried at all about having one politician accuse, secretly charge, I guess—if you can call it a charge—and then execute Americans? I am incredibly troubled by that. I cannot imagine we as a free country would let that stand. I think it is an insult to every soldier in uniform fighting for American freedom around the world that we would just give up on ours at home, that the President would cavalierly or incorrectly or without forethought, without sufficient forethought, not tell us, not go ahead and explicitly say: This will never happen in America.

His answer to me should not have been, no, we will not kill noncombatants. It should be, never—no, never. We will never in America come to that. Under my watch, we will never, ever allow this to happen in America.

It is incredibly disappointing. It should be disappointing to all Americans or anyone who believes in this. We have to realize that trying to figure out guilt or innocence is very complicated. Anybody who has ever served on a jury realizes how difficult it is to determine guilt. And sometimes you are unsure. Some cases are actually decided by, gosh, the evidence was so equal, but there was not a preponderance. I could not become completely convinced, and this person is going to be put to death?

Contrast the feeling a juror has and what a juror is trying to do in finding innocence or guilt and letting someone be punished by death with our current standard. Our current standard for killing someone overseas is that you can be sympathizing, you can be close to people who we think are bad, you can be in a caravan that we say bears the signature of bad people.

Now, there is another debate that can be had about whether those are sufficient standards for war. And the standards are different for war in our country. But we have to adamantly and unequivocally stand up and say to those who would say this is a battlefield: The hell it is a battlefield. This is our country. If you want to say this is a battlefield—if you say we are going to have the laws of war here, we are going to have martial law here—by golly, let's have a debate about it. Let's have a discussion in the country. Let's have everybody talking about, are we the battlefield? Is this a battlefield? Is our country a battlefield? Because what that means is that you get no due process in a battlefield.

I am not here to argue and say that you get due process in a battlefield. I am here to argue that we cannot let America be a battlefield because we cannot say that we are no longer going to have due process, that we are no longer going to have trial by jury, that we are no longer going to have presentment of charges and grand juries. It is impossible in a battlefield. In Afghanistan, it is impossible to say: Hey, wait a minute, can I read you your Miranda rights? It is impossible. We are not arguing for that. We are not arguing for a judge or a jury or anything else. If people are shooting at our troops, they can do everything possible, including drone strikes. It is not even the technology so much that I am opposed to, but the technology opens doors that we need to be concerned with.

Defense of our soldiers in war—there is no due process involved with that. But realize the danger to saying America is at war, America is the battlefield, because also realize the danger that these people—they are Republicans and Democrats—these people do not believe there is any limit to the war, there is no geographic limit, and there is no temporal limit. It is a perpetual war. And many of them—if you prompt them or provoke them—will open up and say: Oh, yes, America is a battlefield. We need the laws of war. And you ask them: When is the war going to end, When will we win the war, they will admit it—some of them will frankly admit it. They will say the war may go on for a long time. Some have talked about a 100-year war, 100 years being in these countries. But basically we are talking about perpetual war. We are talking about a war with no geographic limit, no temporal limit, and a war that has come to our country.

There will be bad people who come to our country whom we need to repel. We are not talking about that. If planes are being flown into the Twin Towers, we have the right to shoot them down with our military. That is an act of war. No one questions that. If someone is standing outside the Capitol with a grenade launcher, we have a lot of brave Capitol policemen. I hope they kill the person immediately. Lethal force to repel lethal force has never been questioned by anybody and is not even controversial.

But they want to make the debate about that and not about killing noncombatants driving in their car down Constitution or sitting in a cafe on Massachusetts Avenue. There may be bad people who are driving in their car, and there may be bad people sitting in cafes around the country. If there are, accuse them of a crime, arrest them and try them.

The battlefield coming to America or acknowledging that is an enormous mistake. So there are some big issues, some issues that we as a country gloss over. We watch the nightly news. There is sometimes so much hysteria about so many issues, so many people yelling back and forth. But this is an issue that I think if we could get a frank discussion—I have proposed to the leadership—I have not had much luck with this—but I proposed for a constitutional debate or a debate of importance that everybody come, and instead of hearing me all day, we take 2 or 3 minutes and we go around the room and everybody speaks, it is limited, but there is some kind of debate and discussion—less speechmaking and more debate.

I proposed we have lunch together. I have asked to come to the Democratic lunch. I have not gotten the invitation secured yet. It has only been 2 years so it may happen, but there are many reasons for discussion. There are many reasons why we should have civility. There are reasons why people on both sides of the aisle can agree to this. If we were to have a vote, maybe not on the nomination but a vote on restricting drones—there is a bill out there that we are working on that would restrict drones to imminent threats. It does not even get into the distinction of the military—things in the country would be the FBI; it would not be the military because that is the law. There is an important reason for the law.

But we have a bill we are going to come forward with that we are working on that would simply say there has to be a real imminent lethal threat, something we can see. Then I think people could agree to that because it is not so much the drone we object to. If some guy is robbing a liquor store 2 blocks from here and the policemen come up and he comes out brandishing a gun, he or she can be shot. Once again, they do not get Miranda rights. They do not get a trial. They do not get anything. If you come out brandishing a weapon and people are threatened by it, you can be shot.

So it is important to know what we are talking about. We are not talking about the guy coming out of the liquor store with a weapon. Even a drone could kill him if the FBI had drones. So my objection to drones is not so much the technology. There may be a use for law enforcement here, but there is also potential for abuses.

Many government agencies have drones. These hopefully will remain unarmed drones. This is a different subject. But it is a subject that sort of dovetails from this into the next subject, which is, should you have protection from the government snooping—from the government looking through your bedroom windows? I remember that issue when I read ''1984'' when I was in high school. It bothered me, but I could not quite connect. I felt somewhat secure in the sense that we did

not have two-way televisions. This was back in the 1970s. We did not have the ability to look at people. The government could not look at me in my house 24 hours a day.

So you kind of get the feeling for how terrible it would be for that to happen. But technology was behind that. Actually ''1984'' was written, I think, in 1949. So talk about—he was truly being able to foresee the future. But now fast forward another 30 or 40 years and look at the technology we have now. We have drones that are less than an ounce, presumably with cameras—it is hard for me to believe that—but less than an ounce with a camera. It is not impossible to conceive that you could have a drone fly outside your window and see what your reading material is.

It is not impossible to say they could not send drones up to your mailbox and read at least what kind of mail you are getting or where it is from. It is not inconceivable that drones could follow you around. We had an important Supreme Court case last year, though, that was a blow for privacy. This was a Supreme Court case that had to do with GPS tagging. Everyone knows what GPS is. But what they were doing is the police were shooting them to cars or tagging them when you were not with your car and then following you around waiting for you to commit a crime. If you tag everybody's car and wait for them to speed, we are going to have a big deal on fines. There is going to be a problem. There is also a problem with following people around waiting for people to commit a crime. So the Supreme Court ruled, I think it was unanimously, that you have to have a warrant to do that.

The thing about surveillance is those of us who believe in privacy are not arguing against any surveillance. What we are arguing is that you have to have a reason to do it and you have to ask a judge for permission. So it is not a society where there is no surveillance or a society where you have absolute privacy. If you commit a crime, the police go to the judge and ask for permission to do this.

But there are some worrisome things about the direction of drones. For example, the EPA now has drones. The EPA is flying drones over farmland. I think some of this may be even in the defecation patterns of the cows. I do not know exactly what they are looking for because manure in streams is said to be a pollutant and, actually, frankly, thousands of animals might.

But the whole idea, if you think someone is dumping anything in a stream—I am not opposed to having laws stopping that, get a warrant, search them or get a warrant and spy on them with a satellite or drone or whatever you want to do. But you have to have some kind of probable cause they are committing a crime. Because you can imagine that we would devolve into a society where every aspect of our life would just be open to the government to watch what we are doing.

They say there is something called an open spaces concept. They say: You have 40 acres. The land is open so it is not private anymore. I think that is absurd. I think that is sort of analogous to the whole banking secrecy, such as you gave your records to your bank so you do not care if anybody looks at them. That is absurd. I have a 40-acre farm. I go hunting out there. I am supposed to not care if people watch me, everything I do once I am outside my house. My privacy is only in my house and not in open spaces?

I disagree with that. One of the interesting things about the right to privacy, and you actually get some disagreement from people on the right about this. There was a case called the Griswold case. It had to do with birth control. A lot of conservatives objected to it because they saw it as a building block for Roe v. Wade. I am pro-life and did not like the decision in Roe v. Wade, but I actually do not mind the decision in Griswold so much. The reason is, going back to a little bit of the discussion we had earlier on Lochner, is that with Griswold, what I see is they talked about a right to privacy.

Some said—the conservatives who are worried about the judiciary coming up with new things or creating things—they thought the right to privacy was not in the Constitution so you do not have it. I think that is a mistake in notion. Because, for example, the right to private property, that is not in the Constitution either, but I do not think any of the Founding Fathers or most of us today would argue you do not have a right to private property. In fact, I think it is one of the most important parts. In fact, there was some debate about having it in there. But I think the right to privacy, the right to private property, they are part of what I would call the unenumerated rights. The unenumerated rights are basically everything else not given to the government.

You gave the government—or we give the government, through the compact of the Constitution, we give the government enumerated powers. There are about 17 to 19, depending on how you count them. But as Madison said, they are ''few and defined.'' When you talk about the rights, though, the 9th and 10th amendment will say those rights not specifically delegated to the Federal Government are left to the States and the people respectively. They are not to be disparaged.

So the interesting thing about your rights is there is not sort of a list of your rights. In fact, when the Founding Fathers were putting together the Bill of Rights, one of the objections to the Bill of Rights was they said if we put the Bill of Rights together, everybody will think that is all of their rights. They will say, if it is not listed, you do not get it.

So the 9th and 10th amendments were an important part of it. In fact, I do not know I would have voted for the Bill of Right's inclusion if you did not have the 9th and 10th. I like all the others, of course. But then the 9th and 10th protect all those not mentioned.

So it is an interesting thing that some on the right disagree. In fact, the majority does not like the Griswold decision. But I actually kind of like it because I think your right to privacy is yours, the same as I think your right to private property is yours. It was not delegated, it was not taken, it was not given to the Federal Government. It is yours.

It gets back to the sort of the primacy of liberty, the primacy of your individual freedom that you did not get that, you were not given your freedom by government. It was yours naturally or, as many of us believe, it is comes from your Creator. So your rights are national and inborn. They were enshrined in the Constitution, not given to you but enshrined and protected. As Patrick Henry said, it is not that the Constitution was instituted among men to protect the government, they were to protect the people from the government.

It was to limit the size of government, to try to restrain the size of government, to try to allow for a government that lived under a rule of law. When Hayek said nothing distinguishes an arbitrary government from a constitutional government more clearly than this concept of the rule of law, the important thing about the rule of law is also that the rule of law is something that—it gives a certainty. Businessmen have talked about certainty.

Without relinquishing the floor, I would like to hear a few comments from Senator LEE.

Mr. LEE. The issues we are discussing are of profound importance to the American people for the reasons Senator PAUL has identified. Americans have every reason to be concerned anytime decisions are made by government that impair one of the fundamental God-given protected rights that Americans have.

Anytime the government wants to intrude upon life or liberty or property, it must do so in a way that comports with time-honored, centuries-old understandings of due process. The rule of law, in other words, must operate in order to protect those God-given interests to make sure they are not arbitrarily, capriciously deprived of any citizen.

We are talking about the sanctity of human life. When the interest at stake is not just liberty or property but life itself, we have to protect it. We have to take steps to protect that. So I think it is important we carefully scrutinize and evaluate any government program that has the potential to deprive any American citizen of his or her life without due process of law.

I was concerned, as was Senator PAUL, recently, when the Obama administration leaked what was characterized as a Department of Justice white paper outlining the circumstances—outlining the legal criteria that this administration would

use in deciding when and whether and under what circumstances to snuff out human life, the human life of an American citizen no less, using a drone.

The memorandum started out with certain somewhat predictable or familiar concepts. The memorandum started out by explaining an imminent standard, explaining that certainly could not happen absent an imminent threat to American national security, an imminent threat to American life, for example. When we think of imminence, we think of something that is emergent, we think of an emergency, something that is going on at the moment, which unless interrupted presents some kind of a dangerous threat.

Significantly, however, this is not how the Department of Justice white paper actually read. Although it used the word ''imminence,'' it defined imminence as something far different than we normally think of, than we as American citizens use this kind of language, certainly in any legal or constitutional analytical context.

If I could read from that memorandum, I would point out this condition of imminence is described as follows.

It says: The condition that an operational leader—an operational leader of a group presenting a threat to the United States—presented 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.

Wouldn't it be the Senator's understanding if something is imminent, it would need to be something occurring immediately?

Mr. PAUL. Yes. I think there is really no question about using lethal force against an imminent attack. I think that is why we need to make the question we are asking the President very clearly. The question is if planes are attacking the World Trade Center, we do believe in an imminent response. We do believe in an imminent defense for that. The problem is we are talking about noncombatants who might someday be involved. If they are in America, I see no reason why they shouldn't be arrested.

Mr. LEE. If we are dealing with something that is imminent, we are talking about something that is about to occur, and it is urgent. That typically is the standard any time government officials in other contexts, law enforcement, for example—sometimes regretfully and tragically, law enforcement officers need to make a spur-of-the-moment judgment call in order to protect human life. Sometimes in doing that they have to do something they wouldn't ordinarily do. It always turns on some kind of an imminent standard. It always turns on some kind of an emergent threat, something that is about to occur, that is occurring at the moment.

Yet we are told in black and white right here in this white paper this condition, imminence, 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 begs the question, what then is the standard. Who then makes this determination? Presumably it is the President of the United States. Perhaps it is others reporting up in the chain of command to the President of the United States.

If actual imminence isn't required as part of this ostensibly imminent standard, what then is the standard? Is there any at all? If there is a standard, is it so wide, is it so broad you could drive a 747 right through it? If that is the case, how is that compatible with time-honored notions of due process, those notions deeply embedded in our founding documents, those notions we understand come from God and cannot be revoked by any government?

I wish I could say the imminence standard problem in the Department of Justice white paper is the only problem. It is not. We look to the very next page, the page dealing with feasibility of capture. One of the other standards outlined in the Department of Justice white paper outlining the circumstances in which the government of the United States may take a human life using a drone in a case involving a U.S. citizen is that the capture must be infeasible, and the United States must be continuing to monitor whether capture becomes feasible at some point.

As to this standard on page 8 of the Department of Justice white paper, it says:

> Second, regarding to the feasibility of capture, capture would not be feasible if it could not be physically effectuated during the relevant window of opportunity or if the relevant country were to decline to consent to a capture operation. Other factors such as undue risk to U.S. personnel conducting a potential capture operation could also be relevant. Feasibility would be a highly fact-specific and potentially time-sensitive inquiry.

In other words, they are saying it has to be something that could not be physically effectuated during the relevant window. What is the relevant window? The white paper makes absolutely no effort whatsoever to define what the relevant window is. Who then makes this determination, and according to what factors is that determination made?

Here yet again we have a standardless standard. We have a standard that is so broad, so malleable, so easily subject to so many varying interpretations, no one can reasonably look into this and decide who the government may kill with a drone and who the government may not kill with a drone. That is a problem, and that, it seems to me, is fundamentally incompatible with time-honored notions of due process. Would the Senator not agree with that assessment?

Mr. PAUL. Absolutely. I think that is where the crux comes down to this, talking about having an imminent standard. This is part of the problem in the sense he doesn't want to talk about it. If we are going to do something so dramatic as to no longer have the fifth amendment apply in the United States, to have no accusation, to have no arrest, no jury trials for folks who are to be killed in the United States, it is such a dramatic change that you would think we would want to have a full airing of a debate on this.

Mr. LEE. Would the Senator from Kentucky yield for a question?

Mr. PAUL. I won't yield the floor, but I will allow the Senator to make comments.

Mr. LEE. If the Senator will yield for a question, I will ask if the Senator was aware of the exchange some members of the Senate Judiciary Committee had with Attorney General Holder this morning on the subject.

Mr. PAUL. Yes.

Mr. LEE. Was the Senator aware of the fact some of us asked Attorney General Holder for a more robust analysis than the series of memoranda authored by the Office of Legal Counsel, the U.S. Department of Justice's chief advisory body, and the fact that so far the Department of Justice has declined to make those available to members of the Judiciary Committee?

Mr. PAUL. Yes, I am aware of that. I think we have a transcript of some of the conversation from this morning.

Mr. LEE. If I may supplement that question by describing what I encountered in connection with that, I expressed frustration to the Attorney General over the fact that members of the Senate Judiciary Committee—who have significant oversight responsibilities with regard to the operation of the U.S. Department of Justice—have not had access to that memorandum. This is part of our oversight responsibilities. This is something we ought to be able to see, and so far it is not something we have been able to see. I encouraged the Attorney General to make available to members of the Senate Judiciary Committee those very documents, which he claimed add some additional insight and would give us some additional analysis above and beyond what this white paper is saying. I thought that might be relevant to the Senator in addressing my question.

Mr. PAUL. Absolutely. At this point, I will entertain comments from Senator CRUZ and a question.

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

Mr. CRUZ. Would the Senator from Kentucky yield for a question?

Mr. PAUL. I will not yield the floor, but I will acknowledge a question to the Chair.

Mr. CRUZ. I wish to ask the Senator's reaction to the testimony Attorney General Eric Holder gave the Senator this morning in the Senate Judiciary Committee. I wish to describe that testimony for the Senate and ask the Senator's reaction to that testimony.

I would begin by saying that Senator after Senator on the Judiciary Committee invoked the leadership of the Senator from Kentucky on the issue of

drones and asked Attorney General Holder about the standards for drone strikes in the United States. Indeed, although the Senator does not serve on the Judiciary Committee, it was as if he were serving in absentia, because the Attorney General was forced over and over again to respond.

I would note the Senator's standing here today, like a modern ''Mr. Smith Goes to Washington,'' must surely be making Jimmy Stewart smile. My only regret is there are not 99 of our colleagues here today standing with the Senator in defense of the most fundamental principle in our Declaration of Independence and our Constitution; namely, each of us is endowed with certain unalienable rights by our Creator and that first among them is life, the right to life, and the right not to have life arbitrarily extinguished by our government without due process of law.

At the hearing this morning, Attorney General Holder was asked about the letter he sent the Senator in which the Senator asked him whether the U.S. Government could use a drone strike to kill a U.S. citizen on U.S. soil. As the Senator knows, Attorney General Holder responded in writing he could imagine a circumstance where that would be permissible. The two examples he gave were: No. 1, Pearl Harbor; and No. 2, the tragic attacks on this country on September 11, 2001. In the course of the hearing, Attorney General Holder was asked for more specifics. In particular, both of those were military strikes on our country with imminent and, indeed, grievous loss of life that flowed from it. Few, if any, disagree that the U.S. Government may act swiftly to prevent a military attack which would mean immediate loss of life. The question Attorney General Holder was asked three different times was whether the U.S. Government could take a U.S. citizen, who was suspected of being a terrorist, on U.S. soil, who was not engaged in any imminent threat to life or bodily harm, simply sitting at a cafe—could the U.S. Government use a drone strike to kill that U.S. citizen on U.S. soil.

Three times when asked that direct question, Attorney General Holder responded that in his judgment that was not ''appropriate.''

The first question—and if I may, I wish to ask a series of questions—does it surprise the Senator the Attorney General would speak in vague, amorphous terms of appropriateness and prosecutorial discretion rather than the bright lines of what the Constitution protects, namely, the right of every American to have our life protected by the Constitution?

Mr. PAUL. Mr. President, I am quite surprised, although I guess I shouldn't be, that we don't get direct responses. It is a pretty direct question. It is the question I have been asking all morning. It is the question I have been asking for a month and a half. I am talking about situations where you have a noncombatant, someone not posing an imminent threat, who they think make may someday pose an imminent threat because that is what we are doing overseas. If that is the standard overseas, I am asking is that going to be the standard here? It amazes me.

Part of the reason we are here today in the midst of a filibuster is because they won't answer the question directly. I applaud the attempts to try to get a more specific question. I am not terribly surprised we have had trouble getting a direct answer.

Mr. CRUZ. Would the Senator yield for additional questions?

Mr. PAUL. As long as I do not yield the floor.

Mr. CRUZ. After three times declining to answer a direct question, would killing a U.S. citizen on U.S. soil with a drone strike when that U.S. citizen did not present an imminent threat, would that be constitutional—after three times of simply saying it would not be appropriate, finally, the fourth time Attorney General Holder responded to vigorous questioning—in particular during the course of the questioning, the point was made that Attorney General Holder is not an advice columnist giving advice on etiquette and appropriateness. The Attorney General is the chief legal officer of the United States. I will note I observed it was more than a little astonishing the chief legal officer of the United States could not give a simple one-word, one-syllable, two-letter answer to the question: Does the Constitution allow the Federal Government to kill with a drone strike a U.S. citizen on U.S. soil who is not posing an immediate threat? The proper answer I suggested at that hearing should be no. That should be a very easy answer for the Attorney General to give.

Finally, the fourth time around, Attorney General Holder stated: Let me be clear. Translate my appropriate to no. I thought I was saying no. All right? No. Finally, after three times refusing to answer the question whether it would be constitutional to do so, the fourth time the Attorney General answered.

The question I want to ask is the Senator's reaction to this exchange. In particular when Attorney General Holder on the fourth time finally stated his opinion—and I assume the opinion of the Department of Justice—that it is unconstitutional for the Federal Government to kill a U.S. citizen on U.S. soil who does not pose an imminent threat, when he stated that, my response was I wish he had simply said so in his letter to the Senator at the beginning. I wish John Brennan in his questioning the Senator provided had said so in the beginning.

Indeed I then said: The Senator from Kentucky and I are going to introduce legislation in this body to make clear that the U.S. Government may not 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 observed that if the Attorney General's view was that it was unconstitutional for the U.S. Government to do so, then I assumed he would be supporting that legislation. I would welcome the Senator's reaction to that exchange.

Mr. PAUL. Well, Mr. President, the response is a little bit troubling; that it took so much work and so much effort of cross-examination to finally get an answer.

I will note, in his final answer, I don't ever see the words ''constitutional'' or ''unconstitutional.'' He is responding to Senator CRUZ's word of ''constitutional'' when he says: Let it be clear and translate my ''appropriate'' to ''no.'' I thought I was saying no. All right. No.

Well, words do make a difference, and I would feel a little more comfortable if we would get in writing a letter that says he doesn't believe killing people not actively engaged in combat with drones in America, on American soil, is constitutional. That sure would have short-circuited and saved quite a bit of time.

I will say, though, that I will believe a little more of the sincerity of the President and of the Attorney General if we get a public endorsement of the bill that says drones can't be used except under imminent threat, and define that as an imminent threat where you actually have a lethal attack underway. If we could get to that, I think this is something that both parties ought to be able to unite by. It is such a basic principle, I can't imagine we couldn't unite by this. And it would have gone a long way to getting these answers.

But what still disappoints me about the whole thing is that it takes so much work to get people to say they are going to obey the law. It takes so much work to get the administration to admit they will adhere to the Constitution. This should be a much simpler process.

I commend the Senator from Texas for not letting go and for trying to get this information. I would welcome any more comments that he has.

Mr. CRUZ. If the Senator would yield for one final question, is the Senator from Kentucky aware of any precedent whatsoever—any Supreme Court case, any lower court case, the decision of any President of the United States, beginning with George Washington up to the present, the stated views of any Member of this Senate, beginning with the very first Congress up to the present—for the proposition that this administration seems willing to embrace, or at least unwilling to renounce explicitly and emphatically, that the Constitution somehow permits, or at least does not foreclose on, the U.S. Government killing a U.S. citizen on U.S. soil who is not flying a plane into a building, who is not robbing a bank, who is not pointing a bazooka at the Pentagon, but who is simply sitting quietly at a cafe, peaceably enjoying breakfast?

Is the Senator from Kentucky aware of any precedent whatsoever for what I consider to be the remarkable proposition that the U.S. Government, without indicting him, without bringing him before a jury, without any due process whatsoever could simply send a drone to kill that U.S. citizen on U.S. soil?

Mr. PAUL. Mr. President, I am aware of no legal precedent for taking the life of an American without the fifth amendment or due process. What is troubling, though, is that Attorney General Eric Holder is on record as actually arguing that the fifth amendment right to due process is to be determined and is to be applicable when determined solely by the executive branch.

I would appreciate the comments and opinions of the Senator from Texas on the idea that the executive branch gets to determine when the Bill of Rights applies.

Mr. CRUZ. If I may give my views on that question and then ask for the Senator's response to my views on whether the executive may determine its own limitations, I would suggest the genesis of our constitution is found in the notion that the President is not a king, that we are not ruled by a monarchy, and that no man or woman is above the law. Accordingly, no man or woman may determine the applicability of the law to himself or herself.

For that reason, the Framers of our Constitution won not one but two revolutions. The first revolution they won was a bloody battle for our independence from King George, and a great many of them gave the ultimate sacrifice so that we might enjoy the freedom we do today. But the far more important war they won was the war of ideas, where for millennia men and women had been told that rights come from kings and queens and are given by grace, to be taken away at the whim of the monarch. What our Framers concluded, instead, is that our rights don't come from any king or queen or president; they come from God Almighty, and sovereignty does not originate from the monarch or the president, it originates from we the people.

Accordingly, the Constitution served, as Thomas Jefferson put it, as chains to bind the mischief of government. And I would suggest that anytime power is arrogated in one place—in the Executive—that liberty is threatened. And that should be a view that receives support not just from Republicans, not just from Democrats or Independents or Libertarians, that should be a view that receives support from everybody; that none of us should want to live in a country where the President or the Executive asserts the authority to take the life of a U.S. citizen on U.S. soil without due process of law and absent any imminent threat of harm.

I would suggest the idea that we should simply trust the Attorney General, trust the Director of the CIA, or trust the President to exercise an astonishing power to take the life of any U.S. citizen, in my judgment, is fundamentally inconsistent with the Bill of Rights. And I would, therefore, ask the Senator from Kentucky for his reaction and whether he shares my understanding that our rights are protected not at the whim or grace of the Executive, but they are protected by the Constitution and, ultimately, they are rights that each of us was given by our Creator, and we are obliged to protect the natural rights to life, liberty, and property that every man and woman in America enjoys?

Mr. PAUL. Well, Mr. President, this is what makes this debate so important. This debate is about the fundamental rights that we—most of us, or many of us—believe derive from our Creator and that it is important we not give up on these; that we not allow a majority vote or one branch of government to say we have now decided you don't get all these rights anymore.

Our Founders really wanted to make it difficult to change things, to take away our rights. So this is an important battle and one in which I think we should engage because the President needs to be more forthcoming. The President needs to let us know what his plans are, if he is going to overrule the fifth amendment and if the Attorney General is going to decide when the fifth amendment applies. That is a pretty important distinction and change from the history of our country.

Mr. President, at this time I would like to ask for any comments, without yielding the floor, from the Senator from Utah.

Mr. LEE. In response to Senator PAUL's question, I would like to add to the Senator's remarks and those of the junior Senator from Texas the fact that in the concluding paragraph of the Department of Justice white paper on this issue, the Department concludes as follows:

> In sum, an operation in the circumstances and under the constraints described above would not result in a violation of any due process rights.

It is a rather interesting conclusion, in light of the fact that two out of the three analytical points outlined above in the memorandum, in the white paper are themselves so broad as to be arguably meaningless or, at a minimum, capable of being interpreted in such a way as to subject American citizens to the arbitrary deprivation of their own right to live.

First, as I mentioned earlier, by proposing an imminent standard that leaves out anything imminent—in other words, it is not just peanut butter without the jelly; it is peanut butter without the peanut butter. There is no ''there'' there—they define out of existence the very imminent standard they purport to create and follow. That is not due process. It is the opposite of due process.

Secondly, they outline a set of circumstances in which this attack may occur, where capture is infeasible, and then they define an understanding of feasibility that is so broad as to render it virtually meaningless.

So at the conclusion of the memo—and the memo says:

> In sum, an operation in the circumstances and under the constraints described above would not result in a violation of any due process rights.

It is describing constraints that are not really constraints, and that is a problem. That amounts to a deprivation of due process.

In light of these circumstances, I think it really is imperative the American people, or those who serve in this body—at a minimum, those who serve on the Senate Judiciary Committee—be given an opportunity to review the wholesale legal analyses identified by the Attorney General today that have been prepared by the Office of Legal Counsel of the Department of Justice. This is the chief advisory body within the U.S. Department of Justice. It is the job of the fine lawyers in the Office of Legal Counsel to render this advice, and we ought to have the benefit of that. At a minimum, we ought to have the benefit of that within the Senate Judiciary Committee.

So when I asked the Attorney General this morning whether he would make those available, I was surprised and a little frustrated when he declined to offer them immediately. He said he would check in with those he needed to consult with. I reminded him he is the Attorney General, and he does, in fact, supervise those who work in the Department of Justice.

I hope that is satisfactory and in response to the Senator's question.

Mr. PAUL. Yes, I agree with the comments of the Senator from Utah.

The whole problem is that if the President says my plan has due process, that would be sort of like me saying I have passed my law, and I think it is constitutional. Well, the same branch of government doesn't get to judge whether it is constitutional. That is the whole idea of the checks and balances.

We pass a law in the Senate and the Supreme Court can rule on whether it is constitutional. So the President gets to decide that he is going to abrogate the fifth amendment or abbreviate the fifth amendment or do certain things, and then he says: Oh, I am really not because the way I interpret it, I am applying the fifth amendment to my process.

Well, he can't do that. He can't be judge, jury, executioner, and Supreme Court all rolled into one. That is an arrogation of power we cannot allow.

Mr. President, at this time I would like to entertain comments or a question from the Senator from Kansas without yielding the floor, if I may.

Mr. MORAN. Mr. President, I thank the Senator from Kentucky, and I would like to ask a series of questions.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. MORAN. First, let me outline a thought I had in listening to this conversation and ask the Senator a question about it.

We have seen the actions of our President to be determined unconstitutional in a recent case in the court of appeals in the District of Columbia—a case in which the President made the determination he could determine the definition of a recess in the Senate—and so we now have a court that has declared the President's conclusion in that regard to be unconstitutional.

I don't know that we want to get into the magnitude or evaluating what constitutional violations are most damaging to the American people or to our rights and liberties, but I would ask the Senator to compare the consequences of the President being wrong once again in regard to the constitutionality of utilizing a drone strike to end the life of an American citizen. Again, I am suggesting that we have seen precedent where the President acts unconstitutionally. Fortunately, the legal process is there to make certain a determination is made as to the constitutionality of that act.

In this case, what would be the consequences of a drone strike as compared to whether an appointment to an administrative body under the recess clause is constitutional?

Mr. PAUL. Mr. President, I think the analogy is apt. The difference is a recess appointment you get to make your appeal to a court while still living, which makes a big difference. In the case of the recess appointments, the President decided he could determine when the legislative branch was in session or out of session. So you have the same sort of conflict again.

The President has a sphere and we have a sphere, but now he is saying he controls our sphere also; that he can tell us when we are in session or out of session, and he can basically do what he wishes. The Supreme Court rebuked him pretty sternly.

So I agree with the Senator from Kansas. There is a great deal of similarity between the two because it is, once again, the executive branch or the President acting as if the checks and balances between the Legislative and the executive branches don't exist; that he basically made the decision for us that he has decided we are in recess.

But the Senator is correct, the Supreme Court gave him a pretty stern rebuke and said that would be unconstitutional.

Mr. MORAN. Mr. President, to the Senator from Kentucky, what is the logical extension of a decision that it is constitutional to utilize a drone by our military to strike at the life of an American citizen in the United States?

And I would say, if the Senator would agree with me, most Americans would find it repulsive, unconstitutional, and a terrible violation of public duty if a military officer on the streets of Wichita, KS, pulled a gun and shot an American citizen.

Really, is that not the logical extension of the idea that a drone strike from above results in the death of a U.S. citizen without due process? Is that any different than the ability to kill somebody in any other manner that I think most Americans would recognize today as prohibited without due process of law by our Constitution?

Mr. PAUL. Mr. President, the analogy that the Senator from Kansas brings up I think is appropriate.

We have had rules on the books since the Civil War saying the military doesn't act in our country. So it is not just a drone; it is any sort of law enforcement in the United States. We recognize that.

We respect our soldiers. We are proud of our soldiers. But we have limited their sphere to the sphere of war. Within the United States, for our security we have the police and we have the FBI. It is because the rules of engagement are different. It is different being a soldier. It is a tough job being a soldier. But it is just not the same on the streets of Wichita or the streets of Bowling Green, KY. So we have different rules and we have made it different.

But the Senator is right. I think people would understand that it would be wrong for a military officer to shoot someone on the streets in America. It is prohibited for a good reason; not because our soldiers are bad people, but it is because there are different rules for soldiers. That is what is most troubling about many of these people who say, oh, Wichita is the battlefield. And if it is the battlefield, they don't understand why the military can't act in Wichita or Houston or Bowling Green, KY. So it does delve into the problem that we have to debate: Is there a limitation to where the battlefield is?

If the Senator has another question, I would yield for a question without yielding the floor.

Mr. MORAN. Mr. President, I have an additional question, and I believe it is my final question.

I would ask the Senator from Kentucky, through the President—we are here at this point in time in the juncture of the Senate with the issue of whether to confirm a particular individual to a particular office, an administrative appointment. I would ask the Senator if he doesn't believe the issue of the due process rights of American citizens is of such a magnitude that the real issue that ought to be before the Senate is not the confirmation of an individual, but we ought to resolve the issue of whether the Senate believes it is constitutional for the due process rights of an American citizen to be taken by a drone strike in the United States, and the opportunity now presents itself that it would be a reason not to grant cloture.

Let me ask it as a question. Would it not be a reason to grant cloture on this nomination until we resolve this issue?

Mr. PAUL. Mr. President, I think it is very reasonable. It is more important than just the nomination of one individual.

When we are talking about whether the Bill of Rights is going to be changed, when we are talking about whether you will have the due process to be tried in a court, or whether you could be killed—summarily executed without a trial—that is an important change in the history of our country.

The Senator's response also made me think of something else. Another way to resolve this, where we could conclude this debate and get on to the nomination, would be for the majority party to come forward with a resolution that says: You know what. We are not going to kill noncombatants in America with drone strikes; we are not going to use the military; we are going to reaffirm the law.

So there is a resolution that both parties could come forward—and it would be a wonderful resolution to this process to say: The Senate goes on record in a bipartisan fashion as saying we are not going to overturn the fifth amendment. If you are an American and you live in America, you will not be killed without being accused of a crime, tried by a jury, and convicted by a jury. I think that would be a reasonable resolution to this, and I would entertain it if the other side were interested.

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

Mr. CRUZ. Mr. President, would the Senator from Kentucky yield for a question?

Mr. PAUL. Mr. President, without relinquishing the floor, I yield to the Senator from Texas for a question.

Mr. CRUZ. Mr. President, I ask the Senator his reaction as to the possible justification for the administration's repeated reluctance to answer what should be a very straightforward question.

I find myself genuinely puzzled that both Mr. Brennan and Attorney General Holder, when asked whether the U.S. Government may kill a U.S. citizen on U.S. soil with a drone strike, absent an imminent threat of harm to life or grievous bodily injury—I find it quite puzzling that both of them did not simply respond: Of course not. Of course we can't. We never have in the history of this country, and we never will. The Constitution forbids it.

In my understanding of the Constitution, that was not a difficult question the Senator asked, and I find it quite remarkable that they treated it as a difficult question.

To be clear, there is no dispute—at least no serious dispute—that if an individual poses an imminent threat of harm—if an individual is robbing a bank, there is no dispute that law enforcement, a SWAT team, can use deadly force to prevent the imminent threat to life or limb.

What this issue is about is an individual who is not posing an imminent threat—a U.S. citizen on U.S. soil—and

the administration's continued reluctance to say: The Constitution forbids killing that U.S. citizen without due process of law.

So what I want to ask the Senator about is efficacy.

Let's take a hypothetical individual whom the U.S. Government believes to be a terrorist, who is sitting at a cafe enjoying a cup of coffee, not posing an imminent threat to anybody. The question I would like to ask about efficacy—and if I might, I would like to ask a couple of questions.

No. 1, if it turns out the intelligence is incorrect, that this individual the U.S. Government suspects of being a terrorist is not in fact a terrorist, that they have the wrong guy; and if a drone strike is used and that individual is killed, is there an effective remedy to correct that tragic mistake?

Mr. PAUL. Mr. President, I think the question is well put.

The first aspect of the question is, What is the President thinking? Why would the President not respond to us? Why would the President not answer a pretty easy question and say that noncombatants in the United States will not be killed with drones?

I think the reason is complicated—and it is conjecture because I can't get in his mind. But I would say it is sort of a contagion or an infection that affects Republicans and Democrats when they get into the White House. They see the power the Presidency has. It is enormous. They see themselves as good people, and they say: I can't give up any power because I am going to do good with that power.

The problem they don't see is that the power itself is intoxicating, and the power someday may be in the hands of someone else who is less inclined to use it in a good way. I think that is why the power grows and grows, because everybody believes themselves to be doing the right thing.

With regard to exactly what would happen in the situation when there is not an imminent threat, it boggles the mind when we can't answer that question. And I don't have a good understanding as to why exactly we can't get a response.

I would yield for a response from the Senator from Texas.

Mr. CRUZ. Mr. President, if I could ask the second question, in the instance where the intelligence was wrong and a U.S. citizen was killed by his or her government without due process of law, there obviously would be no remedy. But I would ask about the alternate scenario.

If it were the case that this individual was in fact a terrorist, was involved in a plot to threaten the lives and threaten the safety of other Americans; if this U.S. citizen sitting in a cafe is killed with a drone strike—focusing on efficacy—once he is killed, am I correct that you can't interrogate him further; you can't find out who else was in the terrorist plot with him; you can't find out what methods he had put in place; you can't find out if there is an imminent threat planned that he may know about? But if a drone from the sky simply kills him, that knowledge perishes with him at that cafe and so undermines the legitimate efforts of our government to protect the safety and security of all Americans.

Mr. PAUL. Mr. President, I think it is an excellent question and really gets to the root of the whole problem we are talking about because we are talking about people who may not all be good people. They may be bad people and they may be plotting to do something bad to America, and they may be in a cafe. So there may be all kinds of reasons to arrest and punish them, but there may be all kinds of reasons to try to get more information from them. Particularly if they are not involved in combat, it is hard to imagine why you would want to kill them. If they are not involved in combat, why not capture them and try to get some useful information out of them?

So it is a little bit difficult to understand why the President wouldn't say what is obvious: Why would we want to kill noncombatants in America?

The reason we keep asking the question is, of the drone strikes overseas—which we are not privy to all of the details because some of it is classified. But the details that have been in the press are that a lot of these people being killed overseas are not in combat.

So the real question is, If you are going to take this drone strike overseas and it has no geographic limitations, and you are bringing it home to America, does the President not think it is incumbent upon him to say: Well, yes, we are bringing it home, but we are not going to kill noncombatants?

What an important question. I think the Senator has phrased it appropriately and I would anticipate or respect any other response he would like to give.

Mr. CRUZ. One final question for the Senator from Kentucky.

I am aware the Senator from Kentucky is originally from the great State of Texas. As the Senator is no doubt aware, today is the 177th anniversary of the fall of the Alamo.

One hundred eighty-two men were stationed at the Alamo, and after 13 days of a bitter siege, fighting an army of thousands, those patriots gave their lives for freedom. They put everything on the line to stand against tyranny and to stand for the fundamental right of every man and woman to breathe freely, to control our own lives, our own autonomy, to make decisions about what our future would be.

If I may presume to speak on behalf of 26 million Texans, I would say I have no doubt that Texans are proud to see the distinguished Senator from Kentucky, as a native-born Texan, fighting so valiantly for liberty and serving as such a clarion voice for liberty at a time when sometimes liberty has few champions.

Indeed, I would suggest if those brave patriots of the Alamo were here, William Barrett Travis and Davy Crockett and Jim Bowie and each of the others who gave their lives for freedom, they would be standing side by side with the Senator and would be proud to call him brother.

Mr. PAUL. Mr. President, I would like to say that I appreciate the remarks of the Senator from Texas. If the filibuster goes on long enough, we would like to hear a recitation of William Barrett Travis's last words at the Alamo. We had to memorize that as a kid, and I am afraid my memory has gone a little dusty. But the Senator is younger and may remember that for us.

The issue at hand is an issue that goes beyond party politics. It goes beyond nominations. It goes beyond the President is a Democrat and I am a Republican. I voted for three of the President's nominations, much to the chagrin and much to the criticism of some on my side. But I have done so because I think the President does have some prerogatives—that is just my personal viewpoint—on choosing appointees. This is a political appointee, but I do not consider this debate to be about the appointee. I think this debate is more about a constitutional issue, and I think it rises to a level above the individual and it is something to which we need to draw attention and about which we need to have a good healthy discussion in our country.

I don't think it has to be a bitter partisan battle. I have met the President personally. I have flown on Air Force One with him. I respect him, I respect the office. I think he and I could have a reasonable conversation on this issue. In fact, I think if he were here today, he might actually agree with much of what I am saying. What I am disappointed in—and I do not know if it is the muddle of a large government and not getting a message forward, but what I am disappointed in is that it is so hard to get him to agree with what I think he should already and probably already agrees with. But when we are talking about doing something so different, when we are talking about changing the way we adjudicate guilt, changing the way we decide someone's life or death, it is too important to just say: Oh, Mr. President, go ahead and do it. As long as you tell me you have no intent of breaking the law or no intent to kill Americans, that is enough.

It just simply is not enough. It is not enough to say: I have not done it yet. I do not intend to kill anybody, but I might.

He came up with some circumstances where he might use the drone strikes in America. Then, in the cross-examination of Senator CRUZ in the committee, we have gotten him to admit—under duress, I think, but to admit that they are not talking about people in a cafe.

Some might say he has never mentioned people in a cafe. The reason it

comes up, of people not involved in combat, is that a lot of the people who have been the victims or have been killed by these drone strikes were not involved in combat when they were killed. They were riding in cars, walking down the street, traveling in caravans. I am not saying they are good people. I am just saying, regarding the standard for whom we kill overseas, we have to ask the question, and I don't think we are doing our job if we do not ask the President: Are you going to use the same criteria for how you kill people overseas? Is that the same criteria over here?

And it should not be: I will tell you later. It shouldn't be, I don't intend to do it and I probably won't, but I might.

That is just not enough.

We are talking about basic protections that we fought our Revolution over and really, in a way, when I see the wars that we have gone to—and not every war has been perfectly justified or that we should have, but when our soldiers fight, I see them fighting for the Bill of Rights, and I think they say that too. No matter where they are around the world, I see them fighting for the Bill of Rights and our Constitution. But if we are giving that up, if we are not going to adhere to the fifth amendment, it takes the wind out of the sails.

Can you imagine being a soldier in Afghanistan or Iraq or in far-flung places around the world and you are told you were fighting for the Bill of Rights minus the fifth amendment? Or when we say we are going to indefinitely detain people, we are going to fight for the Bill of Rights minus the sixth amendment? It is pretty important. These things are what we are fighting for, so we really should at least have a robust debate over the magnitude of these changes, over how these will be set up, over exactly what will happen, how this process is going to work. I am just saying that ''I am not intending to do so'' is not enough.

Mr. President, I, without yielding the floor, would like to allow a question from the Senator from Texas.

Mr. CRUZ. If the Senator from Kentucky would allow this question, I would like to respond to his very gracious invitation and ask if the following letter gives the Senator from Kentucky encouragement and sustenance as he stands and fights for liberty? This letter was written February 24, 1836, and it begins as follows:

To the People of Texas and All Americans in the World:

Fellow citizens and compatriots;

I am besieged, by a thousand or more of the Mexicans under Santa Anna. I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man. The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken. I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism & everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor & that of his country. Victory or Death.

William Barret Travis

My question is, Does that glorious letter give you encouragement and sustenance on this 177th anniversary of the Alamo?

Mr. PAUL. Mr. President, I think what Travis's letter at the Alamo talks about is that there are things bigger than the individual. At the time he wrote that, I don't think they had much hope of surviving, and he died at the Alamo, as well as other volunteers, some from my State of Kentucky. But there was an issue bigger to them at the time, that they saw as bigger than the issue of the individual. I think that is what this debate is about.

This is not really about the person of John Brennan. This really is not about the person of Barack Obama. This is about the body of the Constitution, it is about our respect for it, and it is about whether we will hold these principles so dear and we will hold these principles so high that we are willing to try to enjoin a debate, to try to get both sides to talk about this and to try to admit it, because we don't want innocent people to be killed in America. We want to have the process that has protected our freedoms for a couple of hundred years now to remain in place, and we are unwilling to diminish that simply because of fear.

FDR said, ''There is nothing to fear but fear itself.'' I think we should also say that we should not let fear be so great that we allow the loss of our freedoms. I think that is where we are, that sometimes terrorists are everywhere and they are trying to attack us, but we need to remember that it is our freedom that is precious, and we need to try to do everything we can to uphold that.

At this time, I would entertain a question, without yielding the floor, from the Senator from Oregon.

Mr. WYDEN. Mr. President, the issue of American security and American freedom really does not get enough discussion here in the Senate. It is my view that the Senator from Kentucky has made a number of important points this day, and I would like to take a few minutes to lay out my views on this issue and then pose a question to my colleague from Kentucky. We have talked often about these issues. I always learn a great deal.

Of course the Senate will be voting on the nomination of John Brennan, the Deputy National Security Adviser, to be the Director of the Central Intelligence Agency. I voted in favor of Mr. Brennan during Tuesday's Intelligence Committee meeting, and I intend to vote for Mr. Brennan on the floor. Virtually every member of the Intelligence Committee now, in my view, believes Mr. Brennan has substantial national security expertise and experience, and it is certainly my hope that he will be the principled and effective leader the CIA needs and deserves.

I think Senator PAUL and I agree that this nomination also provides a very important opportunity for the U.S. Senate to consider the government's rules and policies on the targeted killings of Americans, and that, of course, has been a central pillar of our Nation's counterterror strategy.

For several years now, I and colleagues—Senator PAUL as well—have been seeking to get more information about the executive branch's rules for conducting targeted killings of Americans. I am pleased that after considerable efforts—efforts really that should not have to have been taken to get documents that the Intelligence Committee has been entitled to for some time—the committee has now received those secret legal opinions.

To be clear—and this is a point Senator PAUL made in the course of this discussion—targeted killings of enemy fighters, including targeted killings that involve the use of drones, can be a legitimate wartime tactic. If an American citizen chooses to take up arms against the United States, there will absolutely be circumstances in which the President has the authority to use lethal force against that American.

But I think it has been our view—a view that I hold and that I know Senator PAUL holds—that the executive branch should not be allowed to conduct such a serious and far-reaching program by themselves without any scrutiny because that is not how American democracy works. That is not what our system is about. Our unique form of government is based on a system of checks and balances that will be here long after the current President and individual Senators are gone.

From time to time, the Senator from Kentucky and I say we ought to have something that we call a checks and balances caucus here in the Senate. Those checks and balances depend upon robust congressional oversight, and frankly they depend on bringing the public into this discussion as well, that there be public oversight.

We share the view that details about individual operations do need to be kept secret, but the Congress and the public need to know what the rules for targeted killings are so they can make sure, as the Senator has touched on in the course of this day, that American security and American values are both being protected. It is almost as if we have a constitutional teeter-totter: we want both our security and our liberty. This is especially true when it comes to the rules for conducting targeted killings of Americans.

What it comes down to is every American has the right to know when their government believes it is allowed to kill them. Now the executive branch has gradually provided Congress with much of its analyses on this crucial topic, but I think more still needs to be

done to ensure that we understand fully the implications of what these heretofore secret opinions contain and we have a chance to discuss them as well.

In his capacity as Deputy National Security Adviser, John Brennan has served as the President's top counterterrorism adviser and one of the administration's chief spokesmen regarding targeted killing and the use of drones. He would continue to play a decisive role in U.S. counterterror effort if he is confirmed as Director of the CIA, and the Intelligence Committee is charged with conducting vigilant oversight of these particular efforts.

A number of colleagues on the Senate Intelligence Committee of both political parties I think share a number of the views that Senator PAUL and a number on this side of the aisle have been expressing today and in the past few days. I would especially like to express my appreciation to the former chairman of the Intelligence Committee, Senator ROCKEFELLER. There is no one more committed to the principles the CIA stands for. There is no individual more committed to the principles the CIA stands for than Senator ROCKEFELLER, and he believes more needs to be done to ensure that Congress has the power to do responsible oversight. Senator UDALL, Senator COLLINS, and Senator HEINRICH are all ones who share that view as well. In doing that, we recognize that we have a responsibility and that ultimately it is up to American voters to decide whether Congress is fulfilling its obligation to conduct vigorous oversight of the executive branch's actions and activities.

Let me then turn to the question that has received most of the attention today and is really about what I would like to explore for a moment or two with my colleague from Kentucky. The President has also said—I was encouraged by a number of his comments, including the State of the Union Address—that with respect to counterterrorism efforts, no one should take his word for it that the administration is doing things the right way. As part of that, he said he was going to engage the American people in a discussion of these kinds of issues. When it comes to continuing the public debate about the rules for conducting targeted killings, there are a number of questions which need to be explored. One question I will address to Senator PAUL involves the question he and I have been interested in for some time, and that is the question of the geographic limitation with respect to the use of lethal authority.

Senator PAUL and I—as well as others—have been asking for some time: What are the limits with respect to these lethal authorities, and in particular whether they can be used inside the United States?

I have listened to a bit of the comments made by Senator PAUL concerning the confirmation hearing tomorrow. The point the Senator has made this afternoon is an issue I and others have asked of the Attorney General for some time, and we have not been able to get an answer.

In recent weeks Senator PAUL has sent a number of letters on this topic. He has received two responses and he has shared them with me. For purposes of this question, I think the response from John Brennan—and he stated his view on this quite clearly—was quite constructive. He said the CIA does not conduct lethal operations inside the United States, and most importantly—as per the conversations the Senator from Kentucky and I have had—Mr. Brennan said the CIA does not have the authority to conduct those operations.

He was unequivocal with respect to what would happen if he was confirmed as the head of the CIA, that he would not have the authority to conduct those operations. So for purposes of anybody who is kind of keeping score, I just say that Mr. Brennan—on the questions the Senator from Kentucky and I have been interested in—was clear and forthright. I have been interested in this for some time. I am glad the Senator from Kentucky has asked the question. We have now gotten an answer that is unequivocal from Mr. Brennan.

That brings us to the second response from Attorney General Holder. This letter repeated the statement that the U.S. Government has not carried out any drone strikes inside the United States and that the Obama administration has no intention of doing so. It goes on to say that the Obama administration ''rejects the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat.'' I would certainly agree with this position. It is clear to me that prosecutions in Federal court provide tough effective means for dealing with terrorist suspects, which is why there are a great many terrorists who are now sitting in American prisons today locked behind bars and exactly where they belong.

The Attorney General went on to state:

> It is possible . . . to imagine an extraordinary circumstance—Such as Pearl Harbor or the 9/11 attacks—in which it would be necessary and appropriate under the Constitution and . . . laws of the United States for the President to authorize the military to use lethal force within the territory of the United States.

This is what I wish to unpack a little bit with my colleague from Kentucky after asking this question a number of times and thinking a lot about what the answer ought to be. On this particular issue it seems to me the Attorney General has certainly moved in the direction of what we wanted to hear. I want to kind of outline it, and I think we agree on most of it, but I want to have a chance to exchange some thoughts.

One of the core principles of American democracy is that we do not ask our military to patrol our streets. It was important to me to hear the Attorney General emphasize that principle. I know there are some who believe the military ought to be given more domestic counterterror responsibilities such as capturing and detaining terrorist suspects inside the country. I do not share that view, and I know the Senator from Kentucky does not share that view. I am grateful the Obama administration has now said they don't share that view either. In fact, as I have talked about with a number of colleagues, I actually voted against the annual Defense authorization bill for the past 2 years because I was concerned that those two bills didn't adequately address that particular principle.

The Attorney General suggested what I think we would all consider an unlikely scenario, the Pearl Harbor and 9/11 attacks, in which it would be lawful and appropriate for the President to use military force inside the United States. As I read that statement—and this is the point of my question to my friend from Kentucky—it sounds a lot like the language that is in article 4 of the Constitution which directs the U.S. Government to protect individual States from invasion. In my judgment, if the United States is being attacked by a foreign power, such as the 1941 attack on Pearl Harbor, the President can indeed have the military power to use the military to defend our country.

The reason I have been asking this question and have been interested in exploring it with my colleague from Kentucky is that I think it is extremely important to establish that unless we have an extraordinary situation, such as Pearl Harbor, the President should not go around ordering the military to use lethal force inside the United States. Our military—we are very proud of them—plays a vital role in efforts to combat terrorism overseas, but here at home we rely on the FBI and other law enforcement agencies to track down the terrorists, and they do their job well.

I thought it was helpful to see the Attorney General, as part of what has been discussed here, clarify and establish that the President can only use military force inside the United States in extraordinary circumstances such as the Pearl Harbor attack. The Senator from Kentucky and I have had discussions over this, and I thought about it overnight and thought about our discussions. My sense is that the Senator from Kentucky doesn't believe the Attorney General's response was clear enough. I very much respect his view on this point.

One of the reasons why I wanted to walk briefly through a little bit of history is that I think there are some issues still to be debated. My colleague has certainly been correct in asking valid questions because the Attorney General has left open the possibility of using military force inside the United

States outside of the extraordinary Pearl Harbor circumstance I have mentioned.

So, through the Chair, I ask the Senator: I think the Senator is raising some important questions. In fact, my friend has asked some of the most important questions that we could be asking here on the floor of the Senate. It seems to me the Attorney General has ruled out using military force inside the United States except in cases of an actual attack by a foreign power. I understand why my colleague from Kentucky would say we ought to be engaging more with the administration and asking for additional insight. I want it understood that I have great respect for his effort to ask these kinds of questions and force them to be debated on the floor. Senator PAUL has certainly been digging into these issues in great detail. Frankly, on the question of how we balance American security and American liberty, we have worked together often, and we are certainly going to be working together in the future on these issues in the days ahead.

I wish to allow the Senator from Kentucky to respond to my question. I ask that my friend recognize that while we might differ a bit on the aspect of the Attorney General's response which I have cited this afternoon where there would be an instance of an extraordinary threat to our country, I do see—almost as part of what article 4 is about—the President's ability to defend us in those kinds of situations. I know my colleague from Kentucky may see it differently, and, frankly, he is raising important issues. I am interested in his thoughts on that this afternoon.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Kentucky.

Mr. PAUL. Mr. President, I thank the Senator from Oregon for coming to the floor and being a champion for the Bill of Rights. We get a lot of grief in Washington about a lack of civility—people yelling and screaming at each other. In my dealings with Senator WYDEN—who is on the other side of the aisle—I think it is evident that people can be from different perspectives, find common ground, and try to get to a point which is not a partisan point. I have tried to make it not so much about red as it is about principles. I voted for two or three of the President's nominations, and I think he deserves some latitude with his political nominees. I think the Senator from Oregon said it well when he said we have use of authorization of force in Afghanistan. Most people think that was going toward Afghanistan. It has been so broadly interpreted that it means worldwide war basically forever, and that is sort of why we get into some of these problems. Not only is it worldwide, which is a big debate in and of itself, worldwide means at home too. The battlefield is here.

I agree with the Senator from Oregon that Brennan was very forthright. It was a little bit onerous getting the response, but once we got the response, it was exactly what was appropriate. He said he would obey the law, and the law was very clear: The CIA does not operate in the United States. The problem is not with his response but that the Department of Defense is the one directing the drone programs and it doesn't answer the final question.

As far as Holder's response, if it would have been written as the Senator from Oregon states it, there probably wouldn't be much of a problem. I think maybe recounting the letter gives it a little more strength than the letter actually possesses in its own words. If he were to say we were ruling out all strikes other than extraordinary strikes, that would actually be a pretty good letter. Instead he says he can imagine this under certain circumstances, and he lists a couple of circumstances. The interesting thing is that a lot of us agree that in a situation such as Pearl Harbor and 9/11—probably the Senator from Oregon and probably me—we can repel a military attack. The reason we asked the next question, and the reason I am concerned about the next question—and I have only seen the unclassified version of these—but the unclassified versions of the drone attacks indicate that a significant amount of them are not killing people with a weapon. People like to talk about taking up arms. Well, a lot of people are not carrying around arms. It doesn't make them good people, but they are not carrying around arms. They are not actively shooting our soldiers or us. At the particular time they kill them, they look like noncombatants. If we have somebody sitting in a cafe in our country—even if it is a bad person—most of us would probably rather arrest that person. If they were arrested, one, they would get the due process of our country; and two, if they were bad people, we might actually get information from them. So I wish to see a little bit better wording.

The last thing I would say—and I would appreciate hearing the Senator's response—is the Attorney General was in the Judiciary Committee this morning. He was asked a bunch of questions on this. I looked through the transcript of a couple of them and it is still like pulling teeth. He was asked four times: Do you think it is constitutional to kill someone in a cafe in Seattle or Houston or Louisville? He kept saying it wasn't appropriate, but language is important when we are talking about this. Appropriate is not strong enough. It is sort of like the President is saying: I have no intention. We want him to say he won't, rather than not having intention.

He didn't quite put it together in his response, but in his response—combined with the questioning—we can get the opinion that maybe he thinks it is not constitutional to kill noncombatants having dinner. Wouldn't it be easier if they just said that? At this point, I would entertain a question without yielding the floor.

Mr. WYDEN. Mr. President, just responding to the point of the Senator from Kentucky and noting the fact he would not be giving up the floor in the process, I think the Senator from Kentucky is making an important point, and the way I read it, it would focus on ensuring that our country would be protected against those kinds of exceptional circumstances.

I would just like to leave the discussion here by noting that I think both of us feel this is just the beginning of this debate. The nature of warfare has changed so dramatically—and I particularly appreciate the chance to work on this in a bipartisan way—we are going to have to be continually digging in and trying to excavate more information about how all of this actually works without in any way jeopardizing sources and methods and ongoing operations. I think we can do it.

With respect to how I read particularly that part of the letter—and I thought a lot about it—I think the two of us and others can be part of what we can call the ''checks and balances caucus,'' so we can just make sure people understand this is about liberty and security, and I think we can flesh this out more in the days ahead. I know I have had four sessions now with the classified documents that were made available as a member of the Intelligence Committee and I still have a lot of questions. Some of those I think we will have to ask in a classified way, but I think others of them we can ask in a public way, and the two of us can work on that together.

I also think there is a very strong case for beginning to declassify some of the information with respect to these drone policies, and I think that can be done as well, consistent with protecting our national security.

So I think the Senator from Kentucky has made a number of important points this afternoon. I thank him for the chance to work with him on these issues and I look forward to continuing this discussion in the days ahead and I appreciate the time.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Mr. President, a lot of the process by which we are getting this information wouldn't have happened without the Senator from Oregon as well as the senior Senator from Georgia both working together to get information. It is the way the system ought to be working. One of the good things about the body is both Republicans and Democrats working together to get information from—not necessarily adversarial but in a way adversarial—another branch of government. We are a branch of government, but it is not partisan against partisan, it is bipartisan working for the power of the checks and balances to try to ensure a leveling. I thank the Senator from Oregon for helping to get the information to make this a much fuller debate.

Without yielding the floor, I will entertain a question from the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. I thank my colleague for the opportunity. Let me begin by—I have been here a while. Let me give my colleague some free advice: Keep some water nearby. It is handy. Trust me.

Anyway, I thank the Senator for entertaining my question. Let me just begin by saying my question is about the motivation for being here on the floor today. What brought me here is I have been reading some of the accounts of what is going on and people are talking about the involvement of the Senator from Kentucky in a filibuster and some are already characterizing it as another Republican filibuster of one of the President's nominees. Just to be clear because, as I understand, the only thing I have heard the Senator from Kentucky say leading up to now about the primary issue in coming to the floor today is that the Senator from Kentucky asked a very straightforward question on an issue of constitutional importance. Yet he has not received a straightforward answer. Not only has the Senator from Kentucky not received an answer, but we saw testimony earlier this morning that, quite frankly—I watched the video two or three times and I personally do not understand why it was so difficult to basically just say yes or no.

So I wish to start out by asking, just to be clear, the motivation to be on the floor today is not to deny the President a vote on one of his nominees but the motivation is that the Senator from Kentucky has asked this administration a very important and relevant question and has been unable to receive a straightforward answer to that question?

Mr. PAUL. Mr. President, my response to that is yes. In fact, I have actually voted for several of the President's nominations. My trying to draw attention to this issue is because I believe it is an incredibly fundamental issue; that is, how we would kill people—Americans—on American soil, whether the Constitution applies, whether the fifth amendment applies.

So my motivation in doing this is not partisan. It is something that has to do—and I have said, frankly—and I truly mean this—if it were a Republican President today I would still be in the same place because the American people deserve answers on this.

There are different rules in war than there are here. We need to acknowledge and separate ourselves and say we are not completely—we are not in the middle of a battle zone. We still do have Miranda rights and we still get an attorney in the United States. It is not the same as a battlefield, but if he is bringing battlefield strategy home, we need to know before he starts doing it and at least we need to know the rules. Does the Constitution apply?

I would entertain a further question from the Senator from Florida without yielding the floor.

Mr. RUBIO. Without yielding the floor, the followup question I have—because I think this is actually a very useful exercise for the folks who have been snowed in today and there is nothing better to watch than C–SPAN and for the people who are able to be here today to actually understand the structure of our government and how it was designed, because it is my personal opinion we have gotten away from some of that.

Let me describe for a second my position that leads up to the question I am going to ask. I am actually a member of the Intelligence Committee, which means we reviewed this nomination. I have questions that I care about that were somewhat different than the valid ones the Senator from Kentucky is raising. As a member of that committee, I asked those questions and I am going to seek answers to those questions.

We have a job to do. I think that is important for people to understand. Members of the Senate have an important constitutional role to give advice and consent on these nominations. We have an obligation not just to pass these folks through but to actually ask serious questions to determine if they are qualified for the position they are going to hold. We want our Senators to be doing that in both parties, no matter who the President may be.

So I undertook that effort as far as the Intelligence Committee. I asked my questions. I got answers to my questions. I believe the nominee is qualified and I believe the President has a right to his nominees, even if they are not the people we would nominate. I believe ultimately these nominees deserve a vote. That is why I voted yesterday to move this nomination on.

Just as the President has a right to his nominations and ultimately to have a vote on those nominations, so, too, do Members of the Senate have a right to their role and, in particular, to ask relevant questions on issues of important public policy and get answers from the administration. This is not—I think sometimes this is being lost. We have different branches of government, but they are coequal branches of government. The Presidency, the executive branch, is it important? Absolutely, it is important. It is the Commander in Chief. It is the top single office in the Nation. But the legislative branch is a coequal branch with a job just as important. In order to do that job, we have to have access to information, the ability to ask relevant questions, and to get straight answers. To be frank, sometimes I feel when we ask questions of this administration, they feel as though it is beneath them to answer questions from us, from time to time. I think that is very unfortunate.

My question is—when the Senator from Kentucky is here today raising these issues, it is my opinion—and I would like to hear what the Senator has to say—this is more than just an issue of the constitutionality of this particular program, it is a defense of this institution. It is a defense of the legislative branch. It is a defense of the Senate as an institution. Irrespective of how one feels about the nomination or the program or where the Senator falls on this constitutional issue, it is a defense of this institution, and it is a constitutional—not a constitutional right, a constitutional obligation to ask relevant questions of public policy and to get answers, to ask questions so the people back home will know the answers to these questions. If we are not going to ask these questions, who is going to ask them? The press? Maybe in a press conference, but that is not what they are paid to do; that is what we are paid to do. That is what we were elected to do.

So I would like to hear the Senator's views on that, because my belief and what I am picking up from everything Senator PAUL is saying, the Senator is actually on the floor today standing for the obligation this institution has to ask questions such as this and to be able to get straight answers to these questions.

Mr. PAUL. Mr. President, I think the Senator from Florida has it exactly right. This is about checks and balances, it is about the coequal branches of government, and it is about how we limit usurpation of power by checking and balancing each of the different powers.

So when Montesquieu wrote that there can be no liberty when you combine the executive and the legislative, they were separated for a reason. When the Constitution says Congress declares war not the President, it was separated for a reason. So when we look forward to these things—and the Senator from Kansas brought this up earlier—when the President says, I have the ability to determine when you are in session or not and I can do recess appointments when I think you are out of session, that is a great usurpation of power to one branch and we should fight it as an institution, Republican and Democrat, and not make these partisan issues.

So I agree with the Senator from Florida. I believe there is a need for those checks and balances. By the body not struggling to get as much information as they can—not even in this case as much about the individual as about the policy—then I think it is a mistake for the body not to. I agree with the Senator from Florida completely. It is something that should be defended. It is not something to be derided as partisan because I don't see it as partisan at all. I see it as a defense of the separation of powers and of the checks and balances.

At this time I yield, without yielding the floor, for another question.

Mr. RUBIO. This will probably be my last question. Before I get to it, let me say that all the other Senators—I know some of my colleagues have already come to the floor and some might be watching or some might be nearby. I would just say this, to think about this

for a moment. One may or may not agree with the position of the Senator from Kentucky on this issue. Maybe a Senator saw the Attorney General's answer and saw his testimony this morning and that Senator is satisfied with it. Maybe another Senator is not that concerned about this issue at all. I don't think that is the issue. I think what we need to remember is that all of us have something we care deeply about or multiple things we care deeply about, and the day will come when something you care about or some issue you are involved in or some question you have, you will try to raise that question, and it may be under a different administration. I think we have to remember the President will not be President forever. There will be a new President in 3½ years and after that and so forth and some folks may still be here. At some point in the future, all of us will have questions we want answered and we will have an administration or some other organization of government that refuses to give us straight answers. When that moment comes, you will want your colleagues to rally to your side, even if they don't agree with you, and defend your right as a representative of the people of your State to ask important questions, particularly questions of constitutional importance, and get straight answers to those questions.

It is my feeling—and the Senator may comment on this—if he had just gotten a straight answer to that letter, if he had just gotten a straight answer in the testimony today, this would not have been necessary. If they would have taken in the question, which I think is a pretty straightforward question, and answered it in a straightforward way, all of this could have been avoided and this nominee could have had a vote. But, instead, they decided to go in a different direction and it baffles me.

Here is a question I have. I think this is important also for the people watching back home. Often, they may say: Why do you have to do it this way? Why can't you just answer the question and not have to do this process of starting and stopping things from moving forward? My view is—and I want to share it with the Senator and get his impressions—twofold. No. 1, these are the tools that are at our disposal. That is why the system was created and designed this way. One of the things the Senate has at its disposal to preserve and protect its prerogative to ask important questions are the rules we have set up here. They don't protect just one Senator but every Senator here, even if I don't agree with others. One of the things that gives us the ability to ask and have questions answered is this role we have of confirming nominees.

Secondly, I would say this is not the Secretary of the Treasury, this is not some other unrelated Cabinet position, this is the Central Intelligence Agency, which is directly related to the program the Senator from Kentucky has relevant questions about. So I guess I wanted to hear from him a little bit more about why he chose this particular nomination and why and how it is relevant to the larger question he is asking.

Mr. PAUL. The answer to the question is that we have tried the normal channels and have been for a month. We sent the standard letters. We sent three different letters to John Brennan and we didn't get any response. But when the leverage became used or the leverage became apparent that both Republicans and Democrats on the Intelligence Committee were asking for more answers, then we finally began to get answers. The answers unfortunately didn't quite answer the question.

As the days wore on, we have actually gotten more answers. Since I have been standing here this morning, we have now gotten the report of the Attorney General's testimony before the Judiciary Committee. In that, under withering cross-examination, I guess is the best way to put it, he finally owns up and says: Well, maybe somebody in a cafe, it wouldn't be appropriate to kill them in America.

The Senator from Texas wanted to go one step further. We don't want you to say whether it is appropriate; we want you to say whether you think you have the power to do it, whether you think you have the constitutional authority to kill someone who is a noncombatant in a restaurant or in their house or in their church or wherever. Do you think you have the power to kill noncombatants? It is a pretty important question. I think we may have eked out some of the answer from Attorney General Holder.

It would be nice if we would actually get that in clean language, where the Attorney General would now say this is our policy. But, see, this comes from allowing the executive branch so much power. If you allow them the power to make the rules, to make the decisions without any kind of oversight or scrutiny, the danger is that there will be no process. So the thing is right now we have a program going on where we kill people around the world with drone strikes, and there are criteria and standards for how we do it.

The obvious question is: You are going to do that in America? Under what standards? We have had at least allegations, we have had some who have said the bulk of the drone strikes around the world have been signature killings, which means the people are not identified who are being killed, that it is a long line of traffic and we blow up the line of traffic.

Now, we can debate whether in war we may have a looser criteria for whom we are blowing up, but I would think that in America we would not blow up a caravan going from a wedding to a funeral, from a church to a house, from a political meeting back to their home. We would have different rules in America. If you are accused of a crime, if they think you are somehow a terrorist, then they would arrest you, particularly if you are in a noncombat opportunity. Why in the world would the President take the position that if you are eating in a cafeteria, you are eating at a restaurant, you are at home asleep, that you could not be arrested?

So it is a real easy question, and the President should, very frankly, answer the question: I will not kill noncombatants in America. I cannot imagine why the President cannot answer an easy question.

There have been people on both the right and the left who have been asking these questions. Glenn Greenwald writes a lot about this issue. This is a pretty interesting proposition that he puts forward. He says:

> If you posit that the entire world is a ''battlefield,'' then you're authorizing him to do anywhere in the world what he can do on a battlefield. . . .

That has been my point. If the United States is the battlefield, and we are going to have the laws of war—or another way it can be put is martial law—in America, if we are going to have that in America, you need to know about it because martial law—living under martial law—is the way they live in Egypt. That is why they just had a rebellion in Egypt and overthrew Mubarak. Because they had, by martial law, indefinite detention.

So those who say the battlefield is here, we need to live under the laws of war in our country—and they tell you to shut up if you want an attorney—by golly, be careful about that. Be quite careful if you are going to let us go to that sense.

So Greenwald says:

> If you posit that the entire world is a ''battlefield,'' then you're authorizing him to do anywhere in the world what he can do on a battlefield: kill, imprison, eavesdrop, detain—all without limits or oversight or accountability. That's why ''the-world-is-a-battlefield'' theory was so radical and alarming (not to mention controversial). . . .

He also quotes from Esquire, from Charles Pierce, who said:

> This is why the argument many liberals are making—that the drone program is acceptable both morally and as a matter of practical politics because of the faith you have in the guy who happens to be presiding over it at the moment. . . .

So you will remember, many of these people did not like George Bush, and they railed and railed about wiretaps, and now they are suspiciously quiet when we get to a killing program.

But he says: If you have so much confidence because you like the guy, the President in charge of this—he says—that ''is criminally naive, intellectually empty, and as false as blue money to the future.''

He goes on to say:

> The powers we have allowed to leach away from their constitutional points of origin into that office have created in the presidency a foul strain of outlawry that (worse) is now seen as the proper order of things.

If that is the case—

And the author says he believes it is—

then the very nature of the presidency of the United States at its core has become the vehicle for permanently unlawful behavior.

This is coming from a liberal.

Every four years, we elect a new criminal because that's become the precise job description.

So we have to ask some important questions. I am not asking any questions about the President's motives. I do not question his motives. I, frankly, do not think he will be killing people in restaurants tonight or in their house tonight. But this is about the rule of law. It is not so much about him. It is not so much about John Brennan. It is about having rules so that someday, if we do have the misfortune of electing someone you do not trust—electing someone who might kill innocent people or who might kill people whom they disagree with politically or they might kill people whom they disagree with religiously or might kill people of another ethnic group—we are protected. That is what these protections are about. But they are not so much about the individuals involved now.

But there is a program that is going on around the world that is killing individuals with drones, and it is done in a warlike fashion. The thing is, in war you do not get due process. So these people around the world do not get Miranda rights, and I am not arguing for that. If you have a gun leveled at an American in Afghanistan, you are going to be killed with no due process. I am not arguing for that. But I am arguing it is different if you are in Afghanistan pointing a weapon at us or here pointing a weapon at us. It is different if you are eating dinner or if you are in your home at night.

So I think there are clear and distinct differences, and there is no excuse for the President not giving us a clear-cut answer.

There is a writer by the name of Conor Friedersdorf who writes for The Atlantic. I will get into that in just a minute.

At this time, I would like to, without yielding the floor, stop for a question from the Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator from Kentucky.

First of all, let me say, I appreciate the Senator's passion. I appreciate the fact that, as he knows—and he and I have had some discussions about this issue over the last several days and weeks—the Senator is bringing this to the forefront, as he has done.

We have talked about the Senator's question that he submitted to Mr. Brennan for answering. This is not a rocket science question. This is a question that is perfectly reasonable, perfectly rational, and a question that ought to be able to be addressed by the administration in a very quick, simple, direct response. I have been dumbfounded, as the Senator from Kentucky knows, about the fact that he did not get a straightforward, simple answer immediately.

But the fact of whether a drone attack—and I am one of those who thinks we need to detain and interrogate folks as opposed to just firing drones at everybody because we are losing a lot of valuable information from folks whom we take shots at versus folks whom we are able to detain and interrogate—but still, I know the Senator from Kentucky agrees with me that at the end of the day, we need to take out bad guys, guys who seek to do us harm. The Senator's position all along has been that with due process that ought to happen.

My question to the Senator is, with the administration not giving him a straightforward answer—and I understand the Attorney General, in response to some questions today in the Judiciary Committee, again was very evasive on the question, in spite of having given the Senator a letter just yesterday on this issue—that there still is not a straightforward, black-or-white, as it appears to me they could give you, answer to this question; am I correct about that?

Mr. PAUL. Mr. President, the Senator from Georgia is correct. I also, while he is on the floor, want to thank him for getting some of this information to come forward. Because it has been a very onerous task, and without his leadership on the Intelligence Committee, as well as Republicans and Democrats asking for more information, we would not have gotten anywhere. With that input, we have been able to get some answers.

The answers have not all been good. Brennan has answered, with the appropriate answer: The CIA does not work within the United States. That should be pretty obvious because everybody knows that and that is the law. The problem is, it does not answer the final question because the drone program is under the Department of Defense, and if we are going to bring that home to America, I think the Intelligence Committee, as well as the whole body, ought to be not just waiting for the President to tell us how he is going to use it in America. We have civil law in America and we ought to be part of that process. But I do not think we can allow it to go on without our input.

Mr. CHAMBLISS. Let me, Mr. President, if could, ask the Senator again a little different question to make sure I understand exactly what the Senator has asked for.

The Senator's position, as I understand it, has been all along that if we have bad guys flying airplanes into a tower or if we have folks who are firing missiles or tanks or weapons of any sort in the United States, seeking to carry out an act of war, an act of terrorism, taking those guys out is not a problem.

Mr. PAUL. Yes. Mr. President, the idea of combating lethal force I think is questioned by very few, if anybody. If planes are flying into the Twin Towers, we obviously send up F–16s. We have missiles. We do whatever we can to stop an attack on America.

What I am concerned about—the same way if it is a domestic terrorist. If there is someone outside the Capitol with a grenade launcher, we do not give them Miranda rights. We kill them. That is the way it works. If you are exerting lethal force against American soldiers anywhere in the world or in our country, you use lethal force to stop that. Sometimes you cannot stop to even ask permission from Congress. You do that. Imminent threats are repulsed.

But because of all the drone attacks—and I am not saying they are necessarily wrong the way they are done—it is just that they are done at people who are not in the middle of a battle. So if we transfer that to America, I do not think that is acceptable for America.

It is a different debate on whether it is always a good idea, whether we should do it, what the rules should be overseas. But the rules we have currently I do not think are appropriate for the United States.

Mr. CHAMBLISS. Again, Mr. President, if I could direct a question to the Senator: The fact is that from a pure oversight standpoint—Armed Services, Intel—these committees that have jurisdiction over the issue of fighting the war on terrorism need to have the right kind of information so we can ask the right questions. Getting the right kind of information out of this administration has been worse than having a root canal and more difficult than having a root canal.

I again am appreciative of the Senator being forceful in asking the question, and I think at the end of the day, again, he has had no issue relative to ultimately having a vote on Mr. Brennan.

I am not supportive of the nomination of Mr. Brennan, but I think he ought to have a vote, and I intend to express myself in much greater detail on it a little later. But from the standpoint of simply moving the issue forward, if the administration had come to the Senator with a direct answer days or weeks ago, when he asked the question, we probably would not be here now.

Again, I thank the Senator for his comments on this issue.

Mr. PAUL. Mr. President, I wish to thank the ranking member of the Intelligence Committee and also say this could come to a close anytime if the President will sort of say what Attorney General Holder was trying to say this morning, and put it into actual words, that he thinks he has the military authority to reject imminent attack. I think we all agree to that. But if he says he is not going to use drones on people who are not engaged in combat in America, I think we could be done with this debate—I think one phone call from the President to clarify what his position is or from the Attorney General to actually write out what his position is.

But I guess the reason I am kind of alarmed is, we have a quote from the Attorney General saying the executive

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