Documentation

Excerpts from the Filibuster

For 13 hours on the evening of March 6, Sen. Rand Paul (R-Ky.) conducted a filibuster against the nomination of CIA Director John Brennan, in a way that has rarely been done in recent years. (Sen. Bernie Sanders made the last one in 2010, for eight hours.) Paul was ultimately joined by at least ten of his colleagues, including one Democrat, Sen. Ron Wyden of Oregon, in a discussion which ranged from excoriating the "imperial Presidency"—including Obama's refusal to consult Congress, including on the question of going to war—to specific attacks on the Administration's drone policy, and many quotes from civil libertarians on the "left," such as Glenn Greenwald and Conor Fridersdorf.

Paul's determination to get answers from an Administration that had refused to say it was bound by the Constitution not to carry out drone strikes against Americans, created excitement around the nation, as it was broadcast live on CSPAN. There are reports that some members of the House of Representatives came over to the Senate to show their support.

We provide highlights here, to give a flavor of this historic debate. The first half is from an unofficial transcript on Paul's website; the second half is from the Congressional Record.

Senator Rand Paul Speaks

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 café in San Francisco or in a restaurant in Houston or at their home in Bowling Green, Kentucky, is an abomination. It is something that should not and cannot be tolerated in our country.

I don't 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 long and hard for, and to give up on that principle, to give up on the Bill of Rights, to give up on the Fifth Amendment protection that says that 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.

I will speak today until the President responds and says no, we won't kill Americans in cafés; 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's amazing that the President will not respond. I've been asking this question for a month. It's like pulling teeth to get the President to respond to anything. And I get no answer. . . .

Hitler, or the Rule of Law?

You know, when World War I ended, the currency was being destroyed in Germany. In 1923, the paper money became so worthless that people wheeled it in wheelbarrows. They burned it for fuel. It became virtually worthless overnight. The beginning of September 1923, the paper, I think it was like 10, 15 marks for a loaf of bread. September 14, it was a thousand marks. September 30, it was 100,000 marks. 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. The point isn't that anybody in our country is Hitler. I am not accusing anybody of being that evil. It is a misused anology. In a democracy you could someday elect someone who is very evil. That's why we don't give the power to the government. And it's not an accusation of this President or anybody in this body. It's a point to be made historically that occasionally even a democracy gets it wrong. So when a democracy gets it wrong, you want the law to be there in place. You want this rule of law.

The Administration's Outlook

But here's the real problem: When the President's spokesman was asked about al-Awlaki's son, you 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."

You know, it's kind of hard to choose who your parents are. That's sort of like saying to someone whose father is a thief or a murderer or a rapist, which is obviously a bad thing—but does that mean it's okay to kill their children? Think of the standard we would have if

White House Photo/Sonya N. Hebert

President Barack Obama is given his Oath of Office by Chief Justice John Roberts, Jan. 21, 2013. Senator Paul points out that the President swears that he "will" protect, preserve, and defend the Constitution—not that he'll do it "when it's practical."

our standard for killing people overseas is, you should have chosen a more responsible parent.

It just boggles the mind and really affects me to think that that would be our standard. There's absolutely no excuse for the President not to come forward on this. I've been asking for a month for an answer.

Due Process of Law

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 you're not a lawyer (I am not a lawyer), when you first hear that you think, what does that mean? What does it mean to have due process? What it means is you're protected. You get protections. Is our justice system perfect? No.

Sometimes you go all the way through due process in our country. We've actually convicted people who are innocent. Fortunately it's very rare, but think about that. We've actually convicted people who are innocent.

What are the chances that the President, going through PowerPoint slideshows and flash cards, might make a mistake on innocent or guilty? I would say there is a chance. Even our judicial system—it goes through all of these processes with the judge reviewing the indictment, with a jury reviewing it, then with the sentencing phase—with all of that going forward, we sometimes make mistakes. What are the chances that one man, one politician, no matter what party they're from, could make a mistake on this? I think there's a real chance that that exists. That's why we put these rules in place. . . .

The White House's Contempt

I have written a couple of letters to John Brennan, who has been put up for the CIA nomination. 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's a guy who the President promotes as being transparent and wanting to give a lot of information to the American people; he won't respond to a U.S. Senator.

How do they—they treat the U.S. Senate with disdain, basically. Won't 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 that I had bipartisan support for slowing down his nomination if he didn't answer his questions; then he answered his questions. It doesn't 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 don't have a lot of anticipation or belief that we're going to get more information after this nomination hearing. . . .

The Battlefield's in America

Be worried. Be alarmed. Alarm bells should go off when people tell you that the battlefield's in America. Why? Because when the battlefield's in America, we don't have due process. What they're talking about is they want the laws of war. Another way to put it is to

call it martial law. That's what they want in the United States when they say the battlefield is here.

One of them, in fact, said if you—if you—if they ask for a lawyer, you tell them to shut up. Well, if that's the standard we're going to have in America, I'm quite concerned that the battlefield would be here and that the Constitution wouldn't apply. Because, to tell you the truth, if you are shooting at us in Afghanistan, the Constitution doesn't apply over there. But I certainly want it to apply here. If you're engaged in combat overseas, you don't get due process. But when people say, oh, the battlefield's come to America and the battlefield's 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....

A Non-Partisan Issue: Illegal War

And 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. And really, the great irony of this is that 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 a very expansive power. Virtually, some would say, unlimited. He was accused of running an imperial Presidency. The irony is that this President that 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 that the President's powers were limited.

When I first came here, one of the first votes that I was able to cast was a vote on whether or not we should go to war without Congressional approval. And so the interesting thing 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: 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's still a huge mess over there, and I think it's still yet to be determined whether Libya will descend into the chaos of radical Islam. I think there is a chance they still may descend into that chaos. But when the question came up about going to war in Libya, there was the question of, doesn't the Constitution say that you have to declare war? And so we looked back through some of the President's writings as a candidate.

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 this now, since we know "imminent" doesn't have to be immediate, and imminent no longer means what humans once thought imminent meant. But he did say that the President doesn't go to war by himself....

I took his exact words, we quoted them and put them up on a standard next to me and we voted on a Sense of the Senate that said: No President should go to war without the authority of Congress. Which basically just restates the Constitution. You would think that would be a pretty easy vote for people. I think it got less than 20 votes....

Why Won't He Say?

I don't question the President's motives. I don't think the President would purposely take innocent people and kill them. I really don't think he would drop a Hellfire missile on a café or a restaurant like I'm talking about. But it bothers me that he won't say that he won't. And 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 that he seems to have lost that as he's become President....

[*In response to Senate Majority Leader Harry Reid's (D-Nev.) attempt to obtain consent to move to cloture:*]

Mr. President, reserving the right to object, I would be happy with the 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, put it into 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 don't understand why he couldn't put that into words, but if he does, I want no more time; but if not, I will continue to object if the Administration and the Attorney General will not provide an adequate answer. And I object....

Mr. President, in late January, we sent a letter to John Brennan, the nominee for the CIA, asking a bunch of questions, but included among those questions was: Can you kill an American in America with a drone

strike? And 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 two days ago.

The answer from John Brennan was that he acknowledges the CIA cannot act in the United States. That is the law and that was nice. But the Attorney General responded and said that they don't intend to, they haven't yet, but they might....

I can be done any time, if I can just get a response from the Administration or from the Attorney General saying that they do not believe they have the authority to kill noncombatants in America.

Alice's Wonderland?

But there is a question—has America the Beautiful become Alice's Wonderland? We can hear the Queen saying "No, no," but her response is sentence first, verdict afterwards. Well, that's absurd. How could we sentence someone without determining first whether they are guilty or innocent? Only in Alice's Wonderland would you sentence someone before you try them, would you sentence someone to death before you accuse them. Do we really live in Alice's Wonderland? Is there no one willing to stand up and say to the President, for goodness sakes, you can't sentence people before you try them. You can't sentence people before you—he determined whether they are guilty....

Nobody is told who is going to be killed. It is a secret list. So how do you protest? How do you say, "I'm innocent"? How do you say, "Yes, I e-mail with my cousin who lives in the Middle East, and I didn't know he was involved in that"? Do you not get a chance to explain yourself in a court of law before you get a Hellfire missile dropped on your head? So I think that really, it just amazes me that people are so willing and eager to throw out the Bill of Rights and just say, "Oh, that's fine. You know, terrorists are a big threat to us. And, you know, I am so fearful that they will attack me, that I'm willing to give up my rights, I'm willing to give up on the Bill of Rights." I think we give up too easily.

Now, the President has responded and he said he hasn't killed anybody yet in America. And he says he doesn't intend to kill anyone in America, but he might. I frankly just don't think that's good enough. The President's oath of office says that "I will"—not that "I might" or not that "I intend to"—the President says "I will" protect, preserve, and defend the Constitution. He doesn't say, "I'll do it when it's practical" or "I'll do it unless it's unfeasible, unless it's unpleasant and people argue with me and I have to go through Congress and I can't get anything done; then I won't obey the Constitution."

What About the Fifth Amendment?

These are questions that I can't imagine why we can't get an explicit answer to unless the answer is no. Unless the answer is they don't want limitations on their power, unless the answer is that they don't want to be constrained by the Constitution, unless their answer is that the Bill of Rights doesn't apply to them when they think it doesn't apply to them.

And see, that's the real danger. Eric Holder was asked about this and asked about the Fifth Amendment; he was asked, does it apply? He said, well, it applies when we think it applies. What does that mean? I know it is a debatable question overseas, American citizens, this and that, but I don't think it is a debatable question in our country.

Does the Fifth Amendment apply? I don't know how you can argue the Fifth Amendment doesn't apply. I don't know how you can argue that we have an exception to the Bill of Rights when we want to.

Overreaching Power

But this is the same President that did argue that he could determine when the Senate is in recess. Because he didn't get a few of his appointees last year, he argued that the Senate was in recess and said he could appoint anybody he wanted and he did. The case went to court and the court rebuked him. The court says you don't get to decide all the rules for government. The Senate decides when they're in recess. You decide when you're in recess. But you don't get to decide the rules for the Senate. They struck him down. And has he obeyed the ruling? Has he listened to what the court did? Has he been chastised and rebuked by the court?

The people that he appointed illegally are still doing that job. All of their decisions are probably invalid. So for the last two years, or year and a half, however long these recess appointments have been out there, all of these decisions are going to be a huge mess. They've made all these decisions and it is going to be uncertain whether the decisions are [going] to be valid. All of this happens because for some reason he thinks he has power that he doesn't actually have.

A Proposed Resolution

[*Senator Paul suggested that maybe the Senate should pass a resolution on the issue. He asked for unanimous consent to adopt it. Sen. Richard Durbin (D-Ill.) objected, and vaguely promised a hearing sometime in the future.*]

The resolution that we've talked about says, "To express the sense of the Senate against the use of drones to execute American citizens on American soil." "Expressing the sense of the Senate against the use of drones to execute American citizens on American soil. . . .

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

'Signature Strikes'

[*After describing how most of the CIA's strikes are against nameless targets—called "signature strikes"—Senator Paul said:*]

So the question is: Is this the kind of standard we will use in the United States? Will we use a standard where people don't have to be named? We don't know. The President has indicated that his drone strikes in America will have different rules than his drone strikes outside of America, but we've heard no rules on what those drone strikes will be. So we have drone strikes inside and outside. They're going to have different rules. But we already know that a large percentage of the drone strikes overseas were not naming the person.

Is that going to be the standard? We also know that we have targeted people for sympathizing with the enemy. We talked about that before. In this 1960s, we had many people who sympathized with North Vietnam. Many people will remember Jane Fonda swiveling herself around in North Vietnamese artilleries and thinking gleefully that she was just right at home with the North Vietnamese. Now, while I'm not a great fan of Jane Fonda, I'm really not so interested in putting her on a drone kill list either. We've had many people who have dissented in our country. We've had people in our country who have been against the Afghan War, against the Iraq War. I was opposed to the Iraq War. . . .

Will the White House Answer?

We have been in contact with the White House throughout the night. We have made several phone calls to the White House. We told them we are willing to allow a vote on the Brennan nomination. All we ask in return is that we get a clear indication of whether they believe they have the authority under the Constitution to target Americans on American soil. I think it is a question that is fair to ask, and we have been willing to let them have the vote at any time either earlier tonight, obviously, as well as in the morning. All we ask in return from the White House is a clarification.

And in Conclusion

Mr. President, I am hopeful that we have drawn attention to this issue; that this issue won't fade away; that the President will tomorrow come up with a response. I would like nothing more than to facilitate the voting and the continuation of the debate tomorrow. I hope the President will respond to us. We have tried repeatedly throughout the day, and we will see what the outcome of that is. . . .

But what I would say is that it is worth fighting for what you believe in. I think the American people can tolerate a debate and a discussion. There has been nothing mean-spirited about this debate for 12 hours. I think, in fact, more of it would be even better. I wish we had more open and enjoined debate. The senior Senator from Illinois [Durbin] has brought up good points, and I think there is much discussion. I just hope that this won't be swept under the rug and that this isn't the end of this, but that it is the beginning of this.

I would go for another 12 hours to try to break Strom Thurmond's record, but I have discovered there are some limits to filibustering, and I am going to have to go take care of one of those in a few minutes here. But I do appreciate the Senate's forbearance in this, and I hope that if there are some on the other side of the aisle who have been listening and feel they may agree on some of these issues, they will use their ability to impact the President's decision and will, No. 1, say the Senate should be trying to restrain the Executive branch, Republican or Democratic, and, No. 2, will use their influence to try to tell the President to do what I think really is in his heart, and that is to say: Absolutely, we are not going to be killing Americans, not in a combat situation. We will obey the

Fifth Amendment; that the Constitution does apply to all Americans and there are no exceptions. I thank you very much for your forbearance, and I yield the floor.

Sen. Ron Wyden

The issue of American security and American freedom really doesn't get enough discussion here in the United States Senate and it's my view that the Senator from Kentucky has made a number of important points this day..... Mr. President, what it comes down to is [that] every American has the right to know when their government believes that it is allowed to kill them. So 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.

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

Replies from Brennan And the Administration

CIA Director-nominee **John Brennan's** answered questions from members of Senate Select Committee on Intelligence, and the Committee posted the unclassified portions. A number of these related to drone strikes were submitted by Committee chair Dianne Feinstein (D-Calif.).

3. On making public details and numbers of collateral deaths, Brennan's response only addressed the "numbers," not the "details." He said that "to the extent that U.S. national security interests can be protected, the U.S. Government should make public the overall numbers of civilian deaths resulting from U.S. strikes targeting al-Qaida."

6. On the question of "Could the Administration carry out drone strikes inside the United States?" Brennan wrote, "This Administration has not carried out drone strikes inside the United States and has no intention of doing so."

9. Referring to the "well-informed, high-level officials" whom Feinstein asked about who makes the ultimate decision for a targeted killing, Brennan replied: "The process of deciding to take such an extraordinary action would involve legal review by the Department of Justice, as well as a discussion among the departments and agencies across our national security team, including the relevant National Security Council Principals and the President."

On Feb. 14, **President Obama** participated in an online question-and-answer session with Google's Hangout.

He was asked: "A lot of people are very concerned that your administration now believes it's legal to have drone strikes on American citizens, and whether or not they are specifically allowed on citizens within the United States. And if that is *not* true, what will you do to create a legal framework to make sure that American citizens within the United States know that drone strikes cannot be used against American citizens?"

Obama replied: "Well, first of all, there has never been a drone used on an American citizen on American soil.... We respect—and have a whole bunch of safeguards in terms of how we conduct counterterrorism operations outside of the United States. The rules outside of the United States are going to be different than the rules inside the United States, in part because our ability to capture a terrorist in the United States is very different than in the foothills or mountains of Afghanistan or Pakistan. But what I think is absolutely true is it's not sufficient for citizens to just take my word for it that we're doing the right thing.... I am not somebody who believes that the President has the authority to do whatever he wants, or whatever she wants, just under the guise of counterterrorism. There have to be checks and balances on it."

On March 4, **Attorney General Eric Holder** sent this letter to Sen. Rand Paul:

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

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

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

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

On March 7, **Holder** sent this follow-up letter:

"It has come to my attention that you have now asked an additional question: Does the President have the authority to use a weaponized drone to kill an American not engaged in combat on American soil? The answer to that question is no."