

# CORNYN CALLED TARGETED KILLING A “PROGRAM,” TOO

I noted yesterday that the government, in its cynical attempt to play dumb about what the ACLU and NYT were FOIAing in their Anwar al-Awlaki memo lawsuits, had exhibited the same problems with basic definitions as Clinton had over the definition of “is.”

Plaintiffs do not define, and it is otherwise unclear from their response, what is meant by “targeted killing program.”

Interestingly, Tom Junod revealed that one of his sources got squeamish about his use of the word “program.”

But there is someone else who has received at least a cursory white paper introduction to the Administration’s targeted killing of American citizens who is on the record calling it a program: John Cornyn.

In his efforts (thwarted by all the Democrats on the Senate Judiciary Committee) to pass an amendment requiring the Administration to share all legal analysis on its authority to engaging in targeting killings of Americans overseas, he said this:

Cornyn: This is an amendment I alluded to earlier which would require the Executive Branch to share with Congress the legal basis for their decision to engage in **a program of targeted killings**, including apparently American citizens abroad. This is, just to be clear, not asking about **the program** per se, just asking about the legal rationale. I think all of us are troubled at least initially, without further explanation, about the use of

targeted killings that involve American citizens. We all understand that even American citizens may become traitors and declare war, in essence, against their own country. But there has to be a rationale for this in law. And I think this is about transparency, this is about accountability, and it's also important for Congress—the only branch that can actually legislate—if there are aspects of this legal argument or rationale which Congress would choose to hold hearings on, conduct appropriate oversight, or legislate on, this is the kind of information that Congress is entitled to as part of our Constitutional role. I know we can all agree that the decision to use this program bears heavily on core national values. [my emphasis]

Elsewhere in the debate (I've included my own transcription of it below), Pat Leahy reveals the Administration provided a white paper on the program (though Cornyn suggests—and Leahy seems to confirm—that didn't include the legal analysis). Which suggests Cornyn is working from the presentation the Administration gave to Congressional overseers of DOJ.

And based on that presentation, Cornyn seems to believe it's a program.

My transcript of this part of the hearing—which begins around 98:32—is below the line.

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Cornyn: This is an amendment I alluded to earlier which would require the Executive Branch to share with Congress the legal basis for their decision to engage in a program of targeted killings, including apparently American citizens abroad. This is, just to be clear, not asking about the program per se, just asking about the legal rationale. I think all of us are troubled at least initially, without further explanation,

about the use of targeted killings that involve American citizens. We all understand that even American citizens may become traitors and declare war, in essence, against their own country. But there has to be a rationale for this in law. And I think this is about transparency, this is about accountability, and it's also important for Congress—the only branch that can actually legislate—if there are aspects of this legal argument or rationale which Congress would choose to hold hearings on, conduct appropriate oversight, or legislate on, this is the kind of information that Congress is entitled to as part of our Constitutional role. I know we can all agree that the decision to use this program bears heavily on core national values. And I would say if this were being done during a Republican Administration, I would be offering the same amendment. This is not about politics. This is about accountability and making sure Congress fulfills its Constitutional role for oversight and legislation.

Feinstein: Mr. Chairman, I would oppose this amendment. As I mentioned, we're marking up an intelligence bill next week. There will be language in the intelligence bill dealing with this. I've discussed that language with Senator Chambliss. He is in support of it, so I would anticipate that we carry out this purpose in the intelligence bill. With that in mind I would move to table the amendment.

Durbin: Mr. Chairman. May we speak to this before the motion to table?

Leahy: To table is non-debatable.  
[inaudible—seems to ask Feinstein for permission]

Grassley: For me too?

Feinstein: [referring to Durbin] It depends on what he'll say.

[Laughter]

Leahy: I ask consent for five minutes of discussion for senator Durbin and [seems to

point to Grassley]

Durbin: Thank you Mr. Chairman. My staff briefed me of this on the way in, and I asked the basic question, "would I ask this of a Republican President? Of course. And I did ask it, in a different context, of the previous President, when it came to questions of interrogation, torture, and surveillance. I might say to the Senator from Texas I had no support from the other side of the table when I made that request. But I do believe it is a valid inquiry and I would join the Senator from Texas and any who wish in sending a letter to the Attorney General asking for this specific information on a bipartisan basis. And certainly we can raise it the next time the Attorney General appears before us. I do have to say that I'm going to vote to table because I think that as flawed as this [the FAA extension] may be without the Lee Amendment which I think would help it, I do believe we need to pass this and bringing in these other matters are going to jeopardize it. But I think it is a legitimate question to be asked of Presidents of either party, and I will join you in a letter to this President and his Attorney General for that purpose.

Leahy: Of course, we could use the letter I've already sent to this President asking that question. Senator Grassley.

Grassley: Yeah, well, the reason we have to adopt this amendment is for the reason that these letters haven't been answered. I wrote, separate from the Chairman, and I haven't gotten an answer to my letter. And we're dealing with the Administration that on January the 20th, 2009 said that they were going to be the most transparent Administration in the history of this country. So we've got a license to kill Americans, and we don't know the legal basis for the license to kill Americans. And we oughta know that. And we're not going to find it out if we don't legislate it because our letters haven't been answered.

Feinstein: Mr. Chairman?

Leahy: The five minutes is expired, but I would note that each of the Senators has been provided with a white paper we received back as an initial part of the request I made of this administration. And I appreciate the bipartisan nature of seeking that. I wish we could, along with Senator Durbin, I wish even one Republican had joined us when we asked similar questions of the last Administration, but the clerk will call the roll.

Cornyn: Mr. Chairman, may I close? There have been a number of comments made.

Leahy: [affected sigh] Ayeeeeeeee.

Cornyn: It'll be very brief.

Leahy: Go ahead. Then I will yield to Senator Feinstein too.

Cornyn: As Senator Durbin and others have said that they agree that this is a legitimate question that needs to be answered. But we're not mere supplicants of the Executive Branch. We are a coequal branch of government with the Constitutional responsibility to conduct oversight and to legislate where we deem appropriate on behalf of our constituents. So it is insufficient to say, "pretty please, Mr. President. pretty please, Mr. Attorney General, will you please tell us the legal authority by which you claim the authority to kill American citizens abroad?" It may be that I would agree with their legal argument, but I simply don't know what it is, and it hasn't been provided. I would say to the distinguished Chair of the Intelligence Committee, Senator Feinstein, I appreciate the good work that you and Senator Chambliss do on the intelligence committee, I really do. But I don't sit on the intelligence committee, I don't get to vote on that, this is a matter within the jurisdiction of the judiciary committee and I think this is an appropriate time to offer amendments like this. So I would hope it would not be tabled. I don't think this helps the underlying bill move forward, to simply have a party line vote and to

table all amendments that those on the other side might find uncomfortable or inconvenient.

Feinstein: If I may. Senator Cornyn, I'd be happy to share the intelligence committee language with you, we will vote on that next week. I'd be interested in your response to it. But I think that's the appropriate vehicle for it. And that's the reason for the motion to table.

Leahy: Call the roll on the motion to table.

[The motion to table Cornyn's amendment passed 10-8 on a party line vote.]