

. . . no precedent for the idea that due process could be satisfied by some secret, internal process within the executive branch.

So to those of my colleagues who will come on down here today and just stamp “approval” on someone who I believe disrespects the Bill of Rights, realize that other esteemed professors, other esteemed colleagues at Harvard disagree and that you cannot have due process by a secret internal process within the executive branch.

To those who say, oh, the memos are now not secret, are we going to be promised that from now on this is going to be a public debate and that there will be some form of due process? No. I suspect it will be done in secret by the executive branch because that is the new norm. You are voting for someone who has made this the historic precedent for how we will kill Americans overseas—in secret, by one branch of the administration, without representation based upon an accusation. We have gone from having to be proven guilty beyond a reasonable doubt to an accusation being enough for an execution. I am horrified that this is where we are.

To my colleagues, I would say that to make an honest judgment, you should look at this nomination as if it came from the opposite party. I can promise—and this would absolutely be my opinion, and this isn’t the most popular opinion to take in the country—that I would oppose this nomination were it coming from a Republican President.

But what I would ask of my Democratic colleagues is to look deeply within their soul, to look deeply within their psyche and say: How would I vote if this were a Bush nominee? If this were a Bush nominee who had written legal opinions justifying torture in 2007, 2006, 2005, how would I have voted?

I think 90 percent would have voted against and would now vote against a Bush nominee.

This has become partisan and this body has become too partisan. There was a time when there were great believers in the Constitution in this body, and we have degenerated into a body of partisanship. There was a time when the filibuster actually could have stopped this nomination. There was a time when there would have been compromise. There was a time in this body when we would get people more toward the mainstream of legal thought because those on each extreme would be excluded from holding office.

The people who have argued so forcefully for majority vote, for not having the filibuster, are the ones who are responsible now for allowing this nomination to go forward. This nomination would not go forward were it not for the elimination of the filibuster.

Some say about the filibuster: Oh, that was obstructionism.

The filibuster was also in many cases about trying to prevent extremists from getting on the bench. We will now allow someone who has an extreme

point of view, someone who has questioned whether guilt must be determined beyond a reasonable doubt, someone who now says that an accusation is enough for the death penalty. Now, that person may say: Only if you are overseas. Well, some consolation if you are a traveler.

What I would say is we need to think long and hard and examine this nomination objectively as if this were a nomination from a President of the opposite party. We need to ask ourselves: How precious is the concept of presumption of innocence? How precious are our Bill of Rights?

We need to examine—and it is hard when you know someone is guilty, when you have seen the evidence and you feel that this person deserves punishment. I sympathize with that and think that this person did deserve punishment. But I also sympathize so greatly with the concept of having a jury trial, so greatly that an accusation is different from a conviction, that I can’t allow this to go forward without some objection. I hope this body will consider this and will reconsider this nomination.

At the appropriate time I will offer a unanimous consent request to delay the David Barron nomination until the public has had a chance to read his memo. I will return at an appropriate time, and we will offer that as a unanimous consent.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. PAUL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. HEITKAMP). Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST— EXECUTIVE CALENDAR

Mr. PAUL. I ask unanimous consent that the cloture motion on the nomination of David Barron to be U.S. circuit judge be delayed until such time that the public can review documents that are now being promised to be revealed by the President, that have not yet been revealed. So I ask that we delay until such time that the public can review the text of his memos on the use of targeted force against Americans.

The PRESIDING OFFICER. Is there objection?

Mr. MARKEY. Objection.

The PRESIDING OFFICER. The objection is heard.

The PRESIDING OFFICER. The Senator from Oregon.

BARRON NOMINATION

Mr. WYDEN. Madam President, it wasn’t very long ago when the Senator

from Kentucky and I were on the floor talking about drones, and I want to make sure it is understood that Senator PAUL’s passion, intellectual rigor, and devotion to these issues of liberty and security—which he and I have worked on together now for a number of years—is much appreciated.

I come to the floor today to address the issue Senator PAUL and I have discussed in the past, and that is how vigorous oversight—and particularly vigorous oversight over the intelligence field—needs more attention. It is not something we can minimize. It goes right to the heart of the values the Senator from Kentucky and I and others have talked about, and that is liberty and security are not mutually exclusive. We can have both.

The Senator from Kentucky and I often joke about how the Senate would benefit from a Ben Franklin caucus. Ben Franklin famously said, in effect, that anybody who gives up their liberty for security doesn’t deserve either.

The Senator from Kentucky and I have certainly had some disagreements from time to time on a particular judicial nomination, but I thank him for his time this morning, and I thank him for the opportunity we have had over the years to make the case about how important these issues are. The American people ought to insist that their elected officials put in place policies which ensure we have both liberty and security. I thank the Senator from Kentucky for that, and I have some brief remarks this morning.

Of course, the Senate is going to vote on the nomination of David Barron to serve as a judge for the First Judicial Circuit. His nomination has been endorsed by a wide variety of Americans, including respected jurists from across the political spectrum.

Mr. Barron has received particularly vocal endorsements from some of our country’s most prominent civil rights groups. Of course, the aspect of his record that has perhaps received the closest scrutiny in recent weeks is his authorship of a legal opinion regarding the President’s authority to use military force against an individual who is both a U.S. citizen and senior leader of Al-Qaeda. I am quite familiar with this particular memo.

The executive branch first acknowledged its existence 3 years ago in response to a question I asked at an open hearing of the Senate Select Committee on Intelligence. I followed up by working with my colleagues and pressing the executive branch to provide this memo to the intelligence committee.

This month, of course, the administration made this memo available to all Members of the Senate. Executive branch officials have now said they will provide this memo to the American people as well. This is clearly, in my view, a very constructive step, and I am going to vote yes on Mr. Barron’s nomination.

I want to take a minute to outline that this whole matter is about much