

DICK DURBIN: THE TARGETED KILLING MEMO IS LIKE THE TORTURE AND ILLEGAL WIRETAP MEMOS

It took transcribing the debate in the July 19 Senate Judiciary Committee hearing for me to realize it, but Democrats are running very serious interference to keep the Anwar al-Awlaki targeted killing memo secret. Not only did Dianne Feinstein basically roll John Cornyn, telling him she'd introduce language that would accomplish his goal of getting all the oversight committees the memo when, if hers passes, it will only, maybe, get the Intelligence Committee the memo. Not only did the Democrats vote on a party line vote to table John Cornyn's amendment to require the Administration to share it—in classified or unclassified form—with the Judiciary and Armed Services Committees. Not only did Pat Leahy get pretty snippy with Cornyn for offering—and asking to speak on—the Amendment.

Most stunning, though, is Dick Durbin's comment on it.

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. [my emphasis]

This partisan retort (one Leahy repeated) says, in part, that the Democrats aren't going to cooperate with Cornyn's effort to get the memo because Cornyn didn't cooperate with Durbin's efforts to get the torture and illegal wiretap memos. Durbin and Leahy are right: Cornyn and the rest of the Republican party did obstruct their efforts.

That doesn't make obstructing Cornyn's effort right, of course, particularly given that Durbin purports to support Cornyn's intent.

But remember, Republicans obstructed the release of the torture and illegal wiretap memos because, well, they showed the Executive had broken the law. When we all got to see the torture memos, they made it clear CIA had lied to DOJ to get authorization for torture, had exceeded the authorizations given to them, had engaged in previously unimagined amounts of torture, and had ignored legal precedent to justify it all.

And while we've only ever seen part of Jack Goldsmith's illegal wiretap memo (after the Bush Administration purportedly fixed the data mining and other illegal problems with it) and a teeny fragment of an earlier John Yoo memo, those showed that Yoo relied on gutting the Fourth

Amendment, there is an additional secret memo on information sharing, they were hiding their flouting of the exclusivity provision, and—possibly—the illegal wiretap program violated an earlier decision from the FISA Court of Review. We also learned, through some Sheldon Whitehouse persistence, that these memos revealed the President had been pixie dusting Executive Orders and claiming the right to interpret the law for the Executive Branch.

The Republicans had good reason to want to help Bush bury these memos, because they showed breathtaking efforts on the part of the Bush Administration to evade the law.

And that's the fight that Dick Durbin analogized this one to.