

nonmalignant cases each was growing by 25 percent annually, but now the rate of growth is down by 76 percent for mesothelioma, down by 96 percent for other cancers, and down by nearly half for nonmalignant cases.

Even the largest number of asbestos claimants in a single year, 2002—about 95,000—amounts to a little more than one-half of 1 percent of new annual State and Federal cases.

Our system of justice is unique. State courts have seen the problems and they have done something about them. I have talked to Republican Senators and Democratic Senators. Texas has a system we should take a look at here. Illinois has a great system. What they have established is what they call a pleural registry. What they do there, if you have been around asbestos and you think you might get sick—because some of these periods of dormancy can be for years and years—you give your name and the statute of limitations is tolled. If nothing happens to you, no problem. If 10, 20, 30 years later something comes up, you can go into court. It has worked great in Illinois, where a lot of cases were being filed. It protects the most serious cases, the mesothelioma and asbestosis.

There is no litigation crisis. These facts contradict any assertion there is some type of asbestos litigation crisis overwhelming the courts.

In addition, the pleural registry and the system they have in Texas and other States—take, for example, US Gypsum. My brother worked for US Gypsum his whole professional life. They had a lot of problems with asbestos. Why? Because that is what they manufacture stuff with. With US Gypsum, they set up a program and settled all their cases. Right now they have settled all their cases for about \$900 million. Other companies have done the same thing. They have gotten money together: "Let's get rid of this litigation." So anyone talking about a crisis with litigation—the crisis is these big companies are trying to escape responsibility.

I read here on the floor the day before yesterday an example of four companies, hundred-year-old companies, that pay nothing in asbestos now. But one company, even though they paid not a penny for asbestos litigation, under this proposal will pay \$19.5 million a year. They will go bankrupt and a 100-year-old American company is gone.

We do not need to pass this defective legislation. We should instead pass legislation to help the thousands of victims of asbestos exposure and the companies that have contributed to their injuries.

#### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there is now a time for morning business not to exceed 30 minutes, with Senators permitted to speak therein, the first 15 minutes under the control of the Democratic leader or his designee, the second 15 minutes under the control of the majority leader or his designee.

Who seeks recognition?

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

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

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. SESSIONS. I believe my colleagues on the other side are not going to use any of their morning business time that is remaining. A minute or less remains. I ask unanimous consent that I be able to commence my remarks at this time.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized in morning business.

#### NSA TERRORIST SURVEILLANCE PROGRAM

Mr. SESSIONS. Mr. President, last night I was in my office in the Russell Senate Office Building and we were evacuated to the parking deck, and following the excellent leadership of the Capitol Police, people responded professionally and well without any undue alarm and showed good discipline and good spirits.

I point that out to ask, have we forgotten there is an enemy out there who desires to attack us, desires to attack our Nation's Capitol, or any other spot in our country, desires to cause us harm, and that we are spending billions of dollars, that some of the best people in this country are working night and day, like our Capitol Police, in localities all over this country to protect us? From local sheriffs, police officers, State police officers, the FBI, the CIA, the Customs Service, the Immigration Service, to all the agencies that are involved in protecting us, they are out there working their hearts out, and sometimes I think we in this body have gotten too comfortable about this. We have been the subject of a declaration of war by al-Qaida. Bin Laden has declared war on the United States. He has asserted it is his right and, indeed, the duty of his followers to attack Americans and even civilian targets, men, women and children.

We have authorized the U.S. Government, the President, and the executive branch to exercise certain rights because it is war. It is not a criminal matter. If we capture our enemies, they are not entitled to a trial in the

southern district of New York because they are prisoners of war. They are entitled to be held without trial as every prisoner of war since the beginning of the Republic and the rules of war have been instituted. They are held without trial. In the Hamdi case, the U.S. Supreme Court stated that even an American citizen engaged in the war against the United States can be held without trial as an enemy combatant against the United States because it is not a criminal matter. A state has one primary responsibility, and that is to maintain its existence against those forces that would destroy it.

I would ask if anyone thinks we would have any liberties at all if bin Laden ran this country. He would tell you what clothes to put on in the morning. We would have people not only not being free, they wouldn't be able to drive an automobile—women would not be—under his mentality.

This is a serious question, and we need to respond to the challenge to this country in an effective way consistent with our heritage of laws and liberties. There is no doubt about that.

Secretary Rumsfeld has pointed out recently something that is so obvious, but we should think about it. He said the military challenge today is to find, fix, and finish the enemy. He said there is no doubt if we target and develop a plan, we can finish them successfully. We have that military capability. There is no military in the world capable of destroying the military of this United States.

I ask you to remember what we heard after 9/11. What we heard was our intelligence is weak. What we heard was we did not have enough intelligence, that we did not have enough information to find the enemy; that they had sleeper cells in this country and those sleeper cells were activated by phone calls from Afghanistan and bin Ladin over here to encourage them to step forward to carry out the events that led to September 11. Isn't that what happened? And we had this spasm of self-flagellation about intelligence and how we operate our intelligence community. Our job unfortunately was based on the fact that there were failures and we could have done better, had we had interceptions of some of those 18 responsible for 9/11 prior to 9/11, that if we had been able to listen to those conversations, we could well possibly have taken steps to avoid that and 3,000 American citizens would have civil liberties today. Now they have none because they are no longer with us.

We have to ask those questions and go back and look at the history of our country and what is the legitimate power of the President and our forces in a time of war.

What do our intelligence leaders tell us about the capability of the National Security Agency as it has dealt with the ability to intercept international phone calls involving al-Qaida members? What do they tell us? What do all three of our top intelligence people

#### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

say? The National Intelligence Director John Negroponte testified last Thursday before the Intelligence Committee and he stated:

This was not about domestic surveillance. It was about dealing with the international terrorist threat in the most agile and effective way possible.

FBI Director Robert Mueller testified last Thursday as well, stating to the Senate Intelligence Committee:

We get a number of leads from the NSA from a number of programs, including the program that's under discussion today.

The FBI Director is saying we get a number of leads from this program under discussion today.

And I can say that leads from that program have been valuable in identifying would-be terrorists in the United States, individuals who were providing material support to terrorists.

Let me interject here. I was a Federal prosecutor for a long time. I dealt with a lot of drug gangs and some organized crime-type groups. They are pretty close-knit organizations. Sometimes you don't even know they exist. Then all of a sudden you have the ability to identify them and penetrate the organization and gain information against them, and all of a sudden you realize right in your own community there is a major drug-dealing gang or a major organized crime network. So one tip, one lead from an intercepted phone call, can identify a sleeper cell in any community in America. I kid you not. That is the way law enforcement works.

How do you get a warrant to surveil the sleeper cell of terrorists in the United States? Oftentimes it is this kind of intercept on a national security call from foreign sources here that causes us to have the information that leads to the identification of a group bent on destroying our country.

CIA Director Porter Goss testified to the Intelligence Committee:

I'm sorry to tell you—

And I hope the American people listen to this—

I'm sorry to tell you that the damage has been very severe to our capabilities to carry out our mission. . . . I use the words "very severe" intentionally. That is my belief and I think the evidence will show that.

He is talking about the revealing to the world our intelligence capabilities at NSA.

He goes on to say:

When I start talking about the disruption to our plans, things that we have under way that are being disrupted because of releases to the press or public discussion; when I talk about the risk to access, the sources or methods that are no longer viable or usable or less effective by a large degree; when I talk about the erosion of confidence in our working partners overseas, I'm stung to the quick when I get questions from my professional counterparts saying, "Mr. Goss, can't you Americans keep a secret?"

How can we expect them to share intelligence with us if you pick it up in the newspapers? How can we have techniques of this kind and have them leaked to the press?

I would say it is time for us to re-evaluate how we do business. It is time for us to realize that we are in a war and that we are entitled to conduct that war and to win that war. Our military and our intelligence agencies have been charged by us—indeed, they have been criticized by us for not being effective enough in this effort.

I will conclude. I see my colleague from Missouri is here, and he knows this issue very well. I would like to yield to him.

I will conclude with this thought: Please note, Americans, that our military and intelligence agencies have every right to intercept foreign phone calls between two foreign sources. That has never been in dispute. The question we have is whether the authorization of force and the inherent power of the President allows warrantless surveillance of an international call that is connected to the group we are at war with, al-Qaida, that calls into the United States. To say we can't do that will lead to this weird result.

We intercept an international phone call that has not been connected to the United States and we discover information that they are planning an attack on France, we can call France and tell them. If they have a plan that we discover that they are going to attack Canada, we can call them and warn them—or New Zealand or Mexico or any other of our allies and friends around the world. But if the call is into the United States from al-Qaida, we can't intercept that call, we can't use that capability to defend Americans.

I believe that is not logical. The American people don't agree with it. They support and expect our military to carry on these activities. I hope and I believe they will be continued.

Why do I believe they will be continued? Because despite the fact that we have told the world of this capability and severely damaged our capability, not one Member of this Congress that I know of has said we should stop it. If it is so evil and bad, why do they say it does not need to be stopped?

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to speak as if in morning business for 8 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BOND. Mr. President, I certainly support the very powerful words of my colleague from Alabama. He has pointed out many of the compelling reasons for this program.

I rise today to discuss this vitally important program for protecting our national security, and I do so regretfully because this is an open session on the floor of the Senate. This program, of course, is known as the NSA terrorist surveillance program. I say I discuss it regretfully because it is to the detriment of our Nation that this program was leaked to the media and has now been discussed openly for months.

I submit to you that the year 2005, in intelligence and national security circles, will go down in history as the year of the leak. I will not repeat the full litany of those leaks, but we have all been continually reminded about the most damaging one.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. BOND. Yes.

Mr. SESSIONS. I would like to say how much I appreciate his leadership. I note that Senator BOND is a senior Member of this Senate and has served on the Intelligence Committee. He has a son serving in the Marine Corps in Iraq right now in harm's way defending this country. He is a brilliant lawyer, made the highest score on the constitutional law test—I happen to know this—when he was at the University of Virginia. I think the American people need to listen to what he says about this issue.

I guess that is my question. Otherwise, I yield the floor.

Mr. BOND. Mr. President, I say thank you to the Senator from Alabama.

Let me get back to the remarks.

For example, the allegation that the United States is running some secret prisons in Europe has caused European nations and other allies to question their cooperation with us on the war on terror for fear of international retribution; the barrage of books and articles disclosing alleged classified operations, like James Risen's book, "State of War," where he takes every supposed leak he can find and churns it out for profit in a book; and the NSA terrorist surveillance program which tips off terrorists to our early warning program.

On February 2, CIA Director Goss testified to Congress and the Intelligence Committee in open session about the damage to our national security. I asked him if these leaks had a significant impact on our capabilities to carry out our mission. And to quote him:

I use the words "very severe" intentionally. That is my belief.

He went on to say that foreign leaders chide him that the United States cannot keep a secret and that we have lost the confidence of many in the world who were desiring to assist us in the global war on terror. Do those who leak classified information with reckless abandon realize they are potentially aiding and abetting the enemy by allowing the enemy advanced warning of how to avoid our defenses as we seek to prevent another 9/11?

Since so many have taken political advantage of the leak on the NSA terrorist surveillance program, the administration and those of us who agree with the concept of the program are now forced to speak openly to defend it to make sure Congress does not throw this vital program out with the bath water while reviewing it. Some say the program is illegal and even unconstitutional. How do they figure? The President has the inherent constitutional

authority, so held by the courts, to conduct “warrantless” surveillance when it is reasonable for the surveillance for foreign intelligence purposes. This is a constitutional principle which has been established for centuries. Go back to the writings of our Founding Fathers, and from our first President, George Washington, to our current, President George Bush. Presidents have intercepted communications to determine the plans and intentions of our enemies.

A steady stream of Federal court cases has confirmed this Presidential authority, as Attorney General Gonzales pointed out on Monday before the Senate Judiciary Committee: In the face of overwhelming evidence for the President’s authority, opponents retort that the President must then be breaking the law by violating the 1978 Foreign Intelligence Surveillance Act, known as FISA. But—and this is important—Congress cannot extinguish the President’s constitutional authority by passing a law.

We in this body cannot take away the powers the Constitution gives the President. If the law is read in such a way as to encroach upon his constitutional authority, then I question whether that part of the FISA act would be constitutional.

This is not the first time a President has faced the issue of exercising his inherent constitutional powers for foreign intelligence surveillance in view of legislation that could be interpreted as infringing on that authority.

In 1940, President Roosevelt wrote to Attorney General Robert Jackson that despite section 605 of the Communications Act of 1934, and in this instance despite a Supreme Court ruling upholding the prohibition on electronic surveillance, President Roosevelt said he believed he had the inherent constitutional authority to authorize the Attorney General to “secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the government of the United States, including suspected spies.”

So does the President have *carte blanche* with respect to foreign intelligence surveillance? The answer is clearly no. Under the fourth amendment to the Constitution, the surveillance has to be “reasonable,” and it does not require a warrant. In the context of a war against al-Qaida and those who would do great harm by attacks on innocent American civilians within our country and with a constitutional resolution authorizing the use of “all necessary and appropriate force” to prevent attacks, who is the best to determine what is and isn’t “reasonable”?

When surveying communications in real time, who is best to make that determination? A judge or a lawyer or an intelligence analyst who has spent his or her professional life observing, listening, studying, and tracking the ter-

rorist personalities which make up groups such as al-Qaida? To me the answer is obvious: the analyst.

Consider this: If someone listened to your voice on a telephone call, who would be the best person to assess it by the voice intonation and word usage, whether it is your voice on the other end or a lawyer or someone who knows you well? Of course, the answer is the person who knows you. And I submit that the Americans who know these terrorist personalities better than anyone else are the analysts who have spent endless days over the past 4 years studying them.

Again, do the analysts have *carte blanche* to eavesdrop on international communications coming into or out of the United States to known suspected terrorists? No. Their decisions are reviewed by supervisors, and the program is reviewed by the NSA inspector general, the NSA general counsel, the White House Counsel, and numerous lawyers at the Justice Department who are ready to blow the whistle if they see anybody stepping out of line. The Attorney General also reviews the program, and the President reauthorizes it every 45 days with the determination that al-Qaida continues to pose a significant threat.

Did the President keep the Congress in the dark? No, he didn’t. He briefed the Congress in a manner consistent with the practice of Presidents over the past century. He briefed leaders of both parties in the House and Senate and the two leaders on each Intelligence Committee, Democrats and Republicans.

These leaders were elected by their constituents to represent them in Congress and elected or appointed by their parties to serve in these incredibly important positions, so if any one of them ever questioned the legality of this program, they had the responsibility to bring the matter to the leadership, discuss it with the administration, and if necessary to cut off funding for the program through congressional authority.

The reason the President briefed the Congress was to afford them the opportunity to do exactly that. Did anyone do that? No. There was a carefully couched letter written that simply expressed concern. There was no followup, no action taken, and no mention of it at all during subsequent program briefings, according to public statements by those in attendance.

Some Members of Congress may feel slighted because they were not briefed on the program. I am on the Senate Intelligence Committee. Do I feel slighted? Absolutely not. To the contrary, I recognize that the President has to keep these very important programs top secret, which the President is doing to protect my family, my constituents, and myself. That is his responsibility.

The bottom line is that I believe congressional oversight is a vital aspect of ensuring the proper execution of matters involving national security, and I

believe there was adequate oversight. We are not talking about the U.S. Government listening to phone calls from me to you or from my constituents in Missouri to their relatives in or out of State. We are talking about our best intelligence officials having the ability to assess whether al-Qaida affiliates are communicating internationally where one end of the communication takes place inside the United States and the other end takes place outside the United States, maybe discussing another attack like 9/11 on America.

These are times to stand up in arms over our civil liberties. I will do so when I believe they are infringed upon. This is not one.

I thank my colleagues for their indulgence, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Senate will resume consideration of S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Mr. FRIST. With the authority of the majority of the Judiciary Committee, I withdraw the committee amendments, and I send a substitute amendment to the desk.

The PRESIDING OFFICER. The committee amendments are withdrawn.

AMENDMENT NO. 2746

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. SPECTER and Mr. LEAHY, proposes an amendment numbered 2746.

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. DURBIN. I ask for the yeas and nays on the substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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