

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, we will be in session at 8:45 in the morning, and we expect to proceed to a vote on the Kavanaugh nomination, to be followed by a vote on the Hayden nomination, and a cloture vote on the Kempthorne nomination. Thus, Senators can expect three votes very early tomorrow morning. Those votes should begin shortly after we convene at 8:45 a.m. I thank my colleagues for their work on the immigration bill that we passed earlier today.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator OBAMA for 10 minutes, Senator LEVIN for 30 minutes, and then Senator SCHUMER.

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

The Senator from Illinois.

NOMINATION OF GENERAL MICHAEL HAYDEN

Mr. OBAMA. Mr. President, let me start by saying that the nomination of General Hayden is a difficult one for me. I generally, as a rule, believe the President should be able to appoint members of his Cabinet, of his staff, to positions such as the one General Hayden is nominated for without undue obstruction from Congress.

General Hayden is extremely well qualified for this position. Having previously served as head of the National Security Agency and as Deputy Director of National Intelligence under John Negroponte, he has 30 years of experience in intelligence and national security matters. And he was nearly universally praised during his confirmation to Deputy DNI.

There are several members of the Intelligence Committee, including Senator LEVIN, who I hold in great esteem, who believe General Hayden has consistently displayed the sort of independence that would make him a fine CIA Director.

Unfortunately, General Hayden is being nominated under troubling circumstances, as the architect and chief defender of a program of wiretapping and collection of phone records outside of FISA oversight. This is a program that is still accountable to no one and no law.

Now, there is no one in Congress who does not want President Bush to have every tool at his disposal to prevent terrorist attacks—including the use of a surveillance program. Every single American—Democrat and Republican and Independent—who remembers the

images of falling towers and needless death would gladly support increased surveillance in order to prevent another attack.

But over the last 6 months, Americans have learned that the National Security Agency has been spying on Americans without judicial approval. We learned about this not from the administration, not from the regular workings of the Senate Intelligence Committee, but from the New York Times and USA Today. Every time a revelation came out, President Bush refused to answer questions from Congress.

This is part of a general stance by this administration that it can operate without restraint. President Bush is interpreting article II of the Constitution as giving him authority with no bounds. The Attorney General and a handful of scholars agree with this view, and I do not doubt the sincerity with which the President and his lawyers believe in their constitutional interpretation. However, the overwhelming weight of legal authority is against the President on this one. This is not how our Constitution is designed, to give the President unbounded authority without any checks or balances.

We do not expect the President to give the American people every detail about a classified surveillance program, but we do expect him to place such a program within the rule of law and to allow members of the other two coequal branches of Government—Congress and the judiciary—to have the ability to monitor and oversee such a program. Our Constitution and our right to privacy as Americans require as much.

Unfortunately, we were never given the chance to make that examination. Time and again, President Bush has refused to come clean to Congress. Why is it that 14 of 16 members of the Intelligence Committee were kept in the dark for 4½ years? The only reason that some Senators are now being briefed is because the story was made public in the newspapers. Without that information, it is impossible to make the decisions that allow us to balance the need to fight terrorism while still upholding the rule of law and privacy protections that make this country great.

Every democracy is tested when it is faced with a serious threat. As a nation, we have had to find the right balance between privacy and security, between executive authority to face threats and uncontrolled power. What protects us, and what distinguishes us, are the procedures we put in place to protect that balance; namely, judicial warrants and congressional review. These are not arbitrary ideas. They are not new ideas. These are the safeguards that make sure surveillance has not gone too far, that somebody is watching the watchers.

The exact details of these safeguards are not etched in stone. They can be re-

evaluated, and should be reevaluated, from time to time. The last time we had a major overhaul of the intelligence apparatus was 30 years ago in the aftermath of Watergate. After those dark days, the White House worked in a collaborative way with Congress through the Church Committee to study the issue, revise intelligence laws, and set up a system of checks and balances. It worked then, and it could work now. But, unfortunately, thus far, this administration has made no effort to reach out to Congress and tailor FISA to fit the program that has been put in place.

I have no doubt that General Hayden will be confirmed. But I am going to reluctantly vote against him to send a signal to this administration that even in these circumstances, even in these trying times, President Bush is not above the law. No President is above the law. I am voting against Mr. Hayden in the hope that he will be more humble before the great weight of responsibility that he has not only to protect our lives but to protect our democracy.

Americans fought a Revolution in part over the right to be free from unreasonable searches—to ensure that our Government could not come knocking in the middle of the night for no reason. We need to find a way forward to make sure we can stop terrorists while protecting the privacy and liberty of innocent Americans. We have to find a way to give the President the power he needs to protect us, while making sure he does not abuse that power. It is possible to do that. We have done it before. We could do it again.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be allowed to speak for 5 minutes before the Senator from Michigan speaks—he has graciously agreed to allow me to do that—and then he be given as much time as he needs.

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

Mr. SCHUMER. Thank you, Mr. President. I want to first, again, thank Senator CARL LEVIN, who I know has been graciously acceding all night. So he will be the last person to speak here, but I very much appreciate it. And I know all of my colleagues do.

NOMINATION OF BRETT KAVANAUGH

Mr. SCHUMER. Mr. President, I rise in opposition to the confirmation of Brett Kavanaugh to the DC Circuit Court of Appeals.

This court is too important, its jurisdiction too broad, and its decisions too final, for a lifetime seat to be entrusted to someone with such limited nonpartisan experience—even someone as bright as Mr. Kavanaugh clearly is.