

FOREIGN INTELLIGENCE  
SURVEILLANCE ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 18, 2007, the gentleman from Michigan (Mr. HOEKSTRA) is recognized for 60 minutes as the designee of the minority leader.

Mr. HOEKSTRA. Mr. Speaker, I rise tonight to talk about the Foreign Intelligence Surveillance Act. But before we talk about this very important piece of legislation which the Congress extended in the waning hours before we went on our August recess, I think it is important that we put this in context.

As Members of Congress and as my colleague here, Mrs. WILSON from New Mexico joins me, we serve on the Intelligence Committee. We recognize that the American people have laid upon us the responsibility to do everything in our power to assist and give the intelligence community the tools that it needs to prevent another terrorist attack against the United States.

And make no doubt about it, when you take a look at what bin Laden and others in al Qaeda have said, their intent is to attack us and to attack us again and again.

In 1998, bin Laden, in a series of interviews, was asked about his intentions. One of his quotes was: "To kill the Americans and their allies, civilians and military, is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all of the lands of Islam, defeated and unable to threaten any Muslim." That was February 28, 1998.

He was asked about the possibility of acquiring chemical or nuclear weapons. His response to those questions, again in 1998, was: "Acquiring weapons for the defense of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so."

He goes on in another quote, December 1998, to say: "If I seek to acquire such weapons, this is a religious duty. How we use them is up to us."

So we have known of the intentions of bin Laden, al Qaeda and the radical jihadists for a long period of time.

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We experienced many of their attacks during the 1990s, whether it was the first attack on the World Trade Center, the attacks against the USS Cole, the attacks against our compounds in Saudi Arabia, or our embassies in Africa. Of course, it all culminated on 9/11 with the attacks in New York, Washington, and the crash in Pennsylvania.

It is exactly these kinds of activities, these attacks against our homeland or against our interests in other parts of the world that we seek to prevent. We want to make sure that the intelligence community works with other intelligence communities around the

world, because we recognize that it's not only the United States and our homeland that is vulnerable; but we recognize with the attacks in London, the attacks in Spain, the killing of van Gogh in The Netherlands, the plots that were recently disrupted in Germany, in Denmark, the airline plot that was disrupted a year ago, we recognize that the statements that bin Laden made in 1998 are still the way that they think and what they want to do in 2007.

If you go back, if you go to his most recent statement, or one of his recent statements around the anniversary of 9/11, again here's what bin Laden says: However, there are two solutions for stopping it. The first is from our side, and there he's talking about the radical jihadists, and it is to continue to escalate, to continue to escalate the killing and fighting against you. This is our duty and our brothers are carrying it out, and I ask Allah to grant them resolve in victory.

The second solution is from your side, meaning our side. It has now become clear to you and the entire world the impotence of the democratic system and how it plays with the interest of the peoples and their blood, by sacrificing soldiers and populations to achieve the interests of the major corporations.

He wants to attack and sees it as his religious duty for radical jihadists to attack the West, to attack the United States and to escalate, and as I said earlier, his quote from 1998, he seeks access to chemical and nuclear weapons. He seeks access so that they can determine how to use it.

It's our responsibility, again, to give the intelligence community and give the military the tools necessary to prevent bin Laden, to prevent radical jihadists, to prevent al Qaeda from successfully attacking the United States.

I yield to my colleague from New Mexico to talk a little bit about FISA and perhaps also put some context in why this is so important and why the intelligence community is so important as we try to intercept the communications of foreign terrorists like al Qaeda, like bin Laden, like radical jihadists to prevent these kinds of terrorist attacks from occurring again in the future. I yield to my colleague.

Mrs. WILSON of New Mexico. Mr. Speaker, I thank my colleague from Michigan, and I think it's important tonight to take a moment to stop for a moment.

We've been talking all day and all afternoon about health care, and it is something we both care about, and jobs and education and trying to make our schools better and make sure we have roads that people can drive to work on and that we can build businesses and get products to market. And we're all focused on our lives and trying to raise our kids and do the best we can, but we want to talk about something tonight that's really a serious issue and is something I think worries all of us.

But sometimes we just want to set it aside, and we don't want to think about things that could happen to our own families, particularly if we don't feel personally like we can do something about it.

But as government leaders there are things that we can do about it. In fact, I think we have a duty. The first duty that we have as Federal officials is to make sure we protect this country.

This weekend, I have been a merit badge adviser for citizenship in the Nation in Troop 166 in Albuquerque, New Mexico, and had a group of boys that I was just teaching about the Constitution. We were talking about what are the functions of the Federal Government. And I believe that first and foremost our duty is to provide for the common defense.

And by that, we don't mean to clean up after the next disaster or support law enforcement if they prosecute people who conducted a terrorist attack. That's not enough, and that shouldn't be the goal of our government. It is to prevent a terrorist attack on this country. It's to prevent the next disaster. It's to prevent you waking up tomorrow morning, as you did 6 years ago, to watch aircraft fly into the sides of buildings.

I think in some ways maybe as a people our desire to move on with our lives has caused us to become a little complacent about the threats that we continue to face; and, in fact, I think our greatest accomplishment in the last 6 years has been what has not happened. We have not had another terrorist attack on our soil since that cool September morning, and it's not because they haven't tried.

A year ago in August, the British Government arrested 16 people who were within 48 hours of walking on to American airliners at Heathrow Airport and blowing them up simultaneously over the Atlantic. They planned to conceal explosives in things they could carry on in their luggage that looked like toothpaste or hair cream or shampoo, things you'd normally have. That's why all of us now have to put those things in those little quart-size containers so they can make sure there's not enough of anything there that can destroy an airliner, because the people in Heathrow were going to do that. They were going to make the bomb on board.

And if we underestimate the hatred and the cruelty of the people that were going to carry this out, think about this: one of them told the police at Heathrow or British police that he intended to bring his wife and his 6-month-old child with him so he wouldn't attract too much suspicion at the airport. Think about that for a second. These people hate Americans so much, they are so determined to inflict mass casualties on us, that they're willing to kill their own 6-month-old child to do it.

That's the threat that we continue to face; and on September 6, in this

month, in Germany, they arrested three people who had amassed enough explosive material to cause an explosion larger than the London subway bombs. Their likely targets were U.S. military bases in Germany.

Al Qaeda has been successful in the past in conducting a dramatic attack on the United States with mass casualties, huge economic dislocation; and they want to do it again. As Americans we have to accept, perhaps not accept but expect, that it is likely that they will succeed. They may fail in more of their attempts than they succeed at, but they only have to succeed once. America has to get it right 100 percent of the time. They can fail a bunch of times. They just have to get it right once.

There's no question in my mind anyway, and in fact bin Laden has said so, they are trying to acquire chemical, biological, and nuclear materials in order to make their attacks on the West even more dramatic, more devastating, more catastrophic. And there is no doubt in my mind that if they had those weapons they would use them.

Mr. HOEKSTRA. And this is not a partisan issue. The vice chairman of the 9/11 Commission, Lee Hamilton, a Democrat, talking about the objectives of al Qaeda: keep in mind there isn't any doubt here about the intentions of the terrorists. They've made it very clear. They want to get hold of a nuclear weapon. So this is not an idle threat. It's a very serious one. Lee Hamilton, a distinguished Member of this body, former Member of this body, vice chairman of the 9/11 Commission and a Democrat who did a wonderful job in leading the effort of that 9/11 Commission.

One of our colleagues here in the House talked about, again, their intentions and talked a little bit about what his reaction was to September 11. His quote is: It did answer the one question we didn't know about September 11: how far would they go. What September 11 said is they will go as far as they want to, that there's no red line, that there's no sense of decency, no innocence, that our world has changed in a very real way. Those are the words of our colleague from Connecticut, CHRIS SHAYS.

And then if we go back to Lee Hamilton: There is one threat because of the consequences that just rises above all others and that is the possibility of a terrorist getting hold of a nuclear weapon. They've made it very clear that they want to get a hold of a nuclear weapon. It's not an idle threat. It's a serious one. It's our responsibility not as Republicans, not as Democrats. This is an American issue. It's got to be an American priority. It is about preventing a nuclear terrorist attack.

And I yield to my colleague.

Mrs. WILSON of New Mexico. And one of the things that's so deeply troubling is they don't even need to get a nuclear weapon to sell terror across a

whole region. It is just nuclear material or a suitcase-sized device that could cause tremendous damage and mass casualties, huge economic dislocation; and that is their intent.

And sometimes you listen to these tapes from bin Laden, and I was sitting in my office reading over the most recent one that he sent out on 9/11 on the anniversary of the terrorist attacks. You read through this and go, man, this guy is nuts. It just sounds nuts, but he is serious, and he has shown the ability to carry out mass attacks in the United States and to inspire followers to try to do the same.

We have to take this threat seriously. So the question is, as a Nation, and this is one of the things I look forward to talking a little bit about with my colleague tonight, all right, if the first duty of the United States Government is to protect America, to protect Americans from all enemies foreign and domestic, so how do we do this? How can we not only be better today than we were 6 years ago on the morning of 9/11? That's not the challenge. How do we be better tomorrow than we are today?

I think the greatest accomplishment we've had over the last 6 years is that we've not had another terrorist attack on our soil; but just because we're one step ahead of them today is not good enough. We have to stay one step ahead of them. How do we make sure our government is doing everything it can to keep America safe?

Mr. HOEKSTRA. Reclaiming my time, and I think that's exactly right, that we take a look at the past but most importantly that we set the right objective, the right milestone looking forward; and I think as a Congress we ought to commit to the principle of prevention.

We need to commit to diplomacy and international cooperation, commit to homeland security. That includes our ports, our borders, not just our skies. Let's commit to a nonpartisan approach that applies the knowledge and wisdom of all of our elected officials. Let's learn from 9/11 the goal and the objective of making sure that we will prevent the next 9/11 from occurring.

I'll yield.

Mrs. WILSON of New Mexico. One of the things that is hard to understand is just how difficult prevention is when you're facing a terrorist threat compared to what we faced during the Cold War.

I served in the military during the Cold War. I served overseas in Europe for most of my time as an officer, graduated from the Air Force Academy and then did my service overseas.

In some ways I kind of look back on this and say as an intelligence problem, the Soviet Union was a very convenient enemy. They had their exercises the same time every year. They came out of the same barracks. They had tables of equipment and standard organizational charts. They used the same radio frequencies, the same rail

lines. They were a very predictable, potential enemy. Had they ever attacked us, they would have been very difficult to defeat, but we had no doubt about where they were and what they were doing pretty much, and we had huge systems set up for what we called indications and warning, ballistic missile early warning systems and systems that would launch our air interceptors if bombers came close to the United States. We were very good at looking at what the Soviet Union was doing to immediately protect America.

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Mrs. WILSON of New Mexico. The intelligence problem with terrorism is much different. It is more like a Where's Waldo problem. They are hiding among us. They don't have set tables of equipment, they don't have their own dedicated radio systems. They don't live in barracks. They don't have exercises that we can catch or plan for or listen to. But if we can find them, we can stop them. And that is why I believe that good intelligence is the first line of defense on the war on terror.

Mr. HOEKSTRA. Reclaiming my time for just a minute. When we take a look at the threat that we face today, it is a fight against radical jihadists. As my colleague pointed out, this is a fight that is very different than what we fought in the cold war. But even in the cold war we had a very specific strategy laid out and a very specific objective. Now, we need to transform our intelligence community to make sure that it is as good and as quick. Actually, it has to be better and it has to be quicker, than radical jihadists. These people who have perverted their Islamic faith to achieve what they hope will be ultimately a world in which their view of Islam dominates everyone, and you either bend to their will or you are killed. Remember, their objectives are very simple: They want to take down the government in Iraq; they then want to destabilize the region; eliminate the State of Israel; establish their caliphate, Northern Africa, Southern Europe, the Middle East, reaching down into Asia, and they want to put it under sharia law; and, at the same time, they want to continue on in the West.

Remember, that for radical jihadists, as they look at the rest of the world they say, you have three options: you have the option to convert to Islam; you have the option to pay the tax, the hadid, or you will be attacked and you will be killed. And that is how they view the rest of the world. And that is why, when you take a look at the statements of bin Laden, al Qaeda, and other radical jihadist groups, it is why they are so focused and why bin Laden, in one of his latest messages, said that they need to escalate their efforts against the West. They need to escalate the killing. And why, if by the grace of God he is given a nuclear weapon, he will decide whether they

will use it or how they will use it. It is why we need to use every tool at our disposal, tools that we refined and that we learned how to use during the cold war.

We developed a great capability against the former Soviet Union, against other enemies during the cold war, and we ought to now take our knowledge of how these tools worked, how we put them in practice, to make sure that we got the information that kept us safe, that prevented the Soviet Union from ever being able to attack us and attack us successfully. How did we develop those tools to make sure that we got the information that we needed at the same time that we protected American civil liberties, privacy and American rights and the American way of life?

We had a good balance. We got the intelligence that we needed. We kept America safe. We had a period of 50 years where we developed these tools. We developed them at their various intelligence organizations where we refined the practices in such a way that they are now positioned as we target them at different threats, and perhaps a more serious threat than what we have ever seen before, radical jihadists. These are the tools that will enable us to meet our commitment of saying we will do everything we can to prevent a successful attack against the homeland.

I will yield to my colleague.

Mrs. WILSON of New Mexico. My colleague from Michigan and I are talking tonight about something that is pretty important and something perhaps that gets not enough time or attention these days, and that is, how do we better prevent a successful attack on the United States, a successful terrorist attack in particular?

One of our strongest tools in this fight is good intelligence. Now, America spies on its enemies.

Mr. HOEKSTRA. Reclaiming my time. We steal secrets. Correct?

Mrs. WILSON of New Mexico. That is exactly what we do. Other governments try to hide what they are doing and terrorist organizations try to hide what they are doing, and we try to steal those secrets. That is what good intelligence does. We steal those secrets so that we can find out the plans and the capabilities and the intentions of groups that might want to kill us or attack us so that we can stop them.

Mr. HOEKSTRA. If the gentle lady will yield.

Mrs. WILSON of New Mexico. Sure.

Mr. HOEKSTRA. Just to talk a little bit about the difference between the threat that we face with radical jihadists versus what we faced in the former Soviet Union.

You know, when we developed some of these tools, they were targeted against a specific location, an embassy in Washington, D.C. or embassies overseas. We knew who these individuals were; we knew where their locations were. I mean, it is a nation-state. They

carried passports of certain countries. We knew where their embassies were and all of those kinds of things. They were relatively easy to identify, and the threat wasn't necessarily imminent.

What we now face with radical jihadists is we have got groups of people who, as we have seen in taking a look at their own words, have a passion for attacking the United States. And there are all different kinds of levels within this group. You have got the radical jihadists who are clearly linked to al Qaeda who take direction from al Qaeda. We call it the al Qaeda Central in the Pakistani-Afghan border region, the Fatah, the federally administered tribal areas. So you have got that network that is committed on a larger scale to attacking the West. And then you also have individual cells that might be franchises of radical jihadists who have aligned their goals and their missions with al Qaeda but may not be directly linked or taking their direction. And then that goes all the way over to the thing that we see with homegrown terrorists, people who may have become radicalized in a local mosque, or individuals that may actually become radicalized through the Internet.

So, the intelligence community needs to be focused on each of these types of threats in different ways, and it is a very difficult threat to get a handle on.

Mrs. WILSON of New Mexico. And probably one of the best ways that we have to get a handle, particularly on the terrorist threats, is what they call communications intelligence. We try to listen to people talking to each other. If you are trying to get people's plans and their intentions, understand more about them, you listen to them when they are talking to each other. That is what communications intelligence does. And we have been trying to collect communications intelligence since we started technical intelligence since the invention of the telegraph.

There were spies during the Civil War. We tried to read communications telegrams, intercept international telegrams during the First World War. So we have been trying to intercept communications to be able to tell what is the enemy going to do.

In New Mexico, probably the best example and the one that people know today is what we tried to do to protect our own communications. Particularly in the Pacific, in the Marine Corps, because we knew the Japanese were listening to our guys in the field talk to each other on the radios back and forth on where they were going and what hill they were going to, what their plans were. They used Navajo communicators because nobody in Japan could translate the Navajo code talkers. So we try to protect our own communications. We also try to intercept those of the enemy, both on the battlefield and more globally.

One of the challenges that we face and one of the things that the gen-

tleman from Michigan and I have been working on for close to 2 years is that our laws for communications, particularly for gathering foreign intelligence from within the United States, have become outdated. There is a law called the Foreign Intelligence Surveillance Act, or FISA, which was initially put in place in 1978. Before that, there was really no statute that dealt with any limitations at all on how you collect foreign intelligence, foreign communications intelligence if you are based here in the United States. That law was a response to excesses of the intelligence community in the 1950s and the 1960s, and Congress put some limitations in place. They said, we are going to have some procedures on how we gather foreign intelligence in the United States.

Now, think about this. 1978. 1978 was the year I graduated from high school. The telephone was on the wall in the kitchen and it had an extra long extension cord. The Internet was not a word in the dictionary. Cell phones were only on Star Trek, and the first personal computer, the first IBM personal computer was invented in 1982, so 4 years after the Foreign Intelligence Surveillance Act was put in place.

So the threat was different. We were looking at collecting foreign intelligence mostly on diplomats who were hiding as spies in embassies like the Soviet embassy here in Washington. So it was a more static enemy and more static communications.

In 1978, almost all long-haul communication went over the air; it was bounced off satellites. Almost all short-haul communication, local calls, were over a wire. When we wrote the law, or when the Congress wrote the law in 1978, it was technology specific. It said, you don't have to do anything special if you are just gathering signals over the air if it is a radio signal or satellite signal. You can tune it in on your tuner similar to your car radio. There is no special privacy protections there. But if you touch a wire, you have to do some special things. So it was technology specific.

Since 1978, we have gone through a revolution in communications technology so that now the situation is completely reversed. Now, almost all long-haul communications that would be of foreign intelligence interest are on a wire; and almost all, or a vast percentage, of short-haul communications are over the air. There are 230 million cell phone customers just in the United States.

This change in technology meant that the foreign intelligence surveillance law was getting more and more out of date, at the same time the threats to the United States were changing, requiring America to be more agile in its intelligence collection than we had to be when faced with the former Soviet Union and the Soviet threats.

I yield back to my colleague from Michigan.

Mr. HOEKSTRA. If you take a look at the information right almost immediately after 9/11, as the President convened the bipartisan leadership of the House and Senate, along with the bipartisan leadership of the Intelligence Committees, they recognized that the FISA law wasn't going to work against this new kind of threat. So almost immediately, as the President consulted with this bipartisan leadership of the Congress, they talked about exactly what is this threat that is out there. And as they took a look at the statements, as we did earlier tonight, of what bin Laden was saying, what others in the al Qaeda organization were saying about we want to attack the West, we may use a nuclear weapon, we made a portable nuclear weapon, or something like that, they were unsure of exactly what the threat would be and they were unsure of what the organizational capabilities of the radical jihadists and al Qaeda were. So they made a decision. They said, we are going to do everything, we are going to unleash the NSA onto radical jihadists and intercept their communications so that we can determine and get a better insight as to exactly what they are doing. Because the President and the leadership, bipartisan leadership, recognized that it was their responsibility, and they made a commitment back then that said, we are going to do everything in our power to make sure that we prevent another attack against the United States.

So they took the policies and the practices, and they made the decision to adapt it and extend it to recognize the changes that had taken place in technology. The current Speaker of the House, NANCY PELOSI, Speaker PELOSI, briefed four times in the first 12 months of this effort, talking about exactly how it was working, who was being targeted, the information that was being collected, the kind of impact that it was having on the threats against the United States and how American's civil liberties were being protected. And consistently over a period of 3 to 4 years, as Members of Congress, we are consulted and briefed on this program. They all walked out of those briefings saying, this is essential, this is a necessary tool to prevent another successful attack against the United States.

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That all changed when the New York Times published the existence of this program. It made America less safe. It tipped the radical jihadists off as to what some of our capabilities might be. They changed the way that they communicated. They changed the way that they operated.

But the end result is this is still an effective tool and a balanced tool that we now need to bring up to date through the legislative process. We did that in August.

I yield to my colleague.

Mrs. WILSON of New Mexico. And one of the ironies here is that because

of this law, if we're trying to listen to a foreigner in a foreign country, and we take tremendous risks with our members of the intelligence community and collect that communication overseas, maybe at high risk, may not work, and we collect that communication overseas, you don't have to ask permission from anybody in the American judiciary. You're out there trying to do your job as a military officer or a civilian in the intelligence agencies, trying to steal secrets, listen to communications overseas.

But America dominates telecommunications. It used to be that if somebody from northern Spain was calling southern Spain, the route of that communication went directly from northern Spain to southern Spain. Now, because of global telecommunications networks, that call will go on the least restrictive, fastest path. And these efficiencies are running all of the time, and that call from northern Spain to southern Spain could route all the way around the world, through the United States, through whatever the system figures is the best, fastest path. So we may have situations where somebody in a foreign country is talking to somebody else in the same foreign country, and the communication might be routed through the United States.

And yet just because you touch, when you touch a wire in the United States, under the old law, you had to get a warrant from a court, even if you're listening to a foreigner in a foreign country, even if there are U.S. military forces in that country hunting down insurgents who are trying to kill Americans. It just doesn't make any sense at all.

And as one military officer said recently in Iraq, this doesn't make any sense. If I see an insurgent on the telephone, I can shoot him, but I can't listen to him. That was the problem with the Foreign Intelligence Surveillance Act that we sought to get fixed.

Mr. HOEKSTRA. Reclaiming my time, as the gentleday recognizes, when Admiral McConnell, the Director of the National Intelligence Agency, the former head of NSA during the Clinton administration, I think, for three or four years testified in front of our committee that on occasion, in military activities involving the security and safety of American soldiers, that there were instances where there was a requirement, the safety and the security, not of the homeland, but of our troops who are in harm's way that it required the intelligence communities to go to a court in the United States to be able to listen to foreigners, terrorists, jihadists to get the information that was necessary to protect our troops. And in a time of war, as we talked about it on an Amber Alert, whether it's 12 hours, whether it's 24 hours or whatever, that's too long. And if you're a soldier under fire, or at risk, you want the intelligence community to have every tool to keep

you safe and from preventing the terrorists from being successful where you are because, in your environment for the terrorists to be successful, the terrorist objective is very simple. They are over there, you are over here. You're in a hostile environment. Their objective is to kill you. It becomes very, very real for them.

Mrs. WILSON of New Mexico. The other irony of this is that it depended on what technology they were using to talk to each other. If the terrorists or insurgents trying to kill your military unit in the mountains of Afghanistan were using push-to-talk radios, you could listen to them. But if they were on a wire line phone and you were listening, trying to tap into that communication, if it transited the United States, you needed a warrant from somebody in Washington, D.C. This makes no sense. And it was compromising our ability to protect this country, and it was putting our soldiers in danger overseas.

Now there's one provision I want to talk about because I think it is sometimes misrepresented and given as an excuse for not making any updates to the law, and that's the emergency provision in the Foreign Intelligence Surveillance Act. In the 1978 law, there was an emergency provision that said, in case of an emergency, the Attorney General can stand in the shoes of the FISA Court and can approve wiretapping in the United States, and then get 72 hours to go in front of the court and make their case and get the warrant. The problem is that the Attorney General really does stand in the shoes of the court.

The Director of National Intelligence has testified in open session that an average FISA warrant takes 200 man-hours to complete the packet, which is about two or three inches thick, to show probable cause in order to get a warrant. But it's worse than that. If we're talking in the United States, there are things that you can do. If I think that my colleague from Michigan is affiliated with a terrorist organization, the FBI can go out and talk to his neighbors. We can show what kind of affiliations he has with others, who he's communicating with us and so on.

But if you're on the Horn of Africa and you think a particular guy is affiliated with al Qaeda, it's not as though you have a lot of resources there to build your case for probable cause to satisfy some judge in Washington, D.C. And so the standard was not even being met in some cases where we had very good reason to believe that someone was affiliated with a terrorist organization. But everybody, all our analysts are back here, with the limited number of analysts we have with expertise in particular terrorist cells, trying to develop cases to convince judges to allow wiretaps on foreigners in foreign countries simply because the point of access to the communication was in the United States.

And the emergency provision really requires the Attorney General to stand in the shoes of the judge. He has to certify that the probable cause standard is met, that it's all the work to get to that probable cause standard that takes the time in the first place. And in the real world the time has taken too long in cases of real emergencies.

Mr. HOEKSTRA. Reclaiming my time, Mr. Baker, a former official at the Justice Department spent a considerable amount of time with the committee explaining to us exactly how the emergency process works. And so often people have focused on just the last part of the emergency process saying, call the Attorney General and he'll approve it. And that can take, that can be almost done at the speed of light. The Attorney General knows the call's coming, and it's kind of like you can get the approval very quickly. If that were the full extent of the emergency process, it might work. But Mr. Baker, in his testimony, says the emergency process, there are complications to it. I don't mean to sit here today, that you push a button, or it is not like, click, buy now on the Internet. It does take time.

He goes on, so why does it take time? So the intelligence community has to do their investigation, make a judgment about what targets they want to pursue, when they've done that; and when they've reached a point where they realize that they need to do collection immediately, they start talking to us. The "us" is the Justice Department.

Going on, he says, then we work through the legal facts, the legal issues, the factual issues, at the same time that they are dealing with the technical stuff that they need to do. Then, when all of that is ready and they tell us we are ready to go, and they say, yes, we resolved all legal issues, we have no problem; then they call the Attorney General. Calling the Attorney General and getting an answer back, it's not like super-time intensive unless a complicated case. Oftentimes we'll go down, prebrief the Attorney General what the case is all about, what the request will be, so that when the call comes, it can happen quickly.

But before that call is made, Mr. Baker goes through, we work through the legal facts, the legal issues, the factual issues at the same time that they are dealing with the technical stuff. Then, when that's all ready, and this is what my colleague from New Mexico is talking about, this is what the two inches of legal documents preparation that needs to be done before these folks in the Justice Department and in the intelligence community feel comfortable enough calling the Attorney General or one of his designees and saying, hey, it's time to go up on an emergency FISA.

Mrs. WILSON of New Mexico. And some of my colleagues have said, well, you know, there are some common-

sense cases, I mean, where you should just, you know, we're all reasonable people here. There's some commonsense situations where if you've got insurgents who've captured American soldiers, gee, start listening to their communications and we'll take care of the paper work later. That's a felony under the old foreign intelligence surveillance law. So who in a bureaucracy is willing to commit a felony on the hope that some judge will give them mercy? And I look at this and I think, this is nuts. It is the United States Congress' responsibility to make sure we have the laws in place so that the people who are trying to protect us can prevent the next terrorist attack. We shouldn't have lawyers in Washington going in front of judges or making late-night calls to the Attorney General with somebody overseas on the line trying to explain why Abu terrorist really is an agent of a foreign power.

Mr. HOEKSTRA. Reclaiming my time for just a minute, I think we need to go back to what you said where folks have said, well, you know, common sense just says that if there's an imminent threat, just call him. Don't worry about getting the stuff, and just go or just start listening. Like you said, that's a felony. And in the FISA law—

Mrs. WILSON of New Mexico. It used to be a felony until we fixed it.

Mr. HOEKSTRA. Until we fixed it. But in the FISA, you know, there was not a commonsense exception. I'm sure that there are lots of people in America today who have paid a penalty or whatever, believing that what they were doing was, you know, it's just common sense. And they went in front of a judge or maybe they got called in front of a committee in Congress and they found out that their definition of common sense happened to be very different than maybe what the Members of Congress would have defined common sense; and when they got in a court of law, they found out that there wasn't a common sense objective or a common sense exception and found that they'd violated the law.

I yield to my colleague.

Mrs. WILSON of New Mexico. There is no common sense exception. And there is no start listening now and then do all the paperwork later. The paperwork has to be done before the Attorney General says, okay, go ahead; put the alligator clips on the wire. Then all that's left is to get the judge's signature on all of that close-to-200 man-hours on average of paperwork.

So what we did, and what we, and I actually think this year the problem got worse. It got worse for a couple of reasons. One of them was that the Foreign Intelligence Surveillance Court kept looking at more and more issues, and they found that their court was becoming clogged with huge requests for foreigners, for people who are in foreign countries talking to other people in foreign countries. That is not what this law was for. This law needed to be

revised to take it back to its original intent, which was to protect the civil liberties of people in the United States. There are no fourth amendment protections under the Constitution of somebody who's not in the United States, not even related in any way to the United States. That's been long established in law and policy. So why are we wasting all this time with lawyers in Washington getting warrants for foreigners in foreign countries just because they happen to be talking on a wire that transits the United States?

Mr. HOEKSTRA. Just reclaiming my time, because, if we go back and we take a look at since this bill passed in 1978, 1979, FISA originally, I mean, at any time from 1978 to 2007 or before 2001, did we ever pick up American communications?

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Mrs. WILSON of New Mexico. Sure.

Mr. HOEKSTRA. And did the intelligence community develop an elaborate system of protections which we call minimization to protect the civil liberties of Americans if and when that occurred?

Mrs. WILSON of New Mexico. In fact, they are much more explicit than they are in criminal law. Think about this. If the FBI thinks that somebody is running a drug cartel and they have got a wiretap on that person, that person may be calling some of his criminal associates, but he also bumps into hundreds of people who are completely innocent. He calls his kid's teacher at school. He may call a cousin. He may talk to his barber. All those people are innocent. You don't have to go out and get warrants on the innocent people. So, yes, wiretaps bump into innocent people. Intelligence agencies bump into innocent Americans overseas.

I was stationed in Vienna briefly when I was an Air Force captain, and one of my jobs was doing negotiations with the Soviets at the time. We all knew who the guy in the Soviet delegation who was the KGB guy. He came to my apartment for a reception with all the diplomatic corps. And if he had happened to communicate back to Moscow and we were listening in on that conversation and he reported on Captain Wilson and what she was like and whether she would like champagne and strawberries or what she talked about and the American intelligence agencies bumped into that, they would have minimized my participation. If it had no intelligence value, it was completely destroyed. But if it had some, with respect to this KGB guy, they would minimize it. They would hide my identity in a way that they are required to do both by statute and by regulation. And that is a long-established practice in foreign intelligence.

Mr. HOEKSTRA. So even before the attacks of 2001 and the implementation of the terrorist surveillance program, for 21 years the intelligence community had developed a strict regimen of here is what we do if our surveillance

touches on an American to make sure that we protect the civil liberties, and that whole process for 23 years has been able to be reviewed by the Intelligence Committees of the House and the Senate, and those procedures from 2001 were extended and applied in the same way under the terrorist surveillance program.

Mrs. WILSON of New Mexico. One of the ironies here is that some of our colleagues on the Intelligence Committee who were worried about this new law said well, can you tell us how often you collect information that is to, from, or about Americans in the normal intelligence collection? Well, that would require the intelligence agencies to go back and mine their databases, much of which, frankly, is not even touched and actually probably violate the privacy of Americans in ways that they do not now do so in order to make a report to the Congress about collection of information that happened to be incidentally about Americans. If the North Koreans called the, pick one, Iranians and are talking about one of our colleagues in the Congress, that's a conversation about an American.

Mr. HOEKSTRA. Let me reclaim my time, Mr. Speaker, and yield to my colleague from Connecticut.

Mr. SHAYS. Mr. Speaker, I thank the gentleman for yielding.

I have been listening to this wonderful dialogue and realizing that I didn't want to interrupt the flow, but one thing I am just struck with is during the Cold War, we knew what our strategy was. It was to contain, to react, and it was mutually assured destruction. I don't think Americans have accepted what the new strategy has to be, and it has to be detect, prevent, preempt, and maybe act unilaterally. If a small group of dedicated scientists can create an altered biological agent that will wipe out humanity as we know it, even Jimmy Carter is not going to wait for permission from anyone.

And my point is, I'm struck by the fact that we make it easier, for instance, to go into a business or a library to catch a common criminal than we do that if we thought a terrorist was potentially using a library even within this country to communicate. And I am just wondering if, in fact, that is true or not. In other words, isn't it true that if I impanel a grand jury, as the attorney, the prosecutor, I can just literally go and demand information from a business or library and get it, but don't we require, when we go after someone who is a terrorist, to literally go to the FISA court, have to swear under oath that the information that we are seeking is important? And I guess my question relates to the fact that, isn't the key to our success with terrorism to break into the cell without the terrorists knowing that we have so that we can then break it down and know what they are going to do before they act?

Mr. HOEKSTRA. Let me reclaim my time for a second and answer a part of

that. My colleague from New Mexico touched it. When in a legal proceeding we get a warrant against an individual, or a criminal proceeding here in the United States, we target that individual and all of the calls or all of the communications of that individual then are monitored. Some of these calls may be the kind that the criminal system wanted to intercept, talking to another drug kingpin or whatever. But at the same time they may pick up a call from his mom, his kid's teacher, his dentist, a pizza guy, or whatever, and those are all listened to.

What some folks wanted to do on an alternative to this FISA legislation that we passed in August was a guarantee that when you targeted this foreign terrorist, somebody that we knew was a foreign terrorist and you have to guarantee that that person, whoever he is talking to, is also going to be a foreigner, you kind of sit there and say, wow, how do you do that? This cell phone has an area code of West Michigan; so if someone is calling me and has this number, they are probably calling West Michigan. No, I am in Washington, D.C. And for my BlackBerry, if they call my BlackBerry, it has got a West Michigan number on it, I could be in Europe. You don't know where they are going to call, but they said you have to guarantee that it's going to be foreign to foreign. You can't do that.

Mrs. WILSON of New Mexico. But if the gentleman will yield, it's even worse than that. If the limitation in law said you can only listen to foreign-to-foreign communications and I am trying to listen to your cell phone, how do I know who you are going to call next before you call me? So if you are a foreigner and you call another foreigner, that's fine. But if you call into the United States, I have committed a felony because you just called the United States.

You cannot possibly technically, with very rare exceptions, be able to screen out all communications that a foreign target might do calling into the United States before the communication takes place.

Mr. SHAYS. But the bottom line, if the gentleman will further yield, is that we literally have more protections to the potential terrorists than we do for someone involved in organized crime. We make it more difficult, not easier, to get that information. And yet the stakes are so high.

I was in your State at Los Alamos. Is that actually in your district or your neighbor's?

Mrs. WILSON of New Mexico. It's north.

Mr. SHAYS. What I was struck by was that they showed me a nuclear weapon that they made basically out of material they could have bought at Home Depot. The only thing they needed was weapons-grade material. So I am struck by the stakes being so high, and yet we want to make it harder, not easier, to get the terrorists than to get the organized crime.

Mrs. WILSON of New Mexico. But to me it's even worse than that that my colleague from Connecticut mentions, because somebody who is a criminal in the United States has rights under our Constitution; a terrorist outside of the United States does not. They have no protections under the first ten amendments, the Bill of Rights, and those things. We seek to steal secrets from people who are trying to kill us. We seek to listen to the radio communications of our enemies on the battlefield, and yet if those enemies are now using a phone, a communication on a wire to the United States, we are tying ourselves up in court in Washington, D.C. while they are killing our people. It sets a standard which is completely unreasonable.

Now, the Director of National Intelligence came to us in April of this year and said, I have a problem, a very serious problem. We are starting to go deaf because the Foreign Intelligence Surveillance Act has not been updated. He testified in open session last week about the Protect America Act, which must be made permanent. This fix to the Foreign Intelligence Surveillance Act we passed in August and the President has signed. And he said unless we make this law permanent, we will lose between one-half and two-thirds of our intelligence against the terrorist target. Let me say that again. Unless we make this act permanent, we will lose between one-half and two-thirds of our intelligence on the terrorist target.

Think about that. Are you willing to say two of three conversations from terrorists trying to kill us, that it is okay not to listen to them, it is okay that we go deaf with respect to protecting this country against terrorists? I am not. I believe it's possible to protect the civil liberties of Americans and focus our resources there with respect to the courts while listening to people who are reasonably believed to be in foreign countries who are not Americans, and that is what the Protect America Act did.

Mr. HOEKSTRA. Reclaiming my time, I would like to thank my colleagues for joining me this evening to talk about this very important issue. I thank the generosity of the Speaker.

#### THE UNITED STATES AIR FORCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FRANKS) is recognized for 5 minutes.

Mr. FRANKS of Arizona. Mr. Speaker, nearly 100 years ago the Department of War made a contract with two all-American men who would revolutionize human life as we know it. Those Ohio-born Wright brothers had a starry-eyed vision, tenacity, and brilliance that transformed their vision from theory to reality when they contracted with the United States Army to build a flying machine for the use of the United States Armed Forces.

Since then the United States Air Force has proven that mortals can