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Senate

The Senate met at 10 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of our fathers and mothers, we thank You for Your kindness and mercy. When we call You in our pain, You answer our prayers and remove our worries. You enable us to defeat our enemies and surround us with Your protection.

Today, let Your presence be felt in the Senate. Encourage our Senators to be models of the unity our country longs for. Remind them that ultimately they will be judged by their productivity, for Your Word states, ''By their fruits, You will know them.'' Help them to see that they need each other and that more will be accomplished by working together than by laboring at cross-purposes.

We pray in the name of Him whose life was the epitome of peace, poise, and power. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 17, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator

NOTICE

If the 110th Congress, 1st Session, adjourns sine die on or before December 21, 2007, a final issue of the *Congressional Record* for the 110th Congress, 1st Session, will be published on Friday, December 28, 2007, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 27. The final issue will be dated Friday, December 28, 2007, and will be delivered on Wednesday, January 2, 2008.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster/secretary/cong_record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Sec.Senate.gov''.

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By order of the Joint Committee on Printing.

ROBERT A. BRADY, *Chairman.*

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REED thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. I suggest the absence of quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. REID. Mr. President, the Senate will immediately resume the motion to proceed to S. 2248, the FISA legislation. This debate will extend until 12 noon. At noon, the Senate will vote—or thereabouts; there may be a couple minutes' slippage—on the motion to invoke cloture on the motion to proceed to the legislation. If cloture is invoked on the motion, the motion can then be adopted and the Senate can proceed to the bill and begin the amending process.

ORDER OF PROCEDURE

I have 10 minutes under my control. I have given 35 minutes to Senator DODD and 15 minutes to Senator FEINGOLD. It is my understanding that the distinguished Senator from Missouri will allow 10 minutes from the Republican leader's time to go to Senator ROCKEFELLER. I will give Senator ROCKEFELLER 10 minutes. That means he will have 20 minutes. That uses all our time.

I ask unanimous consent that be the case.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

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

FOREIGN INTELLIGENCE SURVEILLANCE ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2248, which the clerk will report.

The legislative clerk read as follows:

A motion to proceed to the bill (S. 2248) to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline provisions of that Act, and for other purposes.

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I will proceed on leader time so as not to encroach on the complicated agreement we reached on dividing time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, heading into our last work week, Republicans remain focused on the two principles that have guided us all year: protecting and defending the country from harm and protecting taxpayers' wallets. In these last few days, we will face some of the most crucial tests of the year on both fronts.

On security, Senate Republicans will amend the House version of the Appropriations bill to include funding for the troops in Iraq. Our men and women in uniform deserve our support wherever they are serving.

These funds are dangerously overdue. Delaying them further could put the Pentagon in serious straits and potentially jeopardize the universally acknowledged gains of the Petraeus plan.

We will also need to act wisely on reforming the FISA law that lets our intelligence agents track terrorists overseas. The success of this law over the last several years should be obvious to everyone.

The Intelligence Committee has produced a bill that would retain its core strengths; that has broad bipartisan support; and that, with slight modification, the President would sign into law. We need to act on this version of the revision without any political games.

On protecting taxpayers, we have two major pieces of legislation to finish: AMT, and a fiscally responsible omnibus bill.

A quarter of the way into the fiscal year, we have passed 1 of 12 Appropriations bills from last year.

We need to evaluate this omnibus and make sure it is written in a form the President will sign. That means funding for our forces in Afghanistan and Iraq, no excess spending, and no poison pills in the form of politically motivated policy riders.

Crucially, we also need to assure middle-class Americans we are not going to raise their taxes or further delay their tax refunds. The House needs to patch the AMT tax that now threatens 23 million taxpayers it was never meant to affect, and they need to do so without raising other taxes on these households.

We saw last week we could get legislation out the door when we work together. After Republican insistence, we passed an energy bill without raising taxes or utility rates. We will need to repeat that effort this week on several issues that lie at the very heart of our responsibilities to the American people.

We need to ensure the safety of our citizens. We need to keep them from being hit by new and unnecessary taxes.

We will need to do all this and act on several important executive nominations. New week. Much to do. America's watching. Let's get to work.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12 noon is equally divided and controlled between the two leaders or their designees, with the Senator from Connecticut, Mr. DODD, controlling 35 minutes and the Senator from Wisconsin, Mr. FEINGOLD, controlling 15 minutes of the opponents' time.

Who seeks recognition?

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I am not a part of the order as read by the Chair.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator has been allocated 20 minutes.

Mr. ROCKEFELLER. I thank the Chair.

Today, the Senate begins debate on S. 2248, the FISA Amendments Act of 2007. I am confident in saying without any risk of exaggeration that FISA modernization is one of the most important matters that will be considered by this Congress. It calls on us to get two essential matters entirely right—protection of our national security and the preservation of the privacy of our citizens.

I am proud of the substance of the bill the Intelligence Committee reported to the Senate in late October on a strong bipartisan vote of 13 to 2. I am equally proud of the process by which we achieved that result. The distinguished vice chairman of the committee, Senator CHRISTOPHER BOND, and I provided simple guidance for all who worked on this bill: First, work together, reach out; second, reach out particularly to the intelligence community and the Department of Justice for their expertise; third, keep in mind at all times the fundamental principles of protecting both the security and the privacy of all Americans; and finally, remain united in our effort to produce a bill that will meet the test of Congress and that will be signed into law by the President.

I am also grateful to all members of our committee for their contribution. As the Senate can see from our report, we debated and voted on highly important issues. We then sought as a committee to lay out for the entire Senate and the American public a description of our bill, the reasons for it, and, in additional views, further improvements that Members might seek. Our report is on each Member's desk. It is also on our committee's Web site and the Web site of the Library of Congress. I urge every Member of the Senate to read it, including a careful section-by-section explanation of the bill.

Of course, some sensitive intelligence matters cannot be described in a public report. That makes this something of an awkward procedure. If any Member has a question about a classified matter, please let the vice chairman or myself know, and we will do our best to

answer your questions in a classified setting.

I am also pleased that we will be sharing the management of this debate with Senator LEAHY and Senator SPECTER, the distinguished chairman and ranking member of the Judiciary Committee. From the very beginning of the Foreign Intelligence Surveillance Act of 1976, it has been a joint responsibility of the Intelligence Committee and the Judiciary Committee. It is, after all, a statute that concerns both intelligence collection and judicial proceedings. The Judiciary Committee considered the Intelligence Committee bill on sequential referral and has reported a proposed amendment to our bill.

In accordance with Senate rules, the Senate has before it only one bill; that is, the Intelligence Committee bill, S. 2248. The legislative recommendations proposed by the Judiciary Committee will be the first pending amendment. Some of the suggestions the Judiciary Committee made improve the quality of our product.

I commend Majority Leader REID for his decision to bring the FISA bill before the Senate under the regular order. While some advocated bringing before the Senate a hybrid bill which combined parts of both committees' work into one bill, the majority leader recognized that following regular order would not only allow for orderly consideration of important amendments but ultimately produce an even stronger bipartisan bill.

The products of the Intelligence and Judiciary Committees have a lot in common. Both fix a number of deficiencies in the flawed Protect America Act, hastily passed in August, as we all remember. Both strengthen our national security while protecting American civil liberties and privacy rights through enhanced and mandatory court review and approval of surveillance activities. Both would greatly improve oversight and accountability and ensure that the unchecked wiretapping policies of the Bush administration are a thing of the past.

Finally, each committee's work includes a sunset provision. Each strengthens the exclusivity of FISA—all concepts to be explained. Each establishes court approval of surveillance of Americans overseas—perhaps the most important of all the amendments. But there are differences in how each committee went about effecting these important protections.

Over the past month, we have worked very closely—our staffs—together to determine how best to reconcile the work of the two committees. It has been a bipartisan, straightforward process. I believe we have been able to work out a number of important amendments that take elements of the Judiciary Committee's work and add them to the underlying Intelligence Committee bill. There are some elements of the Judiciary Committee substitute amendment, however, that I do not support, but in all instances, I deeply appreciate the work of Senator LEAHY and our colleagues on the Judiciary Committee.

I commend in particular the extraordinary contribution during this process of four Senators serving on both committees: Senator FEINSTEIN, Senator HATCH, Senator FEINGOLD, and Senator WHITEHOUSE. They have worked tirelessly in their dual committee assignments to make this legislation as sound and balanced as possible.

Before I go into any details of the legislation and the expected debate over the next few days, I want to briefly remind my colleagues of the history of the debate and why FISA modernizing is so important.

The need to modernize FISA is explained by looking at the convergence of three elements in recent years. One is the rapid change of the world's communications systems, with new challenges and opportunities for signals intelligence arising from the fact that much of the foreign intelligence information now passes through or is stored in American electronic space. The second change is the significant increase in the number of intelligence targets outside of the United States, particularly as a result of international terrorism but also from weapons of mass destruction proliferation and other foreign threats. The final key judgment is that the 30-year-old FISA law has required a large number of individual applications to the FISA Court for the surveillance of foreign persons outside the United States, which was never intended—which was never intended—under the original legislation and does not involve the privacy of Americans.

So the question before our committee was not whether to modernize FISA but how to modernize FISA. We began this effort in March of this year, when the vice chairman, Senator BOND, and I notified the Attorney General of our intention to address FISA modernization. We also advised the Attorney General we would focus on whether legislation should be enacted to address the legal consequences of the President's warrantless surveillance program; namely, the many lawsuits resulting from the President's decision to act outside of the statutory requirements of FISA. In response, the Director of National Intelligence submitted a legislative proposal in April, which the Intelligence Committee began to consider at a public hearing in May.

These efforts to address FISA, however, were stalled for several months because of disagreements with the administration over access to key documents relating to the President's warrantless surveillance program. Yet, given the pressing need to fix FISA and allow for timely collection, we made a concerted effort over the summer to produce a bill that both the Congress and the administration could support. Unfortunately, it did not work. The result of that effort ended in the hastily passed and significantly flawed Protect America Act, which allowed for timely collection, yes, but did not include significant FISA Court safeguards.

In order to fix the Protect America Act and protect the privacy of Americans while strengthening the timely collection of intelligence, our Intelligence Committee spent several months this fall working on a new bill—the bill before us today—which accomplishes four principal reforms.

First, the special procedures provided by this bill apply only to persons outside the United States. If somebody is in the United States—an American is in the United States—all the traditional provisions and protections of FISA continue to apply. Everyone agrees this should be the case. The distinction of whether the target of surveillance is foreign or domestic makes it imperative that there is an adequate basis for determining whether somebody is reasonably believed to be outside the United States.

An important safeguard for Americans in the bill is the requirement for court-approved targeting procedures that are reasonably designed to accurately make the determination whether somebody is outside of the United States. The Protect America Act had included that requirement, and our bill does the same. But the Protect America Act had limited the authority of the FISA Court to review the reasonableness of those procedures by imposing a ''clearly erroneous standard'' on that review. Our bill strikes that limitation.

Second, our bill recognizes that minimization procedures have been an essential part of FISA from the beginning and will continue to play an essential role. These will be explained. These are procedures to ensure, among other things, that if Americans are overheard in conversations of a foreign target or there is discussion about Americans, that the identity of those Americans only be revealed within the U.S. Government if there is a good foreign intelligence purpose for so doing.

The Protect America Act had provided that the Attorney General approve minimization procedures, but it did not provide for court review of them. Our bill corrects that deficiency. The FISA Court will now have the responsibility to ensure that the procedures comply with the law.

Thirdly, our bill provides protections for U.S. citizens who are outside the United States. Under the Protect America Act, if a U.S. citizen sets foot outside the United States, he or she would be treated the same as any foreigner outside the United States.

The Intelligence Committee rejects the proposition that Americans lose rights—any kind of rights—because they travel or work elsewhere in the world. An essential part of the rights of an American is the determination by a judge whether there is probable cause to believe an American outside the United States is a lawful subject of surveillance by our own Government.

This is a concept which both committees—Democrats and Republicans alike—agreed to. Director of National Intelligence Mitch McConnell endorsed this change in law as well in testimony before the Intelligence Committee. There are, however, some differences in how to accomplish this. After considerable negotiation, I believe we have reached an agreement on a bipartisan amendment which would reconcile the approaches of the two committees and resolve the concerns of the administration over unintended consequences of the language reported out by both committees.

It is my hope, given the centrality of this reform to the work of both committees, that this bipartisan amendment is the first one before the Senate once cloture is invoked, if it is invoked and we are, therefore, then on the bill.

The fourth principal accomplishment of the Intelligence Committee bill is that it considerably enhances oversight of these protections by each branch of Government. This is achieved through a series of annual reports to Congress on the authorized collection, including instances of noncompliance; inspector general reviews by the Justice Department and the intelligence community; and FISA Court review and approval of acquisition and minimization procedures.

As we begin debate on these and other important issues, one of the concepts the Senate will hear a lot about is exclusivity. Exclusivity addresses the question of whether FISA and the laws that explicitly govern the domestic interception of communications for law enforcement purposes are the exclusive means by which the President may authorize the surveillance of Americans.

The President claims that he has the authority as Commander in Chief to approve surveillance even when he has no statutory authority to do so. No act of Congress by itself can finally resolve that debate between Presidential and congressional authority, but what Congress can make clear is which statutes authorize electronic surveillance.

The significance of this, in connection with our recent national experience, is that the Department of Justice has claimed that the authorization to use military force, passed in response to 9/11, somehow authorized the President to disregard FISA. Not only is this proposition dubious at best, in my opinion, it is also dangerous. In fact, the next time Congress is asked to act quickly in response to an attack, should there be one, it may pause and take time to consider whether its authorization to use force will have completely unintended consequences, such as authorizing the President unlimited power to violate acts of Congress.

To make sure authorizations for the use of military force do not again become an excuse to wipe away acts of Congress, both the Intelligence and Judiciary Committees sought to make even clearer than before which statutes constitute the exclusive means for conducting electronic surveillance.

I believe we have been able to work out language on an amendment that will reconcile the differences in these two bills.

The Intelligence Committee also establishes a 6-year sunset for the new authority it provides. A sunset is essential because we owe it to the American people to make sure we have gotten both parts of this system right—effective intelligence collection and the protection of the privacy of Americans—before settling on what should be permanent law. The Judiciary Committee amendment proposes a 4-year sunset. The House FISA bill provides for a 2-year sunset. The administration opposes any sunset. I will join with Chairman LEAHY in support of an amendment to incorporate the Judiciary Committee 4-year sunset into the underlying bill. Four years will ensure that a decision on permanency is made during the next Presidential term, not the one succeeding it.

Finally, title II of the committee's bipartisan bill addresses the question of protection for telecommunications companies that assisted the Government during the course of the President's warrantless surveillance program.

The Intelligence Committee carefully reviewed this matter of retroactive liability protection for companies prior to reporting out its bill. We received and reviewed the letters sent by the administration to the companies. These letters stated that the assistance of the companies was ''required,'' that the request was based on order of the President, and that the Attorney General had certified the form and legality of the order.

In the course of our investigation, the committee heard from the companies themselves as well as administration officials and many others and determined that the companies were not provided with any of the Justice Department legal opinions underlying the Attorney General's certifications they received ordering them to do something which has come to put them at risk.

In the end, a bipartisan consensus of the Intelligence Committee supported a narrowly drawn retroactive immunity provision. I want to stress the phrase ''narrowly drawn'' because what the committee approved was not—I repeat: was not—the broad and open-ended immunity sought by the administration.

The committee immunity provision applies only to companies that may have participated in the warrantless surveillance program from a specific period of time—from 9/11—until it was placed under FISA Court authorization in January 2007. Nothing in the bill provides immunity for Government officials for their actions—that is in the current law; it is not in the law that we have proposed—nor to companies outside the specified timeframe.

The 12 members of our committee who supported the provision did so for different reasons. Some Senators believed that the President acted within his constitutional responsibility and authority in establishing the surveillance program. Some other Senators, including me, believe the President trampled on our Constitution and our laws in unilaterally creating a warrantless surveillance program in 2001 and continuing it for years without seeking statutory authority to support it. But no matter what may be the views about the President's adherence to the law, our collective judgment on the Intelligence Committee is that the burden of the debate about the President's authority should not fall on telecommunications companies because they responded to the representations by Government officials at the highest levels that the program had been authorized by the President and determined to be lawful and received requests, compulsions to carry it out.

Companies participated at great risk of exposure and financial ruin for one reason, and one reason only: in order to help identify terrorists and prevent follow-on terrorist attacks. They should not be penalized for their willingness to heed the call during a time of national emergency.

I conclude by urging my colleagues to support cloture on the motion to proceed so that we can turn our attention to reconciling the fine work of the Intelligence and Judiciary committees and ultimately pass a FISA reform bill before adjournment.

Every one of us in the Senate and in Congress has a responsibility to correct the flaws in the Protect America Act and put our Nation on firmer footing in authorizing critical intelligence surveillance activities that are effective, while safeguarding the constitutional rights of Americans.

I thank the Acting President pro tempore, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, we yielded some time to the distinguished chairman from my side. How much time is remaining on this side?

The ACTING PRESIDENT pro tempore. There is 46 minutes remaining.

Mr. BOND. Forty-six. I thank the Chair.

Mr. President, first let me begin by thanking our majority leader, Senator REID, and our minority leader, Senator MCCONNELL, for bringing this very important bill to the Senate floor. It is critical that we discuss it, debate it, vote on it, and pass it. I express my great thanks to the chairman of the committee, Senator ROCKEFELLER, for his thoughtful discussion of the bill and his urgent request, in which I join, that all Members of this body move forward, adopt cloture, and adopt this bill. I wish to thank the chairman and all of the members of the committee and the staff of the Intelligence Committee who have labored long and hard

over many months, beginning well before the April request for legislation, to understand the program. I believe almost all of us have gone out to the NSA to see how the program works and to see what the protections are that are built in.

We have asked questions many times over. I think I have heard the same questions asked many times, and each time they are explained, I learn a little bit more. I think we have a good understanding—not a perfect understanding—of the process, but we do fully appreciate how important it is.

The bill before us today reflects a tremendous amount of work and compromise. The distinguished chairman and I and others have had disagreements. We view things a little bit differently. But I think it is significant for this body to realize we came together, the majority and the minority, in a 13-to-2 vote to present to this body a good compromise. Nobody is 100 percent happy with it. I don't expect them to be. But this is about as good as we can do in earthly matters, and particularly in congressional matters, if we can come that close, I think it is a good product.

Obviously, I have some disagreements with the chairman on the Protect America Act of which I was a principal sponsor. Because that bill was passed—had to be passed hurriedly before the August recess—what we were able to do in that bill was to restore the FISA process with a Foreign Intelligence Surveillance Court acting as it had originally been intended to act: to approve collections on U.S. persons in the United States. We changed the law so that technological changes would no longer bring within the FISA Court jurisdiction—or the FISA Court workload, more appropriately—collections on foreign targets where very often they were communicating with foreign recipients of messages. That was never the purpose and, as I indicated on the Senate floor, the FISA Court objected to the intelligence community having to be burdened by approving collections against targets where there was only minimal impact on any U.S. citizen.

The Protect America Act did fill in a critical national security intelligence gap. We all heard about it for a number of months. The intelligence community was shut out of the ability to go up on foreign targets which might have had vital information. Now, we have had time to consider all of the aspects of this collection program, and we have come up with a plan that will modernize the bill not only to make sure it keeps up with modern technology, but that it adds additional protections under the Foreign Intelligence Surveillance Act.

This morning, in a few minutes, we will hear from some of our colleagues about why they are not happy with the bill coming before us. I would venture that some individuals made the same speeches back in 1978 before the passage of that bill as well. But let me state the measure very plainly. The question is, Can the intelligence community of the United States obtain signals intelligence on foreign persons believed to be terrorists and reasonably believed to be outside of the United States, and do so in a manner that will protect us.

We know the electronic surveillance that was done under the President's program and under the current FISA Court jurisdiction has provided valuable intelligence which has helped to thwart attacks on the United States and, more importantly, as we heard from GEN Stan McCrystal, the commander of the Joint Special Operations Command, when the outmoded FISA law application shut down our ability to collect foreign intelligence, the people most greatly at risk were our men and women in the service overseas who did not have the benefit of collection of intelligence that might have foretold attacks on them. So our men and women volunteers defending America, protecting security in the world, were without the protection our technology enables us to collect at the same time they were fighting overseas, and this kind of information could have been a big help.

Well, the legislation we are looking at today contains far greater protections for U.S. persons than this body ever conceived of or was ever willing to grant Americans when it passed FISA 30 years ago. We have gone further than ever before in this bill in protecting Americans' privacy rights, and I am proud to be part of the process that is shoring up our national security while protecting to the greatest extent possible the liberties of all Americans.

The chairman is correct; we made many changes. We added many protections—important protections—that the Director of National Intelligence agreed were necessary additions to provide protections for Americans, U.S. persons that were not previously in the law. But I believe we can say today that Americans can feel safe and secure; that not only is their privacy being protected but their lives are being protected from terrorist attacks if we pass this bill which will modernize and extend FISA.

We have an urgent need to proceed to the Senate's consideration of the FISA amendments of 2007. Just last week, the Senate heard from our Director of National Intelligence, ADM Mike McConnell, and Attorney General Mike Mukasey in a closed briefing about the vital importance of this legislation to our intelligence collection efforts. This legislation will give the intelligence community the tools it needs today and in the future to protect our country.

The Protect America Act, passed in August by Congress, allowed the intelligence community temporarily to close critical intelligence gaps that were impeding the intelligence community's ability to protect our troops and to detect terrorist plots against our homeland. That temporary legislation expires in less than 2 months, and we must not let those dangerous gaps reopen. Two months may seem like a lot of time, but when it comes to this bill or when it comes to floor action in the Congress in both Houses and then a conference, it is a very short time period. Anybody who has watched this distinguished deliberative body and its counterpart on the other side work knows that 2 months sometimes can go in the flash of an eye.

The Senate will go out of session this week until mid-January, leaving only about 2 weeks for us to work out our differences with the House to get a bicameral bill sent to the President—one that he can sign into law before the current Protect America Act expires on February 5. I regret the majority did not let this important bill get to the floor sooner, particularly when we had the DNI on the Hill last March urging Congress to modernize FISA, giving us his template of legislation for FISA modernization in early April. But we are here in the last week before Christmas, and I hope we will not waste any time in passing the bill on the way to becoming law.

I sincerely hope we are not going to leave ourselves in the same uncomfortable position we found ourselves in this past August when the Senate's consideration of the Protect America Act had to be passed very quickly. Because the Senate waited from April until August to act, we found ourselves in a chaotic rush to pass a bill, and there were genuine fears in the intelligence community that a terrorist attack against the homeland might be in the works. If we had acted in a more timely manner, we would not have had some of the hard feelings we do today that resulted from that rushed process in August. That process produced a bill that continued FISA as it was originally intended but did not include the additional protections we have added today.

The good news, however, is that all of that is ancient history now because the product we have coming before us today is a thoroughly bipartisan Intelligence Committee bill that was put together in close coordination with the subject matter experts in the offices of both the Director of National Intelligence and the Department of Justice. I can assure my colleagues that all of the good ideas we have had—I have had and other members of the committee have had—when we have taken them to these experts, we have found out you have to do it this way if you want to accomplish the results you want. Some of the things we attempted to do had impossible burdens that we did not understand until we laid them out for these experts. They have told us how to accomplish our purposes and do so in a manner that would be effective in protecting the interests, and yet not destroy the ability of the intelligence community to collect the information we need.

So I implore my colleagues in the Senate to move as quickly as possible on this bill since its construction has been quite deliberate so that we do not repeat the history of the hasty manner in which we had to pass the Protect America Act. But that also means we must pass a good bill that will not get vetoed. We don't have time for that. It is always fun to posture and make political statements, but what is more important, we don't have to do that. The bill coming before the Senate out of the Intelligence Committee offers the legislation that gives the intelligence community the flexibility it needs to protect our troops and those of us in America, while protecting the privacy and civil liberties of Americans. With two small fixes that Chairman ROCKEFELLER and I intend to add to the bill in a manager's amendment, I have been assured that the President will sign that bill.

Now, let me comment a minute on exclusivity. We are working on an agreement on exclusivity that states to the greatest extent possible this will be the exclusive legislative means for the President to collect foreign intelligence. As one who used to be a student of the Constitution and still remembers a little bit of it, I have been impressed to read over the years how article 2 of the Constitution has been interpreted. Article 2 of the Constitution has been interpreted to say that the President—the President alone—has the power to collect foreign intelligence.

That power was used by Presidents going back in history. President Carter and President Clinton have used that bill to collect information. The FISA Court of Review has said, in the in re: Sealed Case, that the President's power to collect foreign intelligence remains. The President has put this bill under the FISA Court. So he has accepted the jurisdiction of the court in assessing the appropriateness of the collection means that have been requested.

We cannot erase by legislation a constitutional power. That constitutional power that the President has was fully laid out in the opinions and advice given by the Department of Justice and the intelligence community to any carriers that may have participated in the collection of information during the pendency of the President's terror surveillance program.

One other item I will comment on is the sunset. The provision we have in the bill—the 6-year sunset—is a compromise we reached. I don't believe a bill such as this should have a sunset. FISA did not have a sunset. It stayed in effect from 1978 until 2006. We should have reviewed it before. That is what we are in business for.

The Intelligence Committee of the Senate continues to hold hearings and have oversight of the intelligence community, and I would expect that if we see problems in the bill, we will move to correct them when we see them, not wait to a sunset. General Mukasey strongly opposed having any sunset on the bill, and I oppose lessening the sunset from 6 years. In fact, I prefer to see that sunset provision out of the bill.

To summarize, S. 2248, the bill passed out of the Intelligence Committee by a solid bipartisan vote of 13 to 2, on which I hope the Senate invokes cloture in a few minutes, will be the proper means of assuring the intelligence community can go forward with the vitally important collection of signals intelligence, while at the same time protecting the civil rights and privacy of all Americans and U.S. persons.

The bill is an extremely delicate arrangement of compromises that will fall apart if significant changes are made to it. By ''fall apart,'' what I really mean is it won't become law. We need a bill that Democrats and Republicans can support, that the DNI says will work for the intelligence community, and that the President will sign into law. That means the first principle we need to follow today is that the age-old advice that doctors and others use: ''do no harm,'' and not deconstruct what the Intelligence Committee has carefully crafted.

We don't have time for poison pill amendments or any other sort of political posturing. The Senate Intelligence Committee bill is a good one and needs to become law without further delay so our intelligence collectors and troops in harm's way will have the tools they need before the Protect America Act expires in February.

Mr. President, I urge my colleagues to vote with Chairman ROCKEFELLER and me to proceed to this bill.

I yield the floor and I reserve the remainder of my time.

What is the time remaining?

The PRESIDING OFFICER (Mr. CARDIN). There are 28 minutes.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, first, let me say to my two good friends, Senators ROCKEFELLER and BOND, I appreciate the job they do serving as chairman and ranking member of the Senate Intelligence Committee. I commend them for their efforts in this matter.

Having said that, I reluctantly rise to urge my colleagues to vote against cloture on S. 2248, the FISA Amendment Act, and I will explain why.

Opposing cloture is essential, because there is no unanimous consent agreement in place providing for the immediate adoption of the Judiciary Committee substitute amendment.

As you know, the Judiciary substitute amendment, among other things, strikes title II of the Intelligence Committee bill—the title which seeks to provide retroactive immunity to telecommunications companies who are alleged to have violated their customers' privacy rights by turning over information to the government without warrants.

I am fully aware that the majority leader has various parliamentary options at his disposal to move this legislation forward. It is his right to attempt to invoke cloture.

But I regret that decision, and I hope that my colleagues will join me in stopping this legislation.

Mr. President, why do I feel so strongly about this matter?

For the last 6 years, our largest telecommunications companies have been spying on their own American customers.

Secretly and without a warrant, they delivered to the Federal Government the private, domestic communications records of millions of Americans—records this administration has compiled into a database of enormous scale and scope.

That decision betrayed millions of customers' trust. It was unwarranted—literally.

But was it illegal?

That, Mr. President, I don't know. And if this bill passes in its current form, we will never know. The President's favored corporations will be immune.

Their arguments will never be heard in a court of law. The details of their actions will stay hidden. The truth behind this unprecedented domestic spying will never see light. And the book on our Government's actions will be closed, and sealed, and locked, and handed over to the safekeeping of those few whom George Bush trusts to keep a secret.

The bill that the majority leader will seek to make the pending business of the Senate later today—the FISA Amendments Act of 2007—has a long and twisted history behind it. Its origins lie in President Bush's years of warrantless spying on Americans.

That abuse of power was exposed by the press in late 2005. The New York Times revealed that:

> Under a presidential order signed in 2002, the [National Security Agency] has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years.

In fact, we later learned that the President's warrantless spying was authorized as early as 2001.

Disgraced former Attorney General Alberto Gonzales, in a 2006 white paper, attempted to justify that spying; his argument rested on the specious claim that, in authorizing the President to go to war in Afghanistan, Congress had also somehow authorized him to listen in on phone calls in America.

But many of those who voted on the original authorization of force found this claim to new executive powers to be a laughable invention. Here's what former Majority Leader Tom Daschle wrote:

> As Senate majority leader . . . I helped negotiate that law with the White House counsel's office over two harried days. I can state categorically that the subject of warrantless wiretaps of American citizens never came up . . . I am also confident that the 98 senators who voted in favor of authorization of force against al-Qaida did not believe that they

were also voting for warrantless domestic surveillance.

Such claims to expanded executive power based on the authorization for military force have since been struck down by the courts.

In recent months, the administration has changed its argument, now grounding its warrantless surveillance power in the extremely nebulous ''authority of the President to defend the country'' that they find in the Constitution.

Of course, that begs the question: Exactly what doesn't fit under ''defending the country''? If we take the President at his word, we would concede to him nearly unlimited power, as long as he finds a lawyer willing to stuff his actions into that boundless category.

Rather than concede such power, Congress has worked to bring the President's surveillance program back where it belongs—under the rule of law.

At the same time, we have worked to modernize FISA and ease restrictions on terrorist surveillance. The Protect America Act, a bill attempting to respond to that two-pronged challenge, passed in August; but it is set to expire in February.

The bill now before us would create a legal regime for surveillance under reworked and more reasonable rules. But crucially, President Bush has demanded that this bill include full retroactive immunity for corporations complicit in domestic spying. In a speech on September 19, he stated that ''it's particularly important for Congress to provide meaningful liability protection to those companies.''

In October, he stiffened his demand, vowing to veto any bill that did not shield the telecom corporations. And this month, he resorted to shameful, misleading scare tactics, accusing Congress of failing ''to keep the American people safe.''

That month, the FISA Amendments Act came before the Senate Select Committee on Intelligence. Per the President's demand, it included full retroactive immunity for the telecom corporations. Senator NELSON introduced an amendment to strip that immunity, and instead allow the matter to be settled in the courts. It failed by a vote of 3 to 12.

But as it passed out of the Intelligence Committee, by a vote of 13 to 2, the bill still put corporations literally above the law and ensured that the extent of the President's invasions of privacy would remain a secret. I found retroactive immunity far beyond the pale, and I made my objections strongly and publicly.

But the bill also had to pass through the Judiciary Committee. There, Chairman PAT LEAHY succeeded in reporting out a bill without the egregious immunity provision. Over the years, PAT LEAHY has cemented his reputation as a champion of the rule of law; and I believe the stand he took last month will be honored for a long time to come.

However, I am still concerned that when Senator FEINGOLD proposed an amendment to strip immunity for good, it failed by a vote of 7 to 12.

So here we are—facing a final decision on whether the telecommunications companies will get off the hook for good. The President's allies are as intent as they ever were on making that happen. They want immunity back in this bill at all costs.

But what they are truly offering is secrecy in place of openness. Fiat in place of law.

And in place of the forthright argument and judicial deliberation that ought to be this country's pride, two simple words from our President's mouth: ''Trust me.''

I cannot speak for my colleagues—but I would never take that offer, not even in the best of times, not even from a perfect President. I would never take that offer because our Constitution tells us that the President's word is subject to the oversight of the Congress and the deliberation of the courts; and because I took an oath to defend the Constitution; and because I stand by my oath.

''Trust me.'' It is the offer to hide ourselves in the waiting arms of the rule of men. And in these threatened times, that offer has never seemed more seductive. The rule of law has rarely been so fragile.

''It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger . . . from abroad.'' James Madison, the father of our Constitution, made that prediction more than two centuries ago. With the passage of this bill, his words would be one step closer to coming true. So it has never been more essential that we lend our voices to the law, and speak on its behalf.

On its behalf, we say to President Bush that a Nation of truly free men and women would never take ''trust me'' for an answer, not even from a perfect President—and certainly not from this one.

In these times—under a President who seems every more day intent on acting as if he is the law, who grants himself the right to ignore legislation, who claims the power to spy without a warrant, to imprison without a hearing, to torture without a scruple—in these times, I would be a fool to take his offer.

But ''trust me,'' says President Bush. He means it literally. When he first asked Congress to make the telecoms' actions legally disappear, Congress had a reasonable question for him: Can we at least know exactly what we'd be immunizing? Can you at least tell us what we'd be cleaning up?

And the President refused to answer. Only he, his close advisors, and a handful of telecom executives know all of the facts. Congress is only asked to give token oversight. But if we are to do our constitutionally mandated job, we need more than token oversight; we need full hearings on the terrorist surveillance program before the Intelligence and Judiciary Committees.

Without that, we remain in the dark—and in the dark we're expected to grant the President's wish, because he knows best.

Does that sound familiar to any of my colleagues?

In 2002, we took the President's word and voted to go to war on faulty intelligence. What if we took his word again—and found, next year or the year after, that we had blindly legalized grave crimes?

If this disastrous war has taught us anything, it is that the Senate must never again stack such a momentous decision on such a weak foundation of fact. The decision we're asked to make today is not, of course, as immense. But between fact and decision, the disproportion is just as huge.

So I rise in determined opposition to this unprecedented immunity and all that it represents. I have served in this body for more than a quarter century. I have spoken from this desk hundreds and hundreds of times. I have rarely come to the floor with such anger.

But since I came to Washington, I have seen six Presidents sit in the White House—and I have never seen a contempt for the rule of law equal to this. Today, I have reached a breaking point. Today my disgust has found its limit.

I don't expect every one of my colleagues to share that disgust, or that limit. I wish they did—but had that been the case, we would never have come to this point.

I only ask them to believe me when I say if I did not speak today, my conscience would not let me rest.

The right to conscience is one of the Senate's most treasured allowances. It is perhaps this body's defining feature. The President has his dominating bully pulpit. Justice Robert Jackson famously wrote that ''in drama, magnitude and finality [the President's] decisions so far overshadow any others that almost alone he fills the public eye and ear. No other personality in public life can begin to compete with him in access to the public mind.''

But in this Chamber, a minority—even an impassioned minority of one—has the right to stand against all the combined weight and machinery of government and plead: ''Stop!'' Or at least: ''Wait.'' A minority can't stand forever, as surely as I can't speak forever. Ultimately, a minority has only one recourse—to make itself a majority. And I have faith that when the American people understand the full extent of this President's contempt for the law, they will share my outrage. This is a trusting and patient nation—and with more than two centuries of democratic tradition, rightly so. But that trust is not infinite; that patience is not endless; and after 7 years of this President, they are worn down to the nub.

If I didn't believe that, I wouldn't be standing here today. If the rule of law

were not my ruling passion, I wouldn't be standing here today. But I do, and it is.

''Law'' is a word we barely hear from the President and his allies. They offer neither a deliberation about America's difficult choices in the age of terrorism, nor a shared attempt to set for our times the excruciating balance between security and liberty.

They merely promise a false debate on a false choice: security or liberty, but never, ever both.

It speaks volumes about the President's estimation of the American people that he expects them to accept that choice. I think differently. I think that America's founding truth is unambiguous: security and liberty, one and inseparable, and never one without the other.

Secure in that truth, I offer a challenge to the President's allies: You want to put the President's favored corporations above the law. Could you please explain how your immunity makes any one of us any safer by an iota?

If security were truly the issue, this debate wouldn't be happening. An excellent balance between security and liberty has already been struck by FISA, a balance that has stood for three decades. In fact, FISA was written just to prevent a situation like ours from occurring: to protect Americans without countenancing executive lawbreaking.

In the wake of the Watergate scandal, the U.S. Senate convened the Church Committee, a panel of distinguished senators determined to shine light on executive abuses of power. The facts it uncovered were shocking:

Army spying on the civilian population; Federal dossiers on citizens' political activities; a CIA and FBI program that had opened hundreds of thousands of Americans' letters without warning or warrant.

The collective force of these revelations was undeniable: In their oversight duties, Congress and the courts had failed; they had unquestioningly accepted the executive's ''trust me''; and as a result, Americans had sustained a severe blow to their fourth amendment rights ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.''

The Senate could have panicked; it could have ended or drastically curtailed those searches altogether. But in its wisdom, the Senate understood that protecting the American people was not the problem; the problem was simply the Nixonian attitude that ''if the President does it, it's not illegal.''

The solution was to bring the executive's efforts to protect America under the watchful eye of Congress and the courts—to restore checks and balances to surveillance, and to give it the legitimacy it demands and deserves. America would not be America if such power remained concentrated in the hands of one man, or one branch of Government.

The Church Committee's final report, ''Intelligence Activities and the Rights of Americans,'' put the case eloquently:

> The critical question before the Committee was to determine how the fundamental liberties of the people can be maintained in the course of the Government's effort to protect their security. The delicate balance between these basic goals of our system of government is often difficult to strike, but it can, and must, be achieved.
>
> We reject the view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom. . . .
>
> We have seen segments of our Government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes.
>
> We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as ''vacuum cleaners,'' sweeping in information about lawful activities of American citizens.

The Senators of the Church Commission concluded:

> Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.

What a strange echo we hear in those words. They could have been written yesterday. Three decades ago, our predecessors in this Chamber understood that when domestic spying goes too far, it threatens to kill just what it promises to protect—an America secure in its liberty. That lesson was crystal clear 30 years ago. Why is it so clouded now?

And before we entertain the argument that ''everything has changed'' since those words were written, remember: The men who wrote them had witnessed world war and Cold War, had seen Nazi and Soviet spying, and were living every day under the cloud of nuclear holocaust. How short some memories are.

The threats have multiplied and grown in complexity, but the lesson has been immutable: Warrantless spying threatens to undermine our democratic society, unless legislation brings it under control. In other words, the power to invade privacy must be used sparingly, guarded jealously, and shared equally between the branches of Government.

Or the case can be made pragmatically. As my friend Harold Koh, the dean of Yale Law School, recently argued:

> The engagement of all three branches tends to yield not just more thoughtful law, but a more broadly supported public policy.

Three decades ago, that broadly supported public policy—a prime outcome of the Church Committee—was the Foreign Intelligence Surveillance Act, or FISA. FISA confirmed the President's power to conduct surveillance of international conversations involving anyone in the United States, provided that the Federal FISA court issued a warrant—ensuring that wiretapping was aimed at safeguarding our security, and nothing else. To further protect intelligence gathering, that court was to work in secret.

Ironically, none other than the President's own Director of National Intelligence, Mike McConnell, explained the rationale in an interview this summer: The United States ''did not want to allow [the intelligence community] to conduct . . . electronic surveillance of Americans for foreign intelligence unless you had a warrant, so that was required.''

As originally written in 1978, and as amended nine times since, FISA has accomplished its mission; it has been a valuable tool for conducting surveillance of terrorists and those who would harm America. And every time Presidents have come to Congress openly to ask for more leeway under FISA, Congress has worked with them; Congress has compromised; and together, Congress and the President have struck a balance that safeguards America while doing its utmost to protect privacy.

This summer, Congress made a technical correction to FISA, enabling the President to wiretap, without a warrant, conversations between two foreign targets, even if those conversations are routed through American computers. Personally, I felt that this summer's legislation went too far, and I opposed it. But the point is that Congress once again proved its willingness to work with the President on FISA. Isn't that enough?

Just this October and November, as we have seen, the Senate Intelligence and Judiciary Committees worked with the President to further refine FISA and ensure that, in a true emergency, the FISA court would do nothing to slow down intelligence gathering. Isn't that enough?

And as for the FISA court, it has approved the President's wiretapping requests with impeccable consistency.

Between 1978 and 2004, according to the Washington Post, the FISA court approved 18,748 warrants and rejected five. The FISA court has sided with the executive 99.9 percent of the time. Isn't that enough?

Is anything lacking? Isn't the framework already in place? Isn't all of this enough to keep us safe?

We all know the President's answer. Given this complex, fine-tuned machinery, crafted over three decades by all three branches, what did he do? He ignored it.

Given a system primed to bless nearly any eavesdropping he could conceive—he conducted his own, illegally.

If the shock of that decision has yet to sink in, think of it this way: President Bush ignored not just a Federal court, but a secret Federal court; not just a secret Federal court, but a secret Federal court prepared to sign off on his actions 99.9 percent of the time. A

more compliant court has never been conceived. And still that wasn't good enough for our President.

So I will ask the Senate candidly, and candidly it already knows the answer: Is this about our security or is it about his power?

I ask that question not to change the subject, but because it is the key to understanding why this administration is pushing so hard for telecom immunity—that is, for secrecy. Richard Nixon, the same man who declared that ''if the president does it, it's not illegal,'' raised secrecy to an art form—because he understood that the surest way to amass power is to conceal its true extent.

Secrecy can spring from the best motives; but as it grows it begins to exist only for itself, only for its own sake, only to cover its own abuses.

The Senators of the Church Committee expressed succinctly the deep flaw in that form of Government: ''Abuse thrives on secrecy.''

Today, we have seen the executive branch pass to a new master of secrecy. Vice President CHENEY practices a secrecy so baroque that it could, in a less threatened time, be an object for laughter, instead of fear.

His unclassified papers? Stamped ''treat as TSSCI,'' one of the highest levels of state secret. The list of papers he has declassified? Classified. The members of his energy task force? None of your business. His location? Undisclosed. The names of his staff? Confidential. And tellingly, of course, the visitor log for his office? Shredded by the Secret Service.

When secrecy becomes this divorced from practicality, we are left with only one conclusion: For this executive branch, secrecy is power.

Of course, I don't mean any offense against our Vice President—as he reminds us, he is not part of the executive branch.

We see a pattern of secrecy stretching back to the first months of this administration. Its push for immunity is no different—secrecy is at its center.

And tellingly, the administration's original immunity proposal protected not just the telecoms, but everyone involved in the wiretapping program. In their original proposal, that is, they wanted to immunize themselves.

Think about that. It speaks to their fear and, perhaps, their guilt: their guilt that they had broken the law, and their fear that in the years to come, they would be found liable or convicted. They knew better than anyone else what they had done—they must have had good reason to be afraid!

Thankfully, executive immunity is not part of the bill before us. I am grateful for that. But the origin of immunity tells us a great deal about what's at stake here: This is, and always has been, a self-preservation bill.

Otherwise, why not have the trial and get it over with? If the President's allies believe what they say, the corporations would win in a walk.

After all, look at things from their perspective: In their telling, when our biggest telecom corporations helped the President spy without a warrant, they were doing their patriotic duty. When they listened to the executive branch and turned over private information, they were doing their patriotic duty.

When one company gave the NSA a secret eavesdropping room at its own corporate headquarters, it was simply doing its patriotic duty. The President asked, the telecoms answered.

Shouldn't that be an easy case to prove, Mr. President? The corporations only need to show a judge the authority and the assurances they were given, and they will be in and out of court in 5 minutes. If the telecoms are as defensible as the President says, why doesn't the President let them defend themselves? If the case is so easy to make, why doesn't he let them make it? Why is he standing in the way?

Our Federal court system has dealt for decades with the most delicate national security matters, building up expertise in protecting classified information behind closed doors—ex parte, in camera. We can expect no less in these cases. If we're worried about national security being threatened as a result, we can simply get the principals a security clearance.

No intelligence sources need be compromised. No state secrets need be exposed. And we can say so with increasing confidence, because after the extensive litigation that has already taken place at both the district court and circuit court level, no sensitive information has leaked out.

In fact, Federal District Court Judge Vaughn Walker, a Republican appointee, has already ruled that the issue can go to trial without putting state secrets in jeopardy. He reasonably pointed out that the existence of the President's surveillance program is hardly a secret at all: The government has already disclosed the general contours of the ''terrorist surveillance program,'' which requires the assistance of a telecommunications provider.

George Bush wouldn't be the first president to hide righteously behind the state secrets privilege. In fact, the privilege was tainted at its birth by a President of my own party, Harry Truman. In 1952, he successfully invoked the new privilege to prevent public exposure of a report on a plane crash that killed three Air Force contractors.

When the report was finally declassified—some 50 years later, decades after anyone in the Truman administration was within its reach—it contained no state secrets at all. Only facts about repeated maintenance failures that would have seriously embarrassed some important people. And so the state secrets privilege began its career not to protect our nation—but to protect the powerful.

In his opinion, Judge Walker argued that, even when it is reasonably grounded:

> The state secrets privilege [still] has its limits. While the court recognizes and respects the executive's constitutional duty to protect the nation from threats, the court also takes seriously its constitutional duty to adjudicate the disputes that come before it. To defer to a blanket assertion of secrecy here would be to abdicate that duty, particularly because the very subject matter of this litigation has been so publicly aired.
>
> The compromise between liberty and security remains a difficult one. But dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security.

And that ought to be the epitaph for this Presidency: ''sacrificing liberty for no apparent enhancement of security.'' Worse than selling our soul—giving it away for free!

The President is equally wrong to claim that failing to grant this retroactive immunity will make the telecoms less likely to cooperate with surveillance in the future.

The truth is that, since the 1970s, FISA has compelled telecommunications companies to cooperate with surveillance, when it is warranted—and what's more, it immunizes them. It is done that for more than 25 years.

So cooperation in warranted wiretapping is not at stake today. Collusion in warrantless wiretapping is—and the warrant makes all the difference, because it is precisely the court's blessing that brings Presidential power under the rule of law.

In sum, we know that giving the telecoms their day in court—giving the American people their day in court—would not jeopardize an ounce of our security. And it could only expose one secret: the extent of our president's lawbreaking, and the extent of his corporations' complicity. That, our President will go to the mat to defend. That, he will keep from the light of a courtroom at all costs. That, his supporters would amend the law to protect.

And that is the choice at stake today: Will George Bush's secrets die with this Presidency? Or will they be open to the generations to come, to our successors in this Chamber, so that they can prepare themselves to defend against future outrages of power and usurpations of law from future Presidents, of either party?

I am here because I will not see those secrets go quietly into the good night with Donald Rumsfeld and Alberto Gonzales and DICK CHENEY and George Bush. I am here because the truth is not their private property—it belongs to every one of us, and it demands to be heard.

''State secrets,'' ''patriotic duty''—those, as weak as they are, are the arguments the president's allies use when they're feeling high-minded! When their thoughts turn baser, they make their arguments in dollar signs.

Here's how Mike McConnell put it:

> If you play out the suits at the value they're claimed, it would bankrupt these companies. So . . . we have to provide liability protection to these private sector entities.

Mike McConnell is quickly becoming an accidental truth-teller! Notice how

the President's own Director of National Intelligence concedes that if the cases went to trial, the telecoms would lose. I don't know if that's true, Mr. President—but we can thank Admiral McConnell for telling us how he really feels.

Of course, it is an exaggeration to claim that these companies would surely go bankrupt, even if they did lose.

We are talking about some of the wealthiest, most successful companies in America. Let me quote an article from Dow Jones MarketWatch. The date is October 23, 2007. The headline reads: ''AT&T's third-quarter profit rises 41.5 percent.''

AT&T Inc. on Tuesday said third-quarter earnings rose 41.5 percent, boosted by the acquisition of BellSouth and the addition of 2 million net wireless customers . . . Net income totaled $3.06 billion . . . compared with $2.17 billion . . . a year ago.

Note that AT&T has posted these record profits at a time of very public litigation.

A company with more than $3 billion in profits one quarter—only the most exorbitant and unlikely judgment could completely wipe it out. To assume that the telecoms would lose, and that their judges would then hand down such backbreaking penalties, is already to take several leaps.

The point, after all, has never been to financially cripple our telecommunications industry. The point is to bring checks and balances back to domestic spying. Setting that precedent would hardly require a crippling judgment.

It is much more troubling, though, that the Director of National Intelligence even feels the need to pronounce on ''liability protection for private sector entities.'' Since when were our spies in the business of economics? Since when did they put protecting AT&T or Verizon ahead of protecting the American people? Since when did the amount a defendant stands to lose have any bearing on whether a suit should go forward? I learned in law school that guilty was guilty—no matter how rich or how poor.

Lean on this logic, and you'll sink to its venal core: Certain corporations are too rich to be sued. Forget what they owe; forget what's just; forget judges setting the penalty. If there's even a chance of the judgment being high, throw the suit out—it endangers the Republic!

This administration has equated corporations' bottom lines with our Nation's security. Follow that reasoning honestly to its end, and you come to the conclusion: The larger the corporation, the more lawless it can be. If we accept Mr. McConnell's premises, we could conceive of a corporation so wealthy, so integral to our economy, that its riches place it outside the law altogether. And if the administration's thinking even admits that possibility, we know instinctively how flawed it is.

The truth is exactly the opposite: The larger the corporation, the greater the potential for abuse, and the more carefully it must be watched. Not that success should make a company suspect; companies grow large, and essential to our economy, because they are excellent at what they do. I simply mean that size and wealth open the realm of possibilities for abuse far beyond the scope of the individual.

Consider this. According to the Electronic Frontier Foundation,

Clear, first-hand whistleblower documentary evidence [states] . . . that for year on end every e-mail, every text message, and every phone call carried over the massive fiber-optic links of sixteen separate companies routed through AT&T's Internet hub in San Francisco—hundreds of millions of private, domestic communications—have been . . . copied in their entirety by AT&T and knowingly diverted wholesale by means of multiple ''splitters'' into a secret room controlled exclusively by the NSA.

If true, that constitutes one of the most massive violations of privacy in American history. And it would be inconceivable without the size and resources of an AT&T behind it—the same size that makes Mike McConnell fear the corporations' day in court.

If reasonable search and seizure means opening a drug dealer's apartment, the telecoms' alleged actions would be the equivalent of strip-searching everyone in the building, ransacking their bedrooms, and prying up all the floorboards. That is the massive scale we are talking about—and that massive scale is precisely why no corporation must be above the law.

On that scale, it is impossible to plead ignorance. As Judge Walker ruled:

AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

But the arguments of the President's allies sink even lower. Listen to the words a House Republican leader spoke on Fox News. They are shameful:

I believe that they deserve immunity from lawsuits out there from typical trial lawyers trying to find a way to get into the pockets of American companies.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. DODD. Cindy Cohn is one of those ''trial lawyers.'' She is lead counsel at the Electronic Frontier Foundation, a small public-interest law firm bringing suit against the telecom corporations. And when she heard that Fox News claim about typical greedy trial lawyers, she laughed.

If he still thinks that we're rich plaintiffs' attorneys after he's visited our little tiny Mission Street offices, [she said,] then I have a bridge to sell him. Most of the EFF lawyers worked in those big fancy firms for big fancy salaries, and took big pay cuts to join us . . .

Young lawyers come to me and say, ''I really want to work for EFF—you have such great lawyers.''

I say: ''Take your current paycheck, rip it in three pieces, take any third, and that's about what you'll get working for EFF.'' The lawyers who work for EFF . . . are making far less than they could on the open market in exchange for being able to work in things they believe in every day.

Consider the hundreds of lawyers retained by the corporations in question, and their multimillion-dollar legal budgets, and the attempt to portray them as pitiable Davids is ludicrous. Sprint's lawyers recently settled an unrelated class-action lawsuit for $30 million. Three years ago, AT&T handled a settlement with shareholders for $100 million.

With those resources, I think they can give EFF's nine nonprofit lawyers in their little office on Mission Street a fair fight.

Mr. President, I don't presume to know how that fight will end. I don't presume to hand out innocence and guilt—that's not my job. Judges and juries do that. And in their search for the truth, the only job of this body is to get out of the way.

I am not invested in one verdict or another—only that a verdict is reached. I don't care who the truth favors—only that it comes out at all.

State secrets; future cooperation; economic harms; reputational damage; legal burdens—as we've seen, not a single one of the President's arguments for this immunity stands. Nothing tells us to halt the legal process, to bar the courthouse door. Everything tells us to open it.

Mr. President, perhaps when I leave this floor today, someone will ask me, ''Why are you so agitated about some telephone records? There's so much else to be worked up about!''

And I'll only be able to respond: ''Exactly.''

We have seen this administration chip away at the rule of law at a dozen points. Its relentlessness may be its greatest strength—the assault becomes numbing, and our healthy outrage grows dull. It was an outrage when this President set up secret courts outside the law. It was an outrage when he ignored the courts and tapped our phones. It was an outrage when he sanctioned torture. But outrage upon outrage upon outrage—and we wind up in a stupor. We have allowed each abuse with nothing more than a promise to resist the next one—and the next one, and the next one.

I am here, in the end, because the line has to be drawn somewhere. Why not here? Why not today?

So, Mr. President, I urge my colleagues to reject the motion on cloture. Let them come back, strip this language out on immunity, and give us a clean FISA bill. That is the only right thing to do. The law is here to protect all of us. We can have security and liberty.

As Benjamin Franklin said some 200 years ago:

Those who would sacrifice liberty for security deserve neither security nor liberty.

So I urge my colleagues to reject cloture, and then we can send the bill forward without that immunity provision.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield 13 minutes to the Senator from Pennsylvania, then 5 minutes to Senator SESSIONS, 5 minutes to Senator CHAMBLISS, and 5 minutes to Senator KYL. That would conclude the time on our side, and I think that will put us at a vote or it will consume the time on our side. So I unanimous consent that be the order.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Senator from Missouri for yielding me the time, and I wish to begin with the comment made by the Senator from Connecticut raising a question about the grant of retroactivity immunity. I believe that had that provision not been in the Senate bill, it would be a great deal easier to deal with, although there are some substantial problems with the bill as such, even in addition to the provision on retroactive immunity.

But I support the motion to invoke cloture because I believe it is necessary to deal with the fight against terrorism, and I think the Government has made a case for some expanded powers, although I think we have to weigh them very carefully—to fight terrorism but still protect civil liberties in this country.

I have a strong objection to the provision in the bill relating to retroactive immunity, and my objection goes to the point that the administration did not follow the provisions of law in notifying the Intelligence Committees of the House and Senate or the chairman and ranking member of the Judiciary Committees about this program. To come at a later date and seek retroactive immunity I think is inappropriate.

I found out about it when I was chairman of the Judiciary Committee last year, and I moved to subpoena the records of the telephone company, and then I moved to go into a closed session. While that was in process, Vice President CHENEY went to the members of the Judiciary Committee on the Republican side, without notifying me—which I thought was inappropriate—and thwarted the efforts I was making to find out what this program was all about.

I ask unanimous consent to have my letter to Vice President CHENEY dated June 7, and his reply to me dated June 8, printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 7, 2006.

Hon. RICHARD B. CHENEY,
The Vice President,
Washington, DC.

DEAR MR. VICE PRESIDENT: I am taking this unusual step in writing to you to establish a public record. It is neither pleasant nor easy to raise these issues with the Administration of my own party, but I do so because of their importance,

No one has been more supportive of a strong national defense and tough action against terrorism than I. However, the Administration's continuing position on the NSA electronic surveillance program rejects the historical constitutional practice of judicial approval of warrants before wiretapping and denigrates the constitutional authority and responsibility of the Congress and specifically the Judiciary Committee to conduct oversight on constitutional issues.

On March 16, 2006, I introduced legislation to authorize the Foreign Intelligence Surveillance Court to rule on the constitutionality of the Administration's electronic surveillance program. Expert witnesses, including four former judges of the FISA Court, supported the legislation as an effective way to preserve the secrecy of the program and protect civil rights. The FISA Court has an unblemished record for keeping secrets and it has the obvious expertise to rule on the issue. The FISA Court judges and other experts concluded that the legislation satisfied the case-in-controversy requirement and was not a prohibited advisory opinion. Notwithstanding my repeated efforts to get the Administration's position on this legislation, I have been unable to get any response, including a ''no''.

The Administration's obligation to provide sufficient information to the Judiciary Committee to allow the Committee to perform its constitutional oversight is not satisfied by the briefings to the Congressional Intelligence Committees. On that subject, it should be noted that this Administration, as well as previous Administrations, has failed to comply with the requirements of the National Security Act of 1947 to keep the House and Senate Intelligence Committees fully informed. That statute has been ignored for decades when Presidents have only informed the so-called ''Gang of Eight,'' the Leaders of both Houses and the Chairmen and Ranking on the Intelligence Committees. From my experience as a member of the ''Gang of Eight'' when I chaired the Intelligence Committee of the 104th Congress, even that group gets very little information. It was only in the face of pressure from the Senate Judiciary Committee that the Administration reluctantly informed subcommittees of the House and Senate Intelligence Committees and then agreed to inform the full Intelligence Committee members in order to get General Hayden confirmed.

When there were public disclosures about the telephone companies turning over millions of customer records involving allegedly billions of telephone calls, the Judiciary Committee scheduled a hearing of the chief executive officers of the four telephone companies involved. When some of the companies requested subpoenas so they would not be volunteers, we responded that we would honor that request. Later, the companies indicated that if the hearing were closed to the public, they would not need subpoenas.

I then sought Committee approval, which is necessary under our rules, to have a closed session to protect the confidentiality of any classified information and scheduled a Judiciary Committee Executive Session for 2:30 P.M. yesterday to get that approval.

I was advised yesterday that you had called Republican members of the Judiciary Committee lobbying them to oppose any Judiciary Committee hearing, even a closed one, with the telephone companies. I was further advised that you told those Republican members that the telephone companies had been instructed not to provide any information to the Committee as they were prohibited from disclosing classified information.

I was surprised, to say the least, that you sought to influence, really determine, the action of the Committee without calling me first, or at least calling me at some point. This was especially perplexing since we both attended the Republican Senators caucus lunch yesterday and I walked directly in front of you on at least two occasions enroute from the buffet to my table.

At the request of Republican Committee members, I scheduled a Republican members meeting at 2:00 P.M. yesterday in advance of the 2:30 P.M. full Committee meeting. At that time, I announced my plan to proceed with the hearing and to invite the chief executive officers of the telephone companies who would not be subject to the embarrassment of being subpoenaed because that was no longer needed. I emphasized my preference to have a closed hearing providing a majority of the Committee agreed.

Senator Hatch then urged me to defer action on the telephone companies hearing, saying that he would get Administration support for my bill which he had long supported. In the context of the doubt as to whether there were the votes necessary for a closed hearing or to proceed in any manner as to the telephone companies, I agreed to Senator Hatch's proposal for a brief delay on the telephone companies hearing to give him an opportunity to secure the Administration's approval of the bill which he thought could be done. When I announced this course of action at the full Committee Executive Session, there was a very contentious discussion which is available on the public record.

It has been my hope that there could be an accommodation between Congress's Article I authority on oversight and the President's constitutional authority under Article II. There is no doubt that the NSA program violates the Foreign Intelligence Surveillance Act which sets forth the exclusive procedure for domestic wiretaps which requires the approval of the FISA Court. It may be that the President has inherent authority under Article II to trump that statute but the President does not have a blank check and the determination on whether the President has such Article II power calls for a balancing test which requires knowing what the surveillance program constitutes.

If an accommodation cannot be reached with the Administration, the Judiciary Committee will consider confronting the issue with subpoenas and enforcement of that compulsory process if it appears that a majority vote will be forthcoming. The Committee would obviously have a much easier time making our case for enforcement of subpoenas against the telephone companies which do not have the plea of executive privilege. That may ultimately be the course of least resistance.

We press this issue in the context of repeated stances by the Administration on expansion of Article II power, frequently at the expense of Congress's Article I authority. There are the Presidential signing statements where the President seeks to cherry-pick which parts of the statute he will follow. There has been the refusal of the Department of Justice to provide the necessary clearances to permit its Office of Professional Responsibility to determine the propriety of the legal advice given by the Department of Justice on the electronic surveillance program. There is the recent Executive Branch search and seizure of Congressman Jefferson's office. There are recent and repeated assertions by the Department of Justice that it has the authority to criminally prosecute newspapers and reporters under highly questionable criminal statutes.

All of this is occurring in the context where the Administration is continuing

warrantless wiretaps in violation of the Foreign Intelligence Surveillance Act and is preventing the Senate Judiciary Committee from carrying out its constitutional responsibility for Congressional oversight on constitutional issues. I am available to try to work this out with the Administration without the necessity of a constitutional confrontation between Congress and the President.

Sincerely,

ARLEN SPECTER.

THE VICE PRESIDENT,
Washington, June 8, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of June 7, 2006 concerning the Terrorist Surveillance Program (TSP) the Administration has described. The commitment in your letter to work with the Administration in a non-confrontational manner is most welcome and will, of course, be reciprocated.

As recently as Tuesday of this week, I reiterated that, as the Administration has said before, while there is no need for any legislation to carry out the Terrorist Surveillance Program, the Administration will listen to the ideas of legislators about terrorist surveillance legislation and work with them in good faith. Needless to say, that includes you, Senator DeWine and others who have ideas for such legislation. The President ultimately will have to make a decision whether any particular legislation would strengthen the ability of the Government to protect Americans against terrorists, while protecting the rights of Americans, but we believe the Congress and the Administration working together can produce legislation to achieve that objective, if that is the will of the Congress.

Having served in the executive branch as chief of staff for one President and as Secretary of Defense for another, having served in the legislative branch as a Representative from Wyoming for a decade, and serving now in a unique position under the Constitution with both executive functions and legislative functions, I fully understand and respect the separate constitutional roles of the Congress and the Presidency. Under our constitutional separation between the legislative powers granted to Congress and the executive power vested exclusively in the Presidency, differences of view may occur from time to time between the branches, but the Government generally functions best when the legislative branch and the executive branch work together. And I believe that both branches agree that they should work together as Congress decides whether and how to pursue further terrorist surveillance legislation

Your letter addressed four basic subjects: (1) the legal basis for the TSP; (2) the Administration position on legislation prepared by you relating to the TSP; (3) provision of information to Congress about the TSP; and (4) communications with Senators on the Judiciary Committee about the TSP.

The executive branch has conducted the TSP, from its inception on October 4, 2001 to the present, with great care to operate within the law, with approval as to legality of Presidential authorizations every 45 days or so by senior Government attorneys. The Department of Justice has set forth in detail in writing the constitutional and statutory bases, and related judicial precedents, for warrantless electronic surveillance under the TSP to protect against terrorism, and that information has been made available to your Committee and to the public.

Your letter indicated that you have repeatedly requested an Administration position on legislation prepared by you relating to the TSP program. If you would like a formal Administration position on draft legislation, you may at any time submit it to the Attorney General, the Director of National Intelligence, or the Director of the Office of Management and Budget (OMB) for processing, which will produce a formal Administration position. Before you do so, however, it might be more productive for executive branch experts to meet with you, and perhaps Senator DEWINE or other Senators as appropriate, to review the various bills that have been introduced and to share the Administration's thoughts on terrorist surveillance legislation. Attorney General Alberto R. Gonzales and Acting Assistant Attorney General for the Office of Legal Counsel Steven G. Bradbury are key experts upon whom the executive branch would rely for this purpose. I will ask them to contact you promptly so that the cooperative effort can proceed apace.

Since the earliest days of the TSP, the executive branch has ensured that, consistent with the protection of the sensitive intelligence sources, methods and activities involved, appropriate members of Congress were briefed periodically on the program. The executive branch kept principally the chairman and ranking members of the congressional intelligence committees informed and later included the congressional leadership. Today, the full membership of both the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence (including four Senators on that Committee who also serve on your Judiciary Committee) are fully briefed on the program. As a matter of inter-branch comity and good executive-legislative practice, and recognizing the vital importance of protecting U.S. intelligence sources, methods and activities, we believe that the country as a whole, and the Senate and the House respectively, are best served by concentrating the congressional handling of intelligence matters within the intelligence committees of the Congress. The internal organization of the two Houses is, of course, a matter for the respective Houses. Recognizing the wisdom of the concentration within the intelligence committees, the rules of the Senate (S. Res. 400 of the 94th Congress) and the House (Rule X, cl. 11) creating the intelligence committees mandated that the intelligence committees have cross-over members who also serve on the judiciary, foreign/international relations, armed services, and appropriations committees.

Both in performing the legislative functions of the Vice Presidency as President of the Senate and in performing executive functions in support of the President, I have frequent contact with Senators, both at their initiative and mine. We have found such contacts helpful in maintaining good relations between the executive and legislative branch es and in advancing legislation that serves the interests of the American people. The respectful and candid exchange of views is something to be encouraged rather than avoided. Indeed, recognizing the importance of such communication, the first step the Administration took, when it learned that you might pursue use of compulsory process in an attempt to force testimony that may involve extremely sensitive classified information, was to have one of the Administration's most senior officials, the Chief of Staff to the President of the United States, contact you to discuss the matter. Thereafter, I spoke with a number of other Members of the Senate Leadership and the Judiciary Committee. These communications are not unusual—they are the Government at work.

While there may continue to be areas of disagreement from time to time, we should proceed in a practical way to build on the areas of agreement. I believe that other Senators and you, working with the executive branch, can find the way forward to enactment of legislation that would strengthen the ability of the Government to protect Americans against terrorists, while continuing to protect the rights of Americans, if it is the judgment of Congress that such legislation should be enacted. We look forward to working with you, knowing of the good faith on all sides.

Sincerely,

DICK CHENEY.

Mr. SPECTER. The telephone companies, I do believe, have acted as good citizens. I would not want to see them pay damages because they were responding to a governmental request. So my idea, in order to strike a balance between the Senate bill which grants retroactive immunity and the House bill which leaves it out, would be instead to provide for the Government to be substituted as a party for telephone companies.

Toward that end, I have introduced S. 2402, which was considered by the Judiciary Committee last week and did not pass, on a vote of 13 to 5. Since that time, I have heard from other Senators that they think it is a good idea. I believe it has to be explored and will be explored because I will offer it as an amendment to this bill as soon as I have an opportunity to do so.

What my idea does, essentially, is to substitute the Federal Government as the party defendant for the telephone companies in the cases which have been initiated. The Government would stand in the shoes of the telephone companies, with no more and no less defenses available. For example, governmental immunity would not be available as a defense to the Government because obviously the telephone companies do not have governmental immunity.

The telephone companies, I think, or the defendants in these cases are highly unlikely to pay damages. But I believe it is very important that the courts not be foreclosed from making a judicial determination on the issues which are involved. Part of the concern I have is that the Government is now coming forward to try to have retroactive immunity, to absolve them from any potential wrongdoing in the past. I do not know whether there is wrongdoing, but I do not believe that it is appropriate for the Federal Government to act secretly, surreptitiously, not tell the intelligence committees as required by law, not tell the chairman and ranking member of the Judiciary Committee, and then come back at a later date and say: Please exonerate us. If we give that kind of a blank check, carte blanche to the executive officials, it would be a terrible, devastating precedent for the future.

I believe it is necessary for the judicial actions to run their course. Again, let me say I think it is highly questionable that any of the plaintiffs will succeed. The defense of state secrets has been interposed in the cases against

the telephone companies. Similarly, the Government would have that defense if it were substituted in their stead.

But the fact is that the Congress has not been successful in conducting oversight of the Federal Government. The terrorist surveillance program was in existence from October of 2001 until December of 2005, before the Congress ever found out about it. Then we didn't find out about it as a result of our oversight activities; we found out about it because it was disclosed in a New York Times story.

I remember the morning well. I was managing the PATRIOT Act re-authorization, to try the give the U.S. Government adequate powers to fight terrorism. Right in the middle of the final day of our consideration, the story broke about the secret terrorist surveillance program, and the comment was made on the floor of the Senate by one Senator that he was prepared to vote for the PATRIOT Act but not after he found out about the terrorist surveillance program.

The Federal Government did not notify the Intelligence Committees as required by law until well after the New York Times article. Then they notified the Intelligence Committees only because they felt compelled to do so in order to get General Hayden confirmed.

There is a long list of efforts by congressional oversight which have been insufficient: the signing statements in which the President has cherry-picked, taking provisions he likes and excluding provisions he doesn't like. Senator MCCAIN and the President personally negotiated the question of interrogation in the Detainee Treatment Act. There was language put in, on a 90-to-9 vote, limiting interrogation practices. Then, when the President signed the bill, he made an exclusion, saying that his constitutional authority under article II would enable him to ignore some of those provisions.

Similarly, on the PATRIOT Act reauthorization, we negotiated certain oversight, and then the President issued a signing statement again saying there were some items which he would feel free to disregard on the oversight provisions.

On habeas corpus and detention, the Congress has been totally ineffective at any oversight; it is only the Supreme Court of the United States in Rasul and in a case now pending, Boumediene, argued recently in the Supreme Court. So the judicial oversight on checks and balances and on separation of powers, I believe, is indispensable.

We have within the past few days another instance of executive resistance to congressional oversight. Senator LEAHY and I wrote to the Attorney General recently—a week ago today—inquiring about the destruction of the tapes by the CIA. The Attorney General responded last week, on December 14, denying our request for information.

I ask unanimous consent to have the Attorney General's letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC., December 14, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR SPECTER: Thank you for your letter of December 10, 2007, regarding your concerns about the reported destruction by the Central Intelligence Agency (CIA) of videotapes showing interrogations of detainees and the Department's review of this matter.

As you note, the Department's National Security Division is conducting a preliminary inquiry in conjunction with the CIA's Office of Inspector General. Enclosed please find a letter from Assistant Attorney General Kenneth L. Wainstein to CIA Acting General Counsel John A. Rizzo, which provides some further detail regarding this inquiry, and which was released to the public on December 8.

As to your remaining questions, the Department has a longstanding policy of declining to provide non-public information about pending matters. This policy is based in part on our interest in avoiding any perception that our law enforcement decisions are subject to political influence. Accordingly, I will not at this time provide further information in response to your letter, but appreciate the Committee's interests in this matter. At my confirmation hearing, I testified that I would act independently, resist political pressure and ensure that politics plays no role in cases brought by the Department of Justice. Consistent with that testimony, the facts will be followed wherever they lead in this inquiry, and the relevant law applied.

Finally, with regard to the suggestion that I appoint a special counsel, I am aware of no facts at present to suggest that Department attorneys cannot conduct this inquiry in an impartial manner. If I become aware of information that leads me to a different conclusion, I will act on it.

I hope that this information is helpful.

Sincerely,

MICHAEL B. MUKASEY,
Attorney General.

DEPARTMENT OF JUSTICE,
NATIONAL SECURITY DIVISION,
Washington, DC., December 8, 2007.

JOHN A. RIZZO,
Acting General Counsel, Central Intelligence Agency, Washington, DC.

DEAR MR. RIZZO: I am writing this letter to confirm our discussions over the past several days regarding the destruction of videotapes of interrogations conducted by the Central Intelligence Agency (CIA). Consistent with these discussions, the Department of Justice will conduct a preliminary inquiry into the facts to determine whether further investigation is warranted. I understand that you have undertaken to preserve any records or other documentation that would facilitate this inquiry. The Department will conduct this inquiry in conjunction with the CIA's Office of Inspector General (OIG).

My colleagues and I would like to meet with your Office and OIG early next week regarding this inquiry. Based on our recent discussions, I understand that your Office has already reviewed the circumstances surrounding the destruction of the videotapes, as well as the existence of any pending relevant investigations or other preservation obligations at the time the destruction occurred. As a first step in our inquiry, I ask that you provide us the substance of that review at the meeting.

Thank you for your cooperation with the Department in this matter. Please feel free to contact me if you have any questions.

Sincerely,

KENNETH L. WAINSTEIN,
Assistant Attorney General,
National Security Division.

Mr. SPECTER. It surprised me that the Attorney General would say that in light of his very recent statements made during the confirmation hearings. ''If confirmed, I will review Department of Justice policies with a goal of ensuring that Congress is able to carry out meaningful oversight.''

When I talked to Judge Mukasey in advance of the confirmation hearings and gave him a copy of the letter which I had sent to Attorney General Gonzales, Judge Mukasey agreed with the standards established by the Congressional Research Service, saying that these are within the bounds of congressional authority on oversight.

[A] review of congressional investigations that have implicated DOJ, or DOJ investigations over the past 70 years, from the Palmer Raids and Teapot Dome to Watergate, and through Iran Contra and Rocky Flats, demonstrates that the Department of Justice has consistently been obliged to submit to congressional oversight. . . .

Including:

. . . testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken. . . .

Again:

In all instances, investigating committees were provided with documents respecting open or closed cases.

So here is another example of congressional oversight being thwarted, so that when you have a challenge to what has been done by the telephone companies here and you have litigation in progress, I believe it to be most inappropriate for the Congress to intercede and grant immunity retroactively.

I believe our Federal investigative agencies need very substantial powers in the fight against terrorism. I have discussed the issue with Director of National Intelligence McConnell about granting the Government authority to acquire the cooperation of the telephone companies prospectively. I am waiting for a briefing on the issue, to understand the full import of what it is that the Director of National Intelligence wants. I am open to granting those powers prospectively, but I do not believe, in the context of what has happened here, that it would be advisable to retroactively give these officials a blank check when they kept these matters secret from the oversight committees, and when the Judiciary Committee sought to have subpoenas to find out about it, and we were thwarted in that effort, as disclosed by the exchange of letters between the Vice President and myself, made a part of the record.

I note my time has expired. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, Senator FEINGOLD may have been next, and I see he has returned. I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from Alabama for his courtesy.

Mr. President, I oppose cloture on the motion to proceed to S. 2248, as reported by the Senate Intelligence Committee. This bill is deeply flawed, and I am very disappointed by the decision to take it up on the Senate floor rather than the better bill reported by the Judiciary Committee.

Before leaving town for the August recess, Congress bowed to pressure from the administration, and vastly expanded the Government's ability to eavesdrop without a court-approved warrant. That legislation, the so-called Protect America Act, was rushed through this Chamber in a climate of fear—fear of terrorist attacks, and fear of not appearing sufficiently strong on national security. There was very little understanding of what the legislation actually did.

But there was one silver lining: The bill had a 6-month sunset to force Congress to do its homework and reconsider the approach it took.

The Senate should be taking this opportunity to fix its mistakes and pass a new bill that gives the Government all the tools it needs to spy on suspected terrorists but also protects Americans' basic freedoms. This time around, the Senate should stand up to an Administration that time and again has employed fear-mongering and misleading statements to intimidate Congress.

The fact is, the Intelligence Committee bill doesn't fix those mistakes, and it is not the bill we should be considering on the Senate floor.

I do agree with the administration on one point—Congress should make clear that when foreign terrorists are communicating with each other overseas, the U.S. Government doesn't need a warrant to listen in, even if the collection activity ends up taking place in this country because of the way modern communications are routed. Unfortunately, both the Protect America Act and the bill approved by the Senate Intelligence Committee go far beyond fixing that problem and also authorize widespread surveillance involving Americans—at home and abroad.

The bill we should be considering is the Judiciary Committee bill, which 14 Senators urged the majority leader to take up, in a letter last week.

The Judiciary Committee bill made critical improvements to ensure independent judicial oversight of these sweeping new powers and to better protect innocent Americans. The Judiciary bill does not contain a new form of retroactive immunity for companies that allegedly cooperated with an illegal wiretapping program that lasted for more than 5 years. And, while the Intelligence Committee bill was drafted and debated behind closed doors and in close consultation with the administration, the Judiciary bill was the product of an open process with the input of experts from a variety of perspectives.

The Judiciary Committee bill is not perfect. It needs further improvement. But it would be a vastly better starting point for Senate consideration than the bill that the majority leader has brought to the floor, which simply gives the administration everything it was demanding, no questions asked.

The stakes are high. I want my colleagues to understand the impact that the Protect America Act and the Intelligence Committee bill could have on the privacy of Americans. These bills do not just authorize the 6 unfettered surveillance of people outside the United States communicating with each other. They also permit the Government to acquire those foreigners' communications with Americans inside the United States, regardless of whether anyone involved in the communication is under any suspicion of wrongdoing.

There is no requirement that the foreign targets of this surveillance be terrorists, spies or other types of criminals. The only requirements are that the foreigners are outside the country, and that the purpose is to obtain foreign intelligence information, a term that has an extremely broad definition.

There is no requirement that the foreign targets of this surveillance be terrorists, spies, or any other kind of criminal. The only requirements are that foreigners are outside the country, that the purpose is to obtain foreign intelligence information, a term that has an extremely broad definition.

No court reviews these targets individually. Only the executive branch decides who fits these criteria. The result is that many law-abiding Americans who communicate with completely innocent people overseas will be swept up in this new form of surveillance, with virtually no judicial involvement.

Even the administration's illegal warrantless wiretapping program, as described when it was publicly confirmed in 2005, at least focused on particular terrorists. What we are talking about now is a huge dragnet that will sweep up innocent Americans.

In America, we understand that if we happen to be talking to a criminal or terrorist suspect, our conversations might be heard by the Government. But I do not think many Americans expect the Government to be able to listen into every single one of their international communications with people about whom there are no suspicions whatsoever.

These incredibly broad authorities are particularly troubling because we live in a world in which international communications are increasingly commonplace. Thirty years ago, it was very expensive, and not common, for many Americans to make an overseas call. But now, particularly with e-mail, such communications are commonplace. Millions of ordinary, and innocent, Americans communicate with people overseas for entirely legitimate personal and business reasons.

Parents of children call family members overseas. Students e-mail friends they have met while studying abroad. Businesspeople communicate with colleagues or clients overseas. Technological advancements combined with the ever interconnected world economy have led to an explosion of international contacts.

We often hear from those who want to give the Government new powers that we just have to bring FISA up to date with new technology. But changes in technology should also cause us to take a look at the greater need for the privacy of our citizens.

We are going to give the Government broad new powers that will lead to the collection of much more information on innocent Americans. We have a duty to protect their privacy as much as we possibly can, and we can do that. We can do that, as the Senator from Connecticut said, without sacrificing our ability to collect information that will protect our national security.

To take one example, a critical difference between the Intelligence and Judiciary bills is the role of the court. The Judiciary bill gives the secret FISA Court new authority to operate as an independent check on the executive branch.

It gives the court authority to assess the Government's compliance to wiretapping procedures, to place limits on the use of information that was acquired through unlawful procedures, and then gives the court, as most courts should have, the ability to enforce its own orders.

The Judiciary bill also does a better job of protecting Americans from widespread warrantless wiretapping. It prohibits so-called bulk collection. What is that? Vacuuming up basically all the communications between the United States and overseas, which the DNI admitted is legal under the PAA. And it ensures that if the Government is wiretapping a foreigner overseas in order to really collect the communications of the American with whom that foreign target is communicating, what is called reverse targeting, well, in that case it has to get a court order on that American. Well, none of these changes hinders the Government's ability to protect national security.

The process by which the Judiciary Committee considered, drafted, amended, and reported out its bill was an open one, allowing outside experts and the public at large the opportunity to review and comment. With regard to legislation so directly connected to the constitutional rights of Americans, I think the result of this open process

should be accorded great weight, especially in light of the Judiciary Committee's unique role and expertise in protecting those rights.

Now, I am certain that over the course of this week we will hear a number of arguments about why the Judiciary bill will hamper the fight against terrorism. Well, let me say now to my colleagues: Do not believe everything you hear. Last week I sat with many of you in the secure room in the Capitol and listened to arguments made by the Director of National Intelligence and by our Attorney General.

I can tell you with absolute certainty that several of the examples they gave were simply wrong, simply false. I am happy to have a classified meeting with anyone in this body who wishes to discuss that. This is not about whether we will be effective in combating terrorism. Both bills allow that. This is about whether the court should have an independent oversight role and whether Americans deserve more privacy protections than foreigners overseas. All of this should sound familiar to those who followed previous debates about fighting terrorism while protecting American's civil liberties in the post-9/11 world.

The administration says—and again, following on what the Senator from Connecticut said—the administration basically says: Trust us. We do not need judicial oversight. The court will just get in our way. You never know when they might tell us what we are doing is unconstitutional. We would prefer to make that decision on our own.

Time and again, that has proved to be a foolish and counterproductive attitude, and sadly, despite the objections of many of us in this Chamber, too many times, Congress has just gone along. We do not have to make that same mistake again. In this case we have a factual record to help us evaluate whether we should simply trust the administration or whether we should write protections into the law.

The Protect America Act has only been in effect for 4½ months, and we are still missing key information about it. The Intelligence Committee has recently been provided some basic information about its implementation. Based on what I have learned, I have very serious questions about the way the administration is interpreting and implementing the Protect America Act, including its effect on the privacy of Americans.

I will shortly be sending the Director of National Intelligence a classified letter detailing my concerns which are directly relevant to the legislation we are considering. I regret this information is classified, so I cannot discuss it here. I regret that more of my colleagues have not been privy to this information prior to this floor debate, but I would be happy to share a copy of my letter in an appropriate classified setting with any Senator who wishes to review it.

I have been speaking for some time now about my strong opposition to the Intelligence Committee bill, and I have not even addressed one of the more outrageous elements of the bill: the granting of retroactive immunity to companies that allegedly participated in an illegal wiretapping program that lasted for more than 5 years.

This grant of automatic immunity is simply unjustified. There is already an immunity provision in current law that has been there since FISA was negotiated in the late 1970s, with the participation of the telecommunications industry.

The law is clear. Companies already have immunity from civil liability when they cooperate with a Government request for assistance, as long as they receive a court order or the Attorney General certifies that a court order is not required and all statutory requirements have been met.

So this is not about whether the companies had good intentions or acted in good faith; it is about whether they complied with this statutory immunity provision, which has applied for 30 years. If the companies follow that law, they should get immunity. If they did not follow that law, they should not get immunity. A court should make that decision, not Congress. It is that simple.

Congress passed a law laying out when telecom companies get immunity and when they do not for a reason. Those companies have access to our most private communications, so Congress has correctly subjected them to very precise rules about when they can provide that information to the Government. If the companies did not follow the law Congress passed, they should not be granted a ''get out of jail free'' card after the fact.

We have heard a lot of arguments about needing technical cooperation of carriers in the future. We do need that cooperation, but we also need to make sure carriers do not cooperate with illegitimate requests. We already have a law that tells companies when they should and when they should not cooperate, so they are not placed in the position of having to somehow independently evaluate whether the Government's request for help is legitimate.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FEINGOLD. Mr. President, I ask unanimous consent for 3 additional minutes.

Mr. SESSIONS. Mr. President, reserving the right to object, is the Senator's request for 3 additional minutes on each side?

Mr. FEINGOLD. I would not object to that.

The PRESIDING OFFICER. Without objection, 3 minutes will be added to each side.

Mr. FEINGOLD. Instead of allowing the courts to apply that law to the facts, instead of allowing judges to decide whether the companies deserve immunity for acting appropriately, the Intelligence Committee bill sends the message that companies need not worry, they do not have to worry about complying with questionable Government requests in the future, because they will be bailed out. This is outrageous. Even more outrageous is the fact that if these lawsuits are dismissed, the courts may never rule on the NSA wiretapping program.

So what this is is an ideal outcome for an administration that believes it should be able to interpret laws on its own without worrying about how Congress wrote them or what a judge thinks. For those of us who believe in three independent and coequal branches of Government, this is a disaster.

For all of these reasons, I oppose closure on the motion to proceed to the Intelligence Committee bill. I fear we are about to make the same mistake we made with the PATRIOT Act. We passed that law without taking the time to consider its implications, and we did not do enough during the reauthorization process to fix it. As a result, three Federal courts have struck down provisions of the PATRIOT Act as unconstitutional, and that is right back where we are going to end up if we do not do our jobs now and fix the Protect America Act.

I urge my colleagues to vote no on cloture.

I yield the floor and reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I believe the last unanimous consent agreement was that there would be 5 minutes for Senators KYL, CHAMBLISS, and myself. We have added 3 minutes to that. I ask unanimous consent that we each have 6 minutes.

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

Mr. SESSIONS. Mr. President, I appreciate my colleague, Senator FEINGOLD, and his passionate argument, but I am going to tell my colleagues that this Congress and this Government of the United States are capable of overreacting. We are capable of getting excited about an issue and taking theoretical positions that end up, as a practical matter, leaving our country at greater risk. This is not just an item of discussion; it is very real.

I would point out to my colleagues that we have made two dramatic errors some years ago in a situation just like this, on emotion driven by our civil libertarian friends, such that a wall was put up between the FBI and the CIA which barred the sharing of information between those two critical agencies.

We also mandated that the Central Intelligence Agency officers could not obtain information from people deemed to be dangerous. Bad people. How do you get information in the world and protect America and our legitimate national interests without sources? Those became laws.

And what happened after we were attacked on 9/11? Both those rules that we imposed on our military intelligence agencies were deemed to be bogus, wrong, and mistaken, colossally so. Many Members of this body were warned when they were made the law of the United States, they were warned then that if we did these things it was not wise. But, oh no, the others loved the Constitution more, they loved liberty more, so these unwise laws were passed. And what happened afterwards, after 9/11? Well, we properly removed both of those silly rules. We have taken them off the books, in a bipartisan, unanimous way. They were never required by the Constitution. They were never sensible from the beginning. But we passed them on emotion not reason. Some ideas being promoted now are not sensible either and can leave our country in dangerous straits. So this is an important matter. These things are life and death issues.

Last year, a Federal court ruled, based on changes in technology, that those laws we passed effectively limited the collection of critical communications of foreign intelligence. It was not the intention of Congress when we passed it, I am sure, that the law would, in effect, end up gutting perhaps the most important surveillance program we have against international terrorists, but that was the effect of it.

Admiral McConnell was flabbergasted. He came to us and pleaded with us to give him relief. So what happened? Well, he said this to us. Listen to these words. Basically this is what he said: The United States was unable to conduct critical surveillance of . . . foreign terrorists planning to conduct attacks inside our country.

That is basically—that is what he said to us. That is a dramatic thing.

So what happened? Congress went through an intense study, and we passed the Protect America Act this past summer. Some people said: This is a rush, though we spent weeks on it. Congress spent a lot of time working on it. But we said: OK, it will come back up for reauthorization in February. As of this date, there has been no example of abuse of that act.

Senator FEINGOLD says these intelligence procedures were illegal wiretapping. I think that is really not a fair thing to say. A court ruled that these procedures we had been using for some time, must, according to statutes we passed, go through a certain number of procedural hoops that, as a practical matter, would have eliminated the possibility of us continuing these surveillance techniques. That is what they ruled. I don't think we ever intended this to be the effect, but the court probably ruled fairly on the law. I am not sure. We are stuck with the ruling regardless.

I don't think it is fair to say the program was illegal. But certainly the procedures were not unconstitutional because this summer, when we passed the Protect America Act, we effectively concluded the program was good and constitutional. We affirmed the program.

I want to say, if we have any humor left on this subject, perhaps we ought to write President Bush a letter and tell him: Thank you. We are sorry we accused you of violating our Constitution and basic civil liberties. After the Congress spent weeks studying this, we passed a law that basically allowed the program to continue as it was.

I urge that we do the right thing on this legislation and move forward to the Intelligence bill, not the Judiciary bill.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. I rise in support of the motion to proceed to the Foreign Intelligence Surveillance Act Amendments Act of 2007. It is important to underscore just how critical this legislation is and how the bill which was voted out of the Senate Select Committee on Intelligence by a vote of 13 to 2 is a comprehensive and bipartisan bill.

Some of my colleagues on the other side of the aisle have made allegations that this bill will infringe upon Americans' right to privacy. This bill only infringes on one group's right to privacy, and that is terrorists.

Prior to congressional action in August, and again if we do not make permanent these changes, our intelligence community was unable to collect vital foreign intelligence without the prior approval of a court. If our intelligence community wanted to direct surveillance at an al-Qaida member located in Waziristan who was communicating with another terrorist in Germany, they would have to first petition the FISA court for approval. In August, our intelligence community told us that without updating FISA, they were not just handicapped, they were hamstrung.

Congress passed the Protect America Act which temporarily fixed the intelligence community's legal gaps. However, the Protect America Act will expire in February of 2008. Congress must act swiftly before our core collectors are faced with losing valuable intelligence as a result of inaction by Congress.

When FISA was enacted in 1978, it was meant to provide our Government with the means to collect foreign intelligence within the United States while not infringing upon U.S. citizens' rights. Prior to FISA, the courts held that fourth amendment warrant protection applied to surveillance in a variety of cases, including the decisions of Katz and Keith. Congress reacted to these cases in the criminal and foreign intelligence arena by enacting legislation addressing the requirements of the fourth amendment in title III of the Omnibus Crime Control and Safe Streets Act of 1968 and in FISA.

While debating FISA, Congress sought to protect the rights of U.S. persons from unwarranted Government intrusion while collecting foreign intelligence within the United States. The congressional report accompanying FISA states:

> The purpose of the bill is to provide a statutory procedure authorizing the use of electronic surveillance in the United States for foreign intelligence purposes.

Regulating the collection of foreign intelligence, including the electronic surveillance of foreign communications made by terrorists, was neither contemplated during FISA nor by the courts after enactment of FISA. It has been long held that foreigners do not enjoy the protection of our Constitution unless they enter the territories of the United States, and even FISA provides an exception to that warrant requirement if it is unlikely that a U.S. person's communications would be intercepted. As an unfortunate consequence of the rapid advancements in technology since 1978 and post-Cold War threats, surveillance of some overseas communications were subjected to court orders.

It is now time for Congress to act to make permanent the fix to FISA so that our intelligence community has the tools they need to do their job in a very professional manner and gather the information necessary to protect our national security.

Let me be clear: These amendments to FISA would only apply to surveillance directed at individuals who are located outside the United States. This is not meant to intercept conversations between Americans or even between two terrorists who are located in the United States. The Government still would be required to seek the permission of the FISA Court for any surveillance done against people physically located within the United States, whether a citizen or not.

This is not good enough for some Members of Congress. They wish to extend the warrant requirement of the fourth amendment currently not bestowed under U.S. criminal law and procedure to American citizens overseas. The U.S. laws do not extend beyond our border, but the Supreme Court has held that certain fundamental rights such as those protected by the fifth and sixth amendments, as well as the reasonableness requirement of the fourth amendment, do extend to U.S. citizens outside the country. However, despite the opportunity, the Supreme Court has refused to hold that the warrant clause of the fourth amendment applies abroad for U.S. citizens. In a criminal prosecution, U.S. courts will accept evidence against U.S. citizens obtained by foreign governments without the probable cause demanded by U.S. law. U.S. courts recognize that the Bill of Rights does not protect Americans from the acts of foreign sovereigns, and excluding evidence obtained by them will not deter foreign governments from collecting it. Therefore, the evidence can be turned over to the United States and used in a criminal prosecution.

There was an amendment offered in the Intelligence Committee that requires that anytime a U.S. person is a target of surveillance, regardless of where the collection occurs, the Attorney General must seek approval under title I of FISA for that collection. The amendment fails to consider the intelligence community's adherence to current regulations which were drafted to comply with the reasonableness requirement of the fourth amendment.

Currently, under Executive Order 12333, section 2.5, the Attorney General may authorize the targeting of a U.S. person overseas upon finding probable cause to believe that the individual is a foreign power or agent of a foreign power. The intelligence community will now be required to obtain authorization from the FISA Court prior to conducting surveillance against terrorists or spies overseas who assist foreign governments merely because they are United States persons. It is my belief that the intelligence community has demonstrated to Congress how judicious, selective and careful they have been when it comes to protecting the very small number of U.S. citizens this applies to and does not necessarily need the court to approve their actions every step along the way. This complicates, and attempts to micromanage, the efforts of our intelligence community. Additionally, it prevents the intelligence community from acting quickly and with discretion in a process which has worked well to protect U.S. citizens for almost 30 years.

Some of my colleagues have expressed opposition to title II of the bill which provides that no civil actions may be brought against electronic communication providers if the Attorney General certifies that the assistance alleged was in connection with a lawful communication intelligence activity authorized by the President and designed to detect or prevent a terrorist attack against the United States. Providing our telecommunications carriers with liability relief is necessary and responsible. The Government often needs assistance from the private sector in order to protect our national security and, in return, they should be able to rely on the Government's assurances that the assistance they provide is lawful and necessary for our national security. As a result of this assistance, America's telecommunications carriers should not have to front heavy legal battles shrouded in secrecy on the Government's behalf.

The chairman and vice chairman of the Senate Select Committee on Intelligence introduced a carefully crafted, bipartisan piece of legislation. Although it was not a perfect bill, in committee I was willing to forgo offering amendments to support the bipartisan process and provide our intelligence community with the minimum requirements it needs in an environment with rapidly changing technology. I believe that the bill which was ultimately adopted by the committee, and with my support, contains troubling language which should be altered before enactment. Even so, this legislation is strides ahead of the partisan bill passed out of the Judiciary Committee and offered here as a substitute.

This is not, and should not, be a partisan issue by any means. The ability to collect the intelligence necessary to protect our country from foreign adversaries and terrorists should not be subjected to partisan politics in Congress. Protecting our national security is in the interest of all Americans, and Congress should seek to ensure that our Nation is protected fully. There are serious differences between the substitute bill voted out of the Judiciary Committee and the bill voted out of the Intelligence Committee. I urge my colleagues to reject the Judiciary Committee's substitute amendment and support the carefully crafted bipartisan bill passed out of the Intelligence Committee. However, differences of opinion exist and make it essential for Congress to examine and debate these issues on the floor. For these reasons I support cloture on the motion to proceed to FISA.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I join my colleague from Georgia in encouraging support for the motion to proceed so we can begin consideration of this important bill. The reason for the FISA bill is very straightforward. Technology has outpaced the law. We are now able to collect intelligence in ways that were never understood or contemplated years ago when the law was drafted. As a result, we need to change the law to accommodate that collection.

Before we changed the law last year, we had lost about two-thirds of the ability to collect intelligence against al-Qaida. Clearly, in this war against these evildoers, these terrorists, we cannot cede two-thirds of the playing field to them without any monitoring or collection of intelligence against them. When we did the Protect America Act last summer, we regained the capability to collect that intelligence by conforming the legal procedures to the technology that enables us to collect this material.

Al-Qaida has not ceased to exist after 9/11. In fact, it exists and is still desiring to carry out the same kinds of attacks against the United States and other countries that it did on 9/11. We know the incredible amount of damage that can be inflicted if we are not prepared to deal with them. We also know that the best way to deal with al-Qaida and the like is to collect intelligence so we can prevent attacks from occurring rather than worrying about them after they have occurred. That is why it is so important for us to ensure that under the law we can engage in the kind of intelligence collection against al-Qaida that technology today enables us to do.

Many of our friends on the other side of the aisle have insisted that there be stringent congressional oversight of these programs by which we collect the intelligence. No one disputes that is a desirable thing to do. That is why this Congress and previous Congresses have agreed on a bipartisan basis to create robust oversight of U.S. intelligence gathering, even when it is against foreign targets. The agencies executing wiretaps and conducting other surveillance must report their activities to Congress and to others, so the opportunities for domestic political abuse of these authorities is eliminated.

No one is on a witch hunt against Americans. There is more material out there to be collected against foreign targets. Our people certainly don't have time to try to spy on Americans. That is not what is involved. We have to be careful that in creating this oversight we don't cut deeply into the capabilities of our intelligence community, that we don't in effect limit what they are able to do.

If you compare the Intelligence Committee bill with the Judiciary bill, you will see that the Judiciary bill would severely limit this collection of intelligence. Even the Intelligence Committee bill has one major flaw in it. We have to be careful that we don't tie down our Intelligence agencies with so many limits on how they can monitor foreign terrorist organizations that they really cannot respond to the threat that exists.

Let me give one example. The Intelligence Committee bill, which is the bill we are taking up first and which we should adopt, includes a provision that has been labeled the Wyden amendment which, as written, would require a warrant for any overseas surveillance that is conducted for foreign intelligence purposes and targets a U.S. person. As the Senator from Georgia pointed out, we already have protocols to deal with that, to minimize any potential problems that might arise in conducting intelligence that would include a U.S. person. But the way the Wyden amendment is written is overly broad and unprecedented.

Under current law, a warrant would not be required for overseas surveillance that is targeted to a U.S. person if that surveillance is conducted for purposes of a criminal investigation. So consider the anomaly. The Wyden amendment would create a requirement for a warrant to go after foreign terrorists involving also potentially U.S. persons, but it would not require a warrant in those circumstances of drug trafficking or money laundering that involve the very same people. It should not be more burdensome to monitor al-Qaida than it is to monitor a drug cartel. Yet the Wyden provision literally creates a situation where if an overseas group that includes U.S. persons is suspected, for example, of smuggling hashish, no warrant is required, but if the

same overseas group is suspected of plotting to blow up New York City, then a warrant would be required. This is not only anomalous; it is bad policy. It is the very kind of thing that if, God forbid, another attack should occur and we permit this to be written into the law, the next 9/11 Commission will criticize the Congress for writing it into the statute. We can prevent that from occurring by rejecting the Wyden amendment.

Let me conclude by asking: What is our goal? Do we want to allow our intelligence agencies to use the most up-to-date technology to track and prevent attacks by the most evil people in the world today, these al-Qaida terrorists, or are we so concerned about some potential theoretical, possible situation in which an American citizen's communications might be temporarily intercepted, if they call an al-Qaida person or an al-Qaida person calls them, that we are not going to take advantage of these intelligence-collection techniques?

We can write the law to ensure the protection of every U.S. person. We need to do that. But we cannot restrict our intelligence agencies from collecting that intelligence that is out there that might warn us of another attack.

The PRESIDING OFFICER. The Senator's time has expired.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, we will have a cloture vote shortly on the motion to proceed to the FISA reform legislation that the Senate Select Committee on Intelligence reported last fall. I am glad we are proceeding to this bipartisan bill rather than to either of the rule XIV proposals. Both of those proposals would carve out core components of the Intel Committee's bill and likely would not obtain a Presidential signature.

The Intelligence Committee bill is a rarity in this Congress. It is the product of weeks of painstaking negotiations between Senate Republicans and Democrats, and benefited from the participation of intelligence experts in the administration.

The overwhelming bipartisan vote in the Intel Committee reflected the care, concern, and good faith that went into crafting that bill. The final vote was not 15 to 0, but a vote of 13 to 2 is pretty close.

What is all the more impressive about the Intel bill is that this accomplishment is in an area—foreign intelligence surveillance—that is highly sensitive.

Modifications to the Intel bill still need to be made, but it contains the two main ingredients that are needed for a Presidential signature: It will allow intelligence professionals to do their jobs, and it will not allow trial lawyers to sue telecom companies that helped protect the country.

Unfortunately, the Judiciary Committee bill lacks all the hallmarks of the Intelligence Committee's product. It does not provide our intelligence community with all the tools it needs. It does not protect telecommunications companies from lawsuits. It does not enjoy bipartisan support. And, most importantly, it will not become law.

So I think we have one approach that could lead to an important accomplishment, and we have one that will not. I am hopeful we will choose the right path.

Finally, I wish to make a couple of brief comments about the floor process for the FISA reform legislation.

I will be voting for cloture on the motion to proceed to the Intel bill, and I encourage all of our colleagues to do the same. A cloture vote is needed because of objections to the bipartisan bill by Senators Feingold and Dodd and others. It is certainly their right to object to the Senate's consideration of this important legislation. But it is also the right of other Senators to proceed carefully and thoughtfully on this matter.

Legislation dealing with our foreign intelligence surveillance capabilities is complex, and what we do determines if we are able to adequately defend the homeland from attack. Thus, Republicans will insist on being able to debate and study the complicated consequences of amendments that are offered. That is every Senator's right and, especially in this area, every Senator's duty.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, I yield back our time.

CLOTURE MOTION

The PRESIDING OFFICER. All time having been yielded back, under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 2248, FISA.

Harry Reid, Patrick Leahy, Ken Salazar, Daniel K. Inouye, Robert P. Casey, Jr., Frank R. Lautenberg, Debbie Stabenow, Richard J. Durbin, Tom Carper, John Kerry, E. Benjamin Nelson, Evan Bayh, Kent Conrad, Carl Levin, Mark Pryor, Charles Schumer, Jay Rockefeller, S. Whitehouse, Bill Nelson.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline provisions of that act, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. OBAMA), and the Senator from Vermont (Mr. SANDERS), are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), would vote ''no.''

Mr. LOTT. The following Senators are necessarily absent: the Senator from Colorado (Mr. ALLARD), the Senator from Kansas (Mr. BROWNBACK), the Senator from Oklahoma (Mr. COBURN), the Senator from Idaho (Mr. CRAIG), the Senator from South Carolina (Mr. DEMINT), the Senator from New Hampshire (Mr. GREGG), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 76, nays 10, as follows:

[Rollcall Vote No. 435 Leg.]

YEAS—76

Akaka	Enzi	Nelson (FL)
Alexander	Feinstein	Nelson (NE)
Barrasso	Graham	Pryor
Baucus	Grassley	Reed
Bayh	Hagel	Reid
Bennett	Hatch	Roberts
Bingaman	Hutchison	Rockefeller
Bond	Inouye	Salazar
Bunning	Isakson	Schumer
Burr	Johnson	Sessions
Byrd	Kennedy	Shelby
Carper	Klobuchar	Smith
Casey	Kohl	Snowe
Chambliss	Kyl	Specter
Cochran	Landrieu	Stabenow
Coleman	Leahy	Stevens
Collins	Levin	Sununu
Conrad	Lincoln	Tester
Corker	Lott	Thune
Cornyn	Lugar	Vitter
Crapo	Martinez	Voinovich
Dole	McCaskill	Warner
Domenici	McConnell	Webb
Dorgan	Mikulski	Whitehouse
Durbin	Murkowski	
Ensign	Murray	

NAYS—10

Boxer	Dodd	Menendez
Brown	Feingold	Wyden
Cantwell	Harkin	
Cardin	Kerry	

NOT VOTING—14

Allard	Craig	Lieberman
Biden	DeMint	McCain
Brownback	Gregg	Obama
Clinton	Inhofe	Sanders
Coburn	Lautenberg	

The PRESIDING OFFICER. On this vote, the yeas are 76, the nays are 10. Three-fifths of the Senators duly chosen having voted in the affirmative, the motion is agreed to.

The majority leader is recognized.

Mr. REID. Mr. President, I have had a conversation with the distinguished Republican leader. We are now postcloture. No one is intending to use the 30 hours. We know we have to get to the omnibus and other such things, but there are some people who want to talk postcloture. I have spoken to the chairman of the Intelligence Committee and the ranking member. I have spoken to the Judiciary Committee members several times today. I have spoken to Senator DODD, who has an amendment dealing with immunity. On this side, there is a general feeling that the first amendment should be one dealing with immunity. At this stage, the one who is willing and ready to offer it, as soon as the postcloture finishes, is Senator DODD. So we will get to that on our side as soon as we can.

I would also state it appears at this stage it would probably be in everyone's interest that we acknowledge going into this that everything is going to take 60 votes anyway. So rather than play games, I have spoken to the Republican side, and it would appear to me that when we get to the amendment-offering stage, we should recognize that is likely be to the issue.

Now, let me also say this: I have finished a meeting 45 minutes ago with the Speaker. They are going to finish the omnibus tonight. It will be late. We will not get it tonight. They probably will not finish it until between 10 and 11 o'clock tonight. But that being the case, we are going to move to the omnibus tomorrow, if at all possible. To say the least, it has been very difficult to get to the point where we are. I would hope everyone understands we are going to do our very best to finish the bill tomorrow. There are a number of amendments that will be offered. There are very few that will be offered.

I have talked to Senator MCCONNELL. At this stage, it appears there will probably be four amendments, and that is all. That, of course, is always a moving target, and there may need to be more. If people have questions about this, check with the floor staff on the procedural aspects. But it is a pretty straightforward issue tomorrow. When we finish that, we have to do something about AMT, which is not completed. We have terrorism insurance that we have to do. We have to do an extension of CHIP and some of the Medicare provisions. That is about it. I may be missing something, but I don't think much.

Everyone should understand that even though the omnibus is coming here, we have spent hours and hours on this over the weekend trying to work out some of our differences. The bill has almost nothing as it relates to anything other than spending. It has been hard to arrive at where we have, but I think it has been one of cooperation. It was a good weekend. I don't mean this in any negative sense, but I didn't have to speak to the White House because we were able to work this out with the Speaker and Senator MCCONNELL—the Republican leaders in the House and my colleagues here. So I think we are in fairly decent shape to complete our work in the next couple of days.

Mr. STEVENS. Will the Senator yield for a question?

Mr. REID. Yes.

Mr. STEVENS. This Senator wonders if we will have a chance to read that omnibus. I understand it may or may not contain all of the bills that are unresolved as far as the appropriations process is concerned.

Mr. REID. The bill was online last night. It was filed around 5 o'clock. It is on the House Rules Web site. It has been available for 15 to 18 hours.

Mr. STEVENS. It is still subject to amendment in the House, isn't it?

Mr. REID. No. Well, it is subject to whatever the Rules Committee does over there. They are taking it to Rules today, and it will be on the floor sometime early this evening, and they will finish it tonight.

Mr. LEAHY. Mr. President, if the leader will yield, Senator DODD is prepared——

The PRESIDING OFFICER. If we can extend the courtesies to our Members here, we need order in the Senate.

Mr. LEAHY. I thank the Chair. We have a Judiciary Committee bill that was passed out with a majority vote. I, at some point, will modify that somewhat. At some point, that will require a vote. We have discussed this already. I wanted to make sure people understand that. Senator DODD will go first, but at some point I will do that.

Mr. REID. Mr. President, we thought there may be, initially, a bill that would be offered by the respective chairmen of the Intelligence and Judiciary Committees. That didn't quite work out. Senator LEAHY graciously indicated he would be willing to have Senator DODD go first. Senator DODD has other things he wants to look to. We have a tentative time agreement for Senator DODD, but we don't have that finalized yet. We need to get some of the postcloture debate out of the way. As soon as that is done, Senator DODD will be recognized. If that is not the case, I will be recognized to offer the amendment on his behalf. We hope there will be no efforts to have a jump ball on our side. That is the first amendment Senator LEAHY and Senator ROCKEFELLER want to do.

Mr. BOND. Mr. President, did I hear the majority leader ask unanimous consent that votes would have a 60-vote requirement?

Mr. REID. Mr. President, I say to my friend that I did not ask that. I indicated I thought we should understand that would be the end result.

I ask unanimous consent that all votes in relation to the bill that is now before the Senate—the FISA legislation—require 60 votes, except for final passage.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, is there a rule in the Senate that requires this?

Mr. REID. It is by unanimous consent on this bill. It is a very controversial bill. I think there would not be the votes, for example, on the immunity aspect; I am confident there are people who would require 60 votes. In an effort to cut through a lot of the talk here, we would try to set up a time that we would vote on this as the first amendment out of the box; and on the other amendments, until further notice and agreement among Senators, we would have a 60-vote margin.

Mr. DODD. Let me say this, further reserving the right to object, I will respectfully object at this time, and I will talk with the leader about that necessity. I don't want to set the precedent of insisting on 60 votes on a germane amendment. I will object at this point, and following that, the leader can make the request again.

Mr. REID. Mr. President, my friend has every right to object. It is quite obvious that this is required because Members will simply filibuster. They have told me so. If we are talking about something as sensitive as immunity, retroactive immunity, and prospective immunity, it is going to take 60 votes. The rules don't require that, we know that, but the rules do require 60 votes to stop a filibuster.

Mr. BOND. Mr. President, I object to any measure coming up that does not have a 60-vote requirement. We conditioned our approval to bring up these amendments on agreeing to 60 votes; otherwise, we will use the prerogatives of the Senate.

Mr. DODD. Mr. President, I understand the 60-vote majority, but I have a germane amendment that strikes a provision in the bill. I understand the rules. When something is nongermane or violative of the rules of the Senate and you want to waive the rule, you have a supermajority requirement, but not on an amendment pertaining directly to the bill that strikes a section of it. I understand there is opposition to it, but having to reach a supermajority on an amendment that strikes something in the bill that is of significant disagreement seems to be excessive at this point.

This is an important piece of legislation, and the Judiciary Committee voted differently than the Intelligence Committee on this matter. We feel strongly about this. If I were offering something that is violative of the Senate rules, I would accept a supermajority. But to establish the precedent here that any amendment to be offered to this bill will be subjected to a supermajority vote I think is too excessive. That is my concern. Tell me I am wrong about that, that I am violating the rules of the Senate, and I will accept that. But if we are establishing that simply on any amendment that is different, I think that is a direction in which we should not go.

Mr. REID. Mr. President, first of all, on the immunity issue—we have a lot of matters here. We have had 60-vote margins all year, including on the war

in Iraq. The Senator is right that there is no requirement that there be 60 votes. But there is a requirement that if somebody talks and keeps talking, there won't be a vote. So the Senator can offer his amendment, but, as we have heard from people on both sides of the aisle, there won't be a vote taking place on his amendment—50 votes or 55 votes or 60 votes.

I thought it would be in the interest of the body to cut to the chase and say on this and other matters—this is a very controversial issue. We don't have time to have a lot of cloture votes on different amendments. So it seems to me that it is in the best interest of everybody that that is the agreement. The suggestion made is a good one.

Despite agreeing with the Senator from Connecticut as to this issue, it doesn't mean he and I are right. Certainly, by the unanimous consent request, there is no precedent set in the Senate. It is on a case-by-case basis.

Mr. President, what is the matter before the Senate?

The PRESIDING OFFICER. The motion to proceed to S. 2248.

Mr. REID. That is one where we have 30 hours from the time the vote takes place, with Senators having 1 hour under their control; is that right?

The PRESIDING OFFICER. We are now postcloture, that is correct.

Mrs. BOXER. Mr. President, parliamentary inquiry, if I might. I wonder, is there a unanimous consent request regarding speakers postcloture at this point?

The PRESIDING OFFICER. No request.

Mrs. BOXER. I would like to know this, if I may ask a question to Senator DODD. He, at this point, is objecting to a 60-vote requirement, and therefore the regular order would be to have people speak on the motion to proceed; is that correct?

Mr. DODD. I have an amendment I would like to offer that strikes title II of the legislation. I am prepared to offer that. I know Senator LEAHY talked about going first. I am prepared to follow whatever the Senate would like us to in order. I would like an opportunity to offer my amendment at some point. I told the leader that we can work out a time agreement. I wasn't quite ready to do it. I want to know how many people want to be heard. I will limit myself, but I want to get a vote. I am not looking for extended debate on my amendment.

Mrs. BOXER. Further, when such a list is made, I ask Senator DODD or the majority leader to please place me on the list for a 15-minute timeframe on his amendment and a broader statement.

The PRESIDING OFFICER. On a motion to proceed, amendments are not in order at this point.

Who seeks time?

Mr. REID. Mr. President, I think it would be appropriate if we find out, postcloture, who wants to give speeches. Once we find out how many want to speak and how much time they want, we can lay down the bill and have Senator DODD offer his amendment. Anybody who wants to speak postcloture, let us know so we can get to the bill. We are not on the bill yet. We are postcloture.

Mrs. BOXER. Mr. President, if it is in order, I would like to start and talk for 10 minutes. I would like to make my remarks on the issue that is pending.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I strongly support bringing the Judiciary Committee version of the FISA bill before us. That is why I voted not to proceed to take up the Intelligence Committee bill.

I did not cast that vote lightly because, as the Chair knows, I want to get the terrorists. I voted to go after Osama bin Laden. I voted to go after al-Qaida after they attacked us. I have voted to give this President every penny he needed to go ahead and capture Osama bin Laden. To date, much to my dismay and the dismay of the American people, we haven't captured bin Laden, who engineered the attack against our Nation. We have not caught him dead, we have not caught him alive. But we did capture Saddam Hussein, who didn't attack us on 9/11. We did get into a war we cannot get out of, thanks to the President and his backers, who have gotten us into a position where there is no way out and no end in sight. But capture bin Laden? No.

I will never give up hope on that. I will give our country all the tools it needs to get him and the others who have harmed us and who want to harm us in the future. That is our most sacred responsibility and duty. But if we are not careful, if we are not prudent, if we are not honest about what we are doing here, we give bin Laden exactly what he wants, Mr. President: a country that scares its people rather than a country that protects its people, a country that takes away the rights of its people out of fear.

Former Justice Thurgood Marshall said:

> History teaches us that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to ignore.

Now, what makes America so great? It is that we have been a guiding light to the world because we have been a strong nation in all ways, and a strong nation protects the rights of its citizens, while a weak nation, a fearful nation, a nation that lives in fear, abdicates those rights. We see it around the world. Let us never see it here.

We have an understanding here in America that the need for security must always be balanced against the rights of the people. Once we lose that precious balance, we are giving the terrorists exactly what they want.

We cannot and we must not ever lose that precious balance. If freedom and liberty become nothing more than just hollow words, then when we try to lead the world, we will simply not have the moral high ground. We have seen this happen in our great Nation in so many areas, and we cannot today, or during the next couple of days, allow this Nation, with our permission, to look at the rights of our people and take them lightly.

I quote another Supreme Court Justice, one of my heroines, Sandra Day O'Connor:

> It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.

''We must preserve our commitment at home to the principles for which we fight abroad.''

When President Bush announced his foreign policy—I will never forget it—he said we need to bring democracy around the world. We need to bring freedom around the world. We need to stop the despots of the world from taking away the freedoms the people have. Yet here at home they are destroying tapes, at home they are listening in on Americans without a warrant.

What is in the judiciary version of the bill that makes it much better than the intelligence version, and why was I so proud to stand with only 10 of my colleagues? I thank Senator DODD for his leadership on this issue. That is a hard vote. Here is why.

The judiciary version of the bill requires at least one specific individual target in order to begin bulk collection of international communications. You need to name one target; that is what the Judiciary Committee is saying. You just don't go on a fishing expedition. We have seen those kinds of fishing expeditions before. We have seen people herded up before. We cannot do that now, not in this century; not in this century when we are fighting bin Laden and we are fighting the forces that want to take away freedom.

Second, it requires a FISA Court order to continue surveillance when a call involves U.S. citizens. That is called a check and balance. That is essential to our freedom.

Third, it allows the FISA Court to decide whether surveillance continues while the Government appeals a decision against a proposed surveillance program. That is another example of check and balance.

Human beings are flawed, and when all the power resides in one or two of them, we need to have a check and balance. By the way, check and balance is one of the centerpieces of our freedom, of our Constitution. In this particular area of the law, we ought to make sure it is built in.

The Judiciary bill provides ongoing FISA Court supervision, including audits of surveillance programs. Again, a check and balance.

And then, of course, there is the issue on which Senator DODD has been such a leader, and that is the issue of immunity, immunity for telecommunications companies that cooperated

with the administration's warrantless surveillance program.

Let me point out that there were some companies that did not go along with it. Let's not be led to believe that every company rolled over and said: Here, have at it. There were some that stood up for the law, the law that was supposed to guide them. There were some that stood up for the American people, and I thank them.

To the others, what I say to them is this—I understand why they might not have stood up, but we have to get to the bottom of this issue. We cannot go around giving people immunity when they turn their backs on the rule of law.

Granting immunity without fully understanding whether Americans were spied upon in a warrantless surveillance program is irresponsible because of this reason: Congress and the American people will be blocked from finding out the truth about the warrantless program. We may not find out for 20 years, 30 years, 40 years. That is wrong. The American people deserve to know the truth.

Again, I take it to what we are as a nation. We are a free people. Our people deserve to be protected. The ones who are bad apples deserve to be caught and face the music. We need to find a law that seeks that balance and gets that balance. I think the Judiciary Committee did that beautifully, and I wish that was the bill in front of us now. That is why I voted not to proceed to the Intelligence Committee version.

Having said this, I hope we can work together and improve the Intelligence Committee bill. The Intelligence Committee version of the bill with telecom immunity puts the interests of the telecom companies ahead of the rights of the American people.

In closing, this is a watershed moment for us. Why do I say that? I heard Senator SESSIONS come down and give a very eloquent speech. He said, ''The civil''—I am quoting him now—''The civil libertarians among us''—and then he listed all the bad things he thinks the civil libertarians among us have done. I hope every one of us—every one of us in this Chamber—supports the civil liberties of the United States of America because if you don't, you don't believe in the Constitution. That is where we get these rights.

We need a FISA bill that will help us continue to track the terrorists without surrendering our rights and our liberties, and this can be done. I hope we can get a coalition together and amend this Intelligence Committee bill in a way that will do just that. We need a bill that closes loopholes in FISA that clearly have been created by advancements in technology. I understand that. But we also need a FISA bill that, while it allows us to go after the bad guys, has proper checks and balances within it. We need a bill that will improve FISA Court oversight of our foreign surveillance programs without hindering our ability to protect our country. We can do that.

I believe the Judiciary Committee version of the FISA bill accomplishes these goals. We don't have to create it here. They did an excellent job. It seems to me to throw out all their work would be a big error.

Finally, my point: It is so ironic and sad to me that we are losing our beautiful young people, and, by the way, not so young, some from the National Guard who are in their thirties and forties and older. We are losing them every day over in Iraq. Why? Ask the President to answer that question. He will be quick to answer it eloquently. To bring freedom and democracy, bring freedom and democracy, bring freedom and democracy.

If you feel that way, Mr. President, and those who support him and have given him a blank check, then let's protect it at home in a way that allows us to go after those who will do us harm if we are not careful, and yet protects the very essence of our Nation, the very freedom of our Nation, the very essence of our Constitution that has brought us to this point where the world envies our freedom and democracy. To give it up for politics or sound bites or 30-second commercials on television would be a dereliction of our most sacred duty.

I yield the floor.

The PRESIDING OFFICER (Mrs. MURRAY). The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent to be recognized for 15 minutes and that the Senator from California, Mrs. FEINSTEIN, be recognized next if no Member of the minority seeks recognition.

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

Mr. WHITEHOUSE. Madam President, just recently, the Attorney General of the United States published an opinion piece in the Los Angeles Times on our ongoing work to improve the Foreign Intelligence Surveillance Act, what we call FISA. This follows closely on a similar opinion piece by the Director of National Intelligence, Admiral McConnell, in the New York Times.

I ask unanimous consent to have printed in the RECORD each of these documents.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Dec. 12, 2007]

A FISA FIX

(By Michael B. Mukasey)

One of the most critical matters facing Congress is the need to enact long-term legislation updating our nation's foreign intelligence surveillance laws. Intercepting the communications of terrorists and other intelligence targets has given us crucial insights into the intentions of our adversaries and has helped us to detect and prevent terrorist attacks.

Until recently, our surveillance efforts were hampered by the unintended consequences of an outdated law, the Foreign Intelligence Surveillance Act, which was enacted in 1978 to establish a system of judicial approval for certain intelligence surveillance activities in the United States.

The requirement that a judge issue an order before communications can be intercepted serves important purposes when the target of the surveillance is a person in our country, where constitutional privacy interests are most significant. The problem, however, was that FISA increasingly had come to apply to the interception of communications of terrorists and other intelligence targets located overseas. In FISA, Congress had embedded the crucial distinction between whether targets are inside or outside our country, but did so using terms based on the technology as it existed then. However, revolutionary changes in communications technology in the intervening years have resulted in FISA applying more frequently to surveillance directed at targets overseas. The increased volume of applications for judicial orders under FISA impaired our ability to collect critical intelligence, with little if any corresponding benefit to the privacy of people in the U.S.

This summer, Congress responded by passing the Protect America Act. That law, passed with significant bipartisan support, authorized intelligence agencies to conduct surveillance targeting people overseas without court approval, but it retained FISA's requirement that a court order be obtained to conduct electronic surveillance directed at people in the United States. As J. Michael McConnell, the director of national intelligence, stated, the new law closed dangerous gaps that had developed in our intelligence collection. Congress, however, set the act to expire on Feb. 1, 2008.

It therefore is vital that Congress put surveillance of terrorists and other intelligence targets located overseas on surer institutional footing. The Senate Intelligence Committee has crafted a bill that would largely accomplish that objective. Recognizing the uncommon complexity of this area of the law, the committee held numerous hearings on the need to modernize FISA, received classified briefings on how various options would affect intelligence operations and discussed key provisions with intelligence professionals and with national security lawyers inside and outside government. This thorough process produced a balanced bill approved by an overwhelming, and bipartisan, 13–2 vote.

The Senate Intelligence Committee's bill is not perfect, and it contains provisions that I hope will be improved. However, it would achieve two important objectives. First, it would keep the intelligence gaps closed by ensuring that individual court orders are not required to direct surveillance at foreign targets overseas.

Second, it would provide protections from lawsuits for telecommunications companies that have been sued simply because they are believed to have assisted our intelligence agencies after the 9/11 attacks. The bill does not, as some have suggested, provide blanket immunity for those companies. Instead, a lawsuit would be dismissed only in cases in which the attorney general certified to the court either that a company did not provide assistance to the government or that a company had received a written request indicating that the activity was authorized by the president and determined to be lawful.

It is unfair to force such companies to face the possibility of massive judgments and litigation costs, and allowing these lawsuits to proceed also risks disclosure of our country's intelligence capabilities to our enemies. Moreover, in the future we will need the full-hearted help of private companies in our intelligence activities, we cannot expect such cooperation to be forthcoming if we do not support companies that have helped us in the past.

The bill that came out of the Senate Intelligence Committee was carefully crafted and

is a good starting point for legislation. Unfortunately, there are two other versions of the bill being considered that do not accomplish the two key objectives. The House of Representatives recently passed a version that would significantly weaken the Protect America Act by, among other things, requiring individual court orders to target people overseas in order to acquire certain types of foreign intelligence information. Similarly, the Senate Judiciary Committee made significant amendments to the Senate Intelligence Committee's bill that would have the collective effect of weakening the government's ability to effectively surveil intelligence targets abroad.

Moreover, neither the House bill nor the Senate Judiciary Committee's version addresses protection for companies that face massive liability. Both the Senate Judiciary Committee amendments and the House bill passed largely on party lines, and the full Senate will be debating this issue shortly

Congress must choose how to correct critical shortcomings in our foreign intelligence surveillance laws. It is a time for urgency. The Protect America Act expires in just two months, and we cannot afford to allow dangerous gaps in our intelligence capabilities to reopen. But this is also a time of opportunity, when we can set aside political differences to develop a long-term, bipartisan solution to widely recognized deficiencies in our national security laws. When Congress returns to this challenge, it should continue on the course charted by the Senate Intelligence Committee.

[From the New York Times, Dec. 10, 2007]

HELP ME SPY ON AL QAEDA

(By Mike McConnell)

The Protect America Act, enacted in August, has lived up to its name and objective: making the country safer while protecting the civil liberties of Americans. Under this new law, we now have the speed and agility necessary to detect terrorist and other evolving national security threats. Information obtained under this law has helped us develop a greater understanding of international Qaeda networks, and the law has allowed us to obtain significant insight into terrorist planning.

Congress needs to act again. The Protect America Act expires in less than two months, on Feb. 1. We must be able to continue effectively obtaining the information gained through this law if we are to stay ahead of terrorists who are determined to attack the United States.

Before the Protect America Act was enacted, to monitor the communications of foreign intelligence targets outside the United States, in some cases we had to operate under the Foreign Intelligence Surveillance Act, known as FISA, a law that had not kept pace with changes in technology. In a significant number of these cases, FISA required us to obtain a court order. This requirement slowed—and sometimes prevented—our ability to collect timely foreign intelligence.

Our experts were diverted from tracking foreign threats to writing lengthy justifications to collect information from a person in a foreign country, simply to satisfy an outdated statute that did not reflect the ways our adversaries communicate. The judicial process intended to protect the privacy and civil liberties of Americans was applied instead to foreign intelligence targets in foreign countries. This made little sense, and the Protect America Act eliminated this problem.

Any new law should begin by being true to the principles that make the Protect America Act successful. First, the intelligence community needs a law that does not require a court order for surveillance directed at a foreign intelligence target reasonably believed to be outside the United States, regardless of where the communications are found. The intelligence community should spend its time protecting our nation, not providing privacy protections to foreign terrorists and other diffuse international threats.

Second, the intelligence community needs an efficient means to obtain a FISA court order to conduct surveillance in the United States for foreign intelligence purposes.

Finally, it is critical for the intelligence community to have liability protection for private parties that are sued only because they are believed to have assisted us after Sept. 11, 2001. Although the Protect America Act provided such necessary protection for those complying with requests made after its enactment, it did not include protection for those that reportedly complied earlier.

The intelligence community cannot go it alone. Those in the private sector who stand by us in times of national security emergencies deserve thanks, not lawsuits. I share the view of the Senate Intelligence Committee, which, after a year of study, concluded that ''without retroactive immunity, the private sector might be unwilling to cooperate with lawful government requests in the future,'' and warned that ''the possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our nation.''

Time for the Protect America Act is growing short, but there is still an opportunity to enact permanent legislation that helps us to better confront both changing technology and the enemies we face in a way that protects civil liberties.

I served for almost 30 years as an intelligence officer before spending some time in the private sector. When I returned to government last winter, it became clear to me that our foreign intelligence collection capacity was being degraded. I was very troubled to discover that FISA had not been updated to reflect new technology and was preventing us from collecting foreign intelligence needed to uncover threats to Americans.

The Protect America Act fixed this problem, and we are safer for it. I would be gravely concerned if we took a step backward into this world of uncertainty; America would be a less safe place.

Mr. WHITEHOUSE. Madam President, both opinion pieces go on at some length about the importance of new legislation on foreign surveillance activities. They devote paragraph after paragraph to this issue. But the two leaders of America's law enforcement and intelligence communities completely ignore, never once mention, the issue that is actually in dispute; that is, on what terms will we allow this administration to spy on Americans?

We all agree to unleash our intelligence agencies on foreign targets of foreign surveillance. There is no question there. The heart of the debate is the question of spying on Americans, one, when they are outside the country, or, two, when they are incidentally intercepted by surveillance targeted at someone else.

This, the wiretapping of Americans, has been the entire subject of our work on surveillance. And yet Judge Mukasey and Admiral McConnell never once mentioned the topic. There are only two possibilities and each is regrettable. One is that these two gentlemen simply don't know what is going on, which seems unlikely since Director McConnell has participated in hearings on the subject, and we discussed in detail our concern about wiretapping Americans, and members of my staff are working through the details of the issue on a nearly daily basis with lawyers at the Director of National Intelligence and the Department of Justice.

So that leaves only one alternative that these two gentlemen do know what is going on and just chose to talk past the issue, ignore its very existence. That is a shame, and I hope it is not the early propaganda phase of a Bush administration effort to replicate the August stampede that got us into this pickle in the first place.

Since they have not mentioned it, let me tell you what the problem is. The Protect America Act passed in the August stampede contains no statutory limitation on this administration's ability to spy on Americans traveling abroad whenever it wants, for whatever purpose. Let me repeat that. The Protect America Act contains no statutory restriction on this administration's ability to spy on Americans traveling abroad whenever it wants, for whatever purpose.

The only limitation that now exists on that power is section 2.5 of Executive order No. 12333, which says the administration will not wiretap Americans overseas unless the Attorney General determines that person is an agent of a foreign power.

The problem, as I noted in a speech in this Chamber recently, is a secret Bush administration Office of Legal Counsel memo related to surveillance activities which says this:

> An Executive order cannot limit a President. There is no constitutional requirement for a President to issue a new Executive order whenever he wishes to depart from the terms of a previous Executive order. Rather than violate an Executive order, the President has instead modified or waived it.

In other words, the only thing standing between Americans traveling overseas and a Government wiretap is an Executive order that this President believes he is under no obligation to obey and may secretly disregard. The only thing standing between Americans traveling overseas and a Government wiretap is an Executive order this President believes he has no obligation to obey and may secretly disregard.

So for months we have worked to repair the flawed bill of August, and the question of spying on Americans has been the issue—the issue—of concern. I and my staff, many of my colleagues on both sides of the aisle and their staffs have been working diligently and in good faith to solve this problem. What I have seen in these negotiations has been a thoughtful exchange by well-intentioned people who are committed to keeping America safe without trampling on the rights of Americans.

We have talked not only with each other on both sides of the aisle but also

with people in this administration, including staff attorneys at the DOJ and DNI. We have worked almost all the way toward making sure Americans who are incidentally intercepted enjoy full, meaningful minimization protections. I think we have worked all the way toward making sure a court order is required to wiretap an American who happens to be overseas.

For both Director of National Intelligence McConnell and Attorney General Mukasey to write an op-ed as if the issue of spying on Americans abroad has no role in this debate, when it has been the key and central issue in this debate, is, frankly, disappointing. One wonders how big the elephant in the room has to be before they are willing to acknowledge it. Ignoring this problem may serve the Bush-Cheney interest in unaccountable executive power, but it does not protect Americans' privacy and it does not make Americans safer.

I urge my colleagues to remember that the issue we have been grappling with is a simple one: On what terms will we allow this administration to spy on Americans? It is a question with real implications for our democracy, for our civil liberties, and ultimately for the security of this Nation.

Unless we really believe that when Americans leave our country we leave our civil rights behind, unless we really believe this Government should have unfettered power to eavesdrop on conversations of families vacationing in Europe or soldiers serving in Iraq, then the authority to spy on Americans abroad cannot be left under the exclusive control of this administration. It is a matter that must be solved in this legislation that Congress must pass to restore the Protect America Act to a fair appreciation of civil liberties.

That is why we have been working on this question so hard. It is a serious question. I wish the two gentlemen leading the key Departments of Government involved had recognized that it exists, and I urge my colleagues to insist on the protections we have worked so hard for—to protect Americans from surveillance in a way the intelligence community has come to support.

We have come a long way. Chairman ROCKEFELLER is owed our gratitude, as is Chairman LEAHY. Their leadership in this has been spectacular. I also wish to express appreciation for the efforts of the distinguished ranking members, Senators KIT BOND and ARLEN SPECTER. We are on the verge of a historic moment in the rights of Americans and in making sure that when they travel abroad it is clear that they take their rights with them. Let us not let this moment slip away.

Madam President, how much time remains of my 15 minutes?

The PRESIDING OFFICER. The Senator from Rhode Island has 6½ minutes remaining.

Mr. WHITEHOUSE. Let me say one thing quickly, and we will come back to it, I believe, when amendments come forward.

With respect to the question of how we deal with the litigation that presently involves certain telephone communications carriers, I think everybody in this Chamber should remember the impossible predicament in which those companies have been placed. There are litigants, private litigants in court, in an ongoing action, and the Government has come in and told them: You may not defend yourself. It has told them: You may not say one word in defense of this litigation. National security is asserted as the reason, and all of the threats that come with violations of national security are in play.

So there they are, private litigants in private litigation, and the Government has stepped in and said: You may not defend yourself. I think we have to do something about that. Along with what the ranking member of the Judiciary said earlier, the distinguished Senator from Pennsylvania, Mr. SPECTER, I think the only decent thing we can expect the Government to do is to at least step in itself for these litigants. If they are going to tell the carriers they can't defend themselves in court in ongoing litigation, the least this Government should be able to do is to step in and say: We will step in and substitute ourselves for you.

So I applaud what Senator SPECTER has done with his substitution bill, and I look forward to a discussion of that.

I yield the remainder of my time, and I yield floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I ask unanimous consent that I may yield the remainder of my hour postcloture to Senator DODD.

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

The Senator from Connecticut.

Mr. DODD. Madam President, let me begin by thanking my colleague from California, Senator BOXER, not only for her generosity in giving me some additional time, but also for her comments regarding the underlying discussions on the FISA legislation and the provisions of the law before us for our consideration. I appreciate her comments and her thoughts on the subject matter.

I have already spoken at some length on FISA this morning, on these amendments, this new legislation before us, and my concern for what I consider to be the most egregious provision in this proposed legislation—that is, the retroactive immunity for the telecommunications industry that may have helped the President break the law. I have objected to that immunity on some very specific grounds because it would cover up an immense violation of trust, privacy, and civil liberties in our country.

This was not some small matter. It was not a one-time event. It went on for 5 years, in an elaborate and extensive way. But even more importantly, immunity is wrong because of what it represents. This is a fatal weakening of the rule of law which shuts out our independent judiciary and concentrates power in the hands of the executive.

FISA, as we have seen, was written precisely to resist that concentration. That the motivation in 1976–1978 when this legislation was drafted: making sure we could bridge this gap between security and rights, protecting both our security and our fundamental liberties. When we divide that power responsibly between the legitimate legislative, judicial, and executive branches, terrorist surveillance is not weakened; it is strengthened and made more judicious and more legitimate and less subject to the abuses that sap public trust.

But when millions of people, for over 5 years, had their private communications interrupted by the telecommunications industry, without a court order—which is what the law requires—the spirit of FISA has been undermined, and the public trust has been sapped. That, Mr. President, compromises our security.

I firmly believe, therefore, that any changes to FISA must be in keeping with its original spirit of shared powers, respect for the rule of law. If we act wisely, we can ensure terrorist surveillance remains inside the law and not an exception to it.

The Senate should pass a bill doing just that, and we will have the opportunity to do so; but the FISA Amendments Act, as it comes to us from the Intelligence Committee, is not that bill. Its safeguards against abuse, against the needless targeting of ordinary Americans, are far too weak. The power this bill concentrates in the hands of the administration is far too expansive.

However, the Senate also has before it a version of the bill that embodies a far greater respect for the rule of law. The version crafted by the Senate Judiciary Committee substituted a completely new title I and was reported out on November 16. Both versions of the bill authorize the President to conduct overseas surveillance without individual warrants. Let me repeat that: both bills—both versions of the bill authorize the President to conduct overseas surveillance without individual warrants.

Madam President, I see my colleague from California arriving on the floor, so I will yield the floor to her. I will ask when I come back to pick up my remarks as if uninterrupted, when the Senator from California completes her remarks; or the Senator from Missouri may have some thoughts on this legislation, and I will be more than happy to yield to him, as well, before coming back to the remarks I was in the midst of giving.

But I appreciate the opportunity to address the subject of retroactive immunity, which is the reason I am here on this matter today. So I look forward

to hearing from the Senator from California, and I am withholding my time, and I yield the floor.

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

The Senator from California.

Mrs. FEINSTEIN. Indeed, Madam President, I am taken aback by the generosity of the Senator from Connecticut, and I want him to know I very much appreciate it.

I wish to make a few comments on this bill and then introduce two amendments. These two amendments are very important to me because without them I am going to have a great deal of trouble voting for the final product. I say that as a predicate.

First, the general comments.

On December 16, 2005, the New York Times introduced the world to a secret NSA surveillance program, later dubbed the ''terrorist surveillance program,'' or TSP as it came to be known. This program, ordered by the President after September 11, 2001, was conducted in violation of U.S. law.

I have served on the Intelligence Committee for more than 6 years now and on the Judiciary Committee for almost 15 years, and I can tell you that NSA signals intelligence is an indispensable tool on the war on terror. No one should think there aren't people who would do us harm. The only way to wage this war on terror is to find them before they find us. At the same time, it is crucial to remember the history.

FISA was first enacted in 1978 in the wake of major civil rights abuses of foreign intelligence. The White House had authorized surveillance on Americans because of their political views—Martin Luther King, Joan Baez, and many others—a massive drift net collection of communications of U.S. citizens into and out of the United States. FISA was enacted to ensure such abuses would not occur again, and it has, in fact, safeguarded Americans' privacy rights for the past 30 years.

FISA requires court review and approval when surveillance is targeting a person inside this country. No content can be collected on an individual unless there is a warrant by the FISA Court.

As has been pointed out many times, changes in telecommunications technology and a change in the nature of our enemies have made updates to the 1978 FISA law necessary. New legislation is, in fact, needed to redraw the lines detailing when and where surveillance can take place and when a court warrant is required. That is what this debate is about and that is what the cloture vote just began.

To be clear, these modifications should not come at the expense of civil liberties protections that are enshrined in our Constitution. Today, in my view, it is clear that the administration made a big mistake in not using FISA in the first place. I have consistently said that I thought the terrorist surveillance program could be done under FISA. A FISA Court judge proved this correct earlier this year. If changes to FISA were needed to accomplish this surveillance, the administration should have requested those changes when we reauthorized the PATRIOT Act.

But, instead, the White House and Department of Justice relied on a new and aggressive interpretation of the President's article II authority under the Constitution, and a flawed argument that the authorization to grant military force use provided a statutory exemption to FISA. That was a big mistake. It is clear to me from the Office of Legal Counsel opinions that individuals in the Justice Department did not feel bound by established U.S. law, but proceeded under a new and expanded view of Presidential authority to move forward with the program.

With this bill, we can turn the page on a sad portion of our Nation's history. Both the Intelligence and the Judiciary bills will keep the terrorist surveillance program under FISA, and it will restore protections for America's privacy rights in ways that the Protect America Act does not. Let me give a few examples.

No. 1, this bill categorically requires an individualized warrant any time surveillance targets someone inside the United States. So the argument about a great drift net being cast across the United States, picking up tens of thousands of America's phone calls, simply is not correct. Targets outside the United States would be subject to a program warrant where the FISA Court reviews the targeting, in what are called minimization procedures.

No. 2, the FISA Court review must be involved any time the intelligence community is conducting surveillance on an American anywhere in the world. By that I mean any time a American is collected for content anywhere in the world, that individual becomes a target. Until now, the Attorney General has authorized, under section 2.5 of Executive Order 12333, surveillance of Americans outside the country. There has been no FISA Court review in these cases.

The numbers of Americans targeted overseas were between 50 and 60 cases last year, according to the DNI—last year being 2006. So the numbers are small, and reports are made anonymous through minimization, and only included if they contained foreign intelligence value.

No. 3, the bill puts the FISA Court review upfront, where it belongs, rather than 4 months after collection has begun, as was done under the Protect America Act. In other words, upfront the FISA Court reviews the minimization and approves that minimization, and can say to the Department: We want you to come back in 6 months or 8 months or 3 months, and we will take another look at it.

No. 4, procedures known as ''minimization'' are clearly defined and applied. This has been a hallmark of FISA for 30 years, but was not included in the Protect America Act. Once again, minimization is the process that the intelligence community has used since 1978 to protect information concerning Americans. When the NSA collects the content of communications, it does so to write intelligence reports. Minimization states that information without a foreign intelligence purpose is not used, and it cannot be retained indefinitely. It must be discarded at some point.

Intelligence reports that use information about an American are made anonymous, to protect that person's privacy rights. The bill requires that the minimization procedures used in each program be approved by the court upfront, so they go to the court first and they say this is what we want to do and these are the procedures we will use, and the court can affirm it or deny it. But it goes before a court.

If the amendments are adopted, the court will have the power to review how the minimization is being applied as well, so they will have constant review of the process.

No. 5, oversight mechanisms are stronger in this legislation. Reviews are required by inspectors general, agency heads, the FISA Court, and the Congress on how the surveillance authority is being used.

I wish to speak for a moment on the subject of telecom liability and then on exclusivity. If I might, I wish to do the exclusivity first.

On behalf of myself, Senator ROCKEFELLER, Senator LEAHY, and Senator NELSON, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment may be filed but not offered.

Mrs. FEINSTEIN. Madam President, this bill does not include language I authored to strengthen the exclusivity provisions of FISA. It has been reviewed by the chairman of the Intelligence Committee, the chairman of the Judiciary Committee, and they are both cosponsors, as well as an additional cosponsor in Senator BILL NELSON of Florida, who is also a member of the Intelligence Committee. Basically, what this amendment does is strengthen FISA as the only and exclusive authority for gathering intelligence through electronic surveillance. It specifically closes the AUMF loophole I mentioned earlier, whereby the administration contends it does not need FISA approval.

Second, it provides that only another statute, specific statute can constitute an additional exclusive means of electronic surveillance.

Third, it strengthens the requirements for certifications. The administration must identify the specific provision of the law on which the certification is based.

The exclusivity amendment I have submitted is intended to reinforce the legislative intent of the bill. In 1978, when the bill was passed, the court was to be absolute when conducting electronic surveillance against Americans

for foreign intelligence purposes. Unfortunately, despite the 1978 language, the Bush administration decided it could go outside the law. That was both wrong and unnecessary.

To make matters worse, the administration made up an argument that Congress had authorized it to go around FISA by some passing the authorization for use of military force against al-Qaida and the Taliban. Does anyone here actually believe that? I do not know one Member of Congress who has stated publicly that they believed they were authorizing the terrorist surveillance program when they voted to go to war against bin Laden. In fact, to the contrary, it was never considered and to the best of my knowledge it was never thought of. When the Department of Justice came to the Congress in September 2001, outlining the changes it needed in FISA to wage this war, it did not mention anything about surveillance efforts such as those the TSP program addressed.

Congressional intent from 1978 is clear. Congress clearly intended for FISA to be the exclusive authority under which the executive branch may conduct electronic surveillance. Let me briefly review the history, because it is important.

Congress wrote, in 1978, in report language accompanying FISA:

> Despite any inherent power by the President to authorize warrantless electronic surveillance in the absence of legislation, by this bill and chapter 119 of title 18, Congress will have legislated with regard to electronic surveillance in the United States, that legislation, with its procedures and safeguards prohibit the President, notwithstanding any inherent powers, notwithstanding any inherent powers—

Which means AUMF, article II of the Constitution

—from violating the terms of that legislation.

That is a quote. The legislative history continues by describing the Supreme Court's decision in the Keith case, in which the Court ruled at that time Congress hadn't ruled in this field, and simply left the Presidential powers where it found them.

But at this point the legislative history turns. The 1978 language responded to the Keith case and said this:

> The Foreign Intelligence Surveillance Act, however, does not simply leave Presidential powers where it finds them. To the contrary, this bill would substitute a clear legislative authorization pursuant to statutory, not constitutional, standards.

I want the record to show here the clear understanding in 1978 that FISA was the exclusive authority. That was the report language accompanying H.R. 7138 as it passed the 95th Congress.

President Carter signed the bill. His signing statement said this:

> This bill requires, for the first time, a prior judicial warrant from all electronic surveillance for foreign intelligence or counterintelligence purposes in the United States in which communications of U.S. persons might be intercepted.

That is pretty clear, on the part of the President who signed the bill, and the House and the Senate that passed that bill, what the intention was.

The Intelligence Committee bill before us reiterates the 1978 exclusivity language, but I believe this needs to be strengthened in light of the article II and the AUMF arguments that this administration has been making. I am going to introduce this amendment at this time.

This language closes loopholes that this Department of Justice squeezed through, to claim that the AUMF was an authorized exception to the FISA. It clearly was not. The amendment does this by tightening language in FISA, and in title 18 of the criminal code, making clear that future Presidents should not try to read between the lines in future legislation for authorization to go outside of the Foreign Intelligence Surveillance Act.

It also provides more specificity in what must be included in written requests or directives to telecommunications authorities for them to legally provide assistance. It is clear from the recent history that this is necessary. In fact, the whole issue of whether telecom immunity is needed is because past certifications have not been clear.

I couldn't support a bill that did not clearly reestablish the primacy of FISA. I tried to do it in committee. I thought it was done in committee. It was not included in the base bill. The Republican side would not go along with it. I once again submit it. To me it is vital, and my vote on the bill was, at least 50 percent, based on this exclusivity provision.

Now, if I may, may I mention telecom immunity and submit an amendment? I voted for telecom immunity in the committee. I am not inclined to vote for it, to be candid with you, unless this amendment is adopted. So let me begin by talking about the immunity provision of the bill. It is not as expansive as some would make it sound. The language would only cover cases where the Attorney General certifies that the defendant companies received written requests or directives from top levels of the Government for their assistance.

In other words, the Government, in writing, I stress in writing, assured those companies that the program was legal, the President had authorized the program, and that its legality has been approved by the Attorney General.

The legislation does not provide immunity for criminal wrongdoing, nor does the legislation provide liability relief for any Government official such as that the Director of National Intelligence had requested in April. No individual immunity of anyone in the government is included in this bill.

There are approximately 40 cases pending in the Ninth Circuit. The companies in these cases are prevented from making their own defense. I do not know if Members understand the full importance of this. They are prevented from responding to inaccurate news articles, inaccurate press releases, they cannot come before the Congress and testify in public, they cannot respond to anything that is said in the public sector, and they are prevented from defending themselves in court.

These defendants have to sit by and listen to what they consider to be misrepresentations, and they cannot respond to these misrepresentations. So, in effect, they are handcuffed and gagged by the administration's claim of state secrets. This is a matter of fairness. These companies have no financial motives in providing assistance to the Government. In fact, they incurred a substantial risk in doing so. They were given written requests, legal assurances in the weeks after September 11. The letters went out within 5 weeks of September 11, when we all feared this Nation might suffer additional attacks.

In fact, evidence has come to light to indicate the second wave of attacks involving the West Coast was being planned. It was this administration, not the companies, that made a flawed legal determination. It was this administration that withheld its activities from the Congress for 4 long years. It was this administration that decided not to go to the FISA Court. They could have gone to the FISA Court. They could have asked for a program warrant, which they subsequently got.

They could have put this program under FISA coverage, which it now is, which they did not at the time.

It has been pointed out that there is a longstanding common law provision that allows citizens to rely on the assumption that the Government acted legally when it asks a private citizen or a company to assist it for the common good. All that is required is that the citizen act in good faith.

So the question is whether the small number of people, and it was a small number of people, who were actually cleared in a classified sense, to deal with this, of these companies, were acting in good faith and whether it was reasonable for them to determine that the assistance, in fact, it provided was legal.

A small number of telecom officials were acting under the cloak of secrecy and a directive not to disclose the Government's request. They are not experts on article II of the Constitution. The amendment I am going to submit would put before the FISA Court the question of whether the telecommunications companies should, in fact, receive immunity based on the law.

The FISA Court would be required to act, en banc, and how this is, is 15 judges, Federal judges, appointed by the Chief Justice, they sit 24/7, and this is all they do, they would act en banc. They would look at the following: Did the letters sent to the carriers which were repeated virtually every 35 to 45 days over the last 4 to 5 years, did the letters sent to the carriers meet the conditions of law.

Section 2511 of title 18 clearly states that a certification from the Government is required in cases where there is no court order. That is the only two ways that FISA allows this to proceed, by written certification or by court order.

The Government has to certify in writing that all statutory requirements for the company's assistance have been met. So the FISA Court would first look at whether the letter sent to the companies met the terms of this law. The court would then look at, if the companies provided assistance, was it done in good faith and pursuant to a belief that the compliance was legal.

Finally, the FISA Court would ask: Did the defendants actually provide assistance? If the FISA Court finds that defendant did not provide any assistance to the Government or that the assistance either met the legal requirements of the law or was reasonably and in good faith, the immunity provision would apply.

If the FISA Court finds that none of these requirements were met, immunity would not apply to the defendant companies. I think the merit of this approach is it preserves judicial review, the method we look at in order to decide questions of legality.

Now, the bulk of the Members of this body, probably 90 percent of them, have not been able to see the written certification, so you do not know what was there. What we ask in this amendment is: FISA Court, you take a look at these letters, and you make a ruling as to whether they essentially meet the certification requirements of the FISA law.

Therefore, there is judicial review to determine whether, under existing law, this immunity should be forthcoming. It is a narrowing of the immunity provisions of the Intelligence bill. I think it makes sense. I read the letters. I am a layperson, I am not a lawyer. I cannot say whether they met the immunity provisions. Others can say that.

But it should be up to a court to make that decision. It seems to me that if the FISA Court finds that none of these requirements were met, immunity would not apply to the defendant companies.

The FISA Court of Review stated in 2002 that the President has article II authorities to conduct surveillance. The article II authority is the big rub in all this. The collection under this program was directed overwhelmingly at foreign targets.

But no court has addressed this issue since FISA was enacted in 1978. And, candidly, I think the time has come to see whether the President's article II authority—and the FISA Court would be the first judge of this—in fact, supersedes the article II authority based on the reading that I had given you of FISA Court passage in 1978.

So essentially that is the amendment I would like to send to the desk at this time which narrows the immunity provision of the FISA law. I thank the clerk for receiving the amendment.

In sum, I have tried to pay a great deal of attention to this. I tried to do my due diligence, both as a member of the Judiciary Committee and the Intelligence Committee. I truly do believe electronic surveillance is vital in the war against terror.

I believe it is the most likely way we learn what is being planned for the future and have an opportunity to prevent it from happening. I truly believe there are people who would do this Nation grievous injury and harm if they are given the opportunity to do it, and I think the telecom communities did depend on the good faith of the head of the National Security Agency and the Attorney General and the requests from the highest levels of Government.

The question is, Did they comply with the law? And so the amendment I have suggested would give the FISA Court the opportunity to make a ruling as to whether, in fact, they did comply with the law.

The second amendment would strengthen the exclusivity provisions of the FISA law so we never again, hopefully, will find ourselves in the same situation.

I look for a vote on both those amendments, and I thank the Chairman of the Intelligence Committee, the Judiciary Committee and Senator NELSON for supporting my amendment on exclusivity.

I ask unanimous consent that Senator NELSON of Florida be added as a cosponsor of the FISA Court evaluation on the immunity question amendment.

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

Mrs. FEINSTEIN. I thank the Senator from Connecticut for yielding to me.

Mr. KENNEDY. Mr. President, I am troubled by the FISA bill that has come to the Senate floor. Since I introduced the original FISA legislation over 30 years ago, I have worked to amend the FISA law many times, and I believe that this bill is not faithful to the traditional balance that FISA has struck. This bill gives the executive branch vast new authorities to spy on Americans, without adequate guidance or oversight. Americans deserve better.

I voted ''yes'' on the motion to proceed to consideration of this bill because I believe this legislation is too important to hold up any longer. The House has already passed a new FISA bill, and the Senate needs to do the same. But let me be clear, the Senate should reject the bill that we have before us. We need to pass the Judiciary Committee version instead.

The Foreign Intelligence Surveillance Act is one of our landmark statutes. For nearly three decades, it has regulated Government surveillance in a way that protects both our national security and our civil liberties and prevents the Government from abusing its powers. It is because FISA enhances both security and liberty that it has won such broad support over the years from Presidents, Members of Congress, and the public alike. It is important to remember that before this administration, no administration had ever resisted FISA, much less systematically violated it.

When the administration finally came to Congress to amend FISA after its warrantless wiretapping program was exposed, it did so not in the spirit of partnership, but to bully us into obeying its wishes. The Protect America Act was negotiated in secret at the last minute. The administration issued dire threats that failure to enact a bill before the August recess could lead to disaster. Few, if any, knew what the language would actually do. The result of this flawed process was flawed legislation, which virtually everyone now acknowledges must be substantially revised.

I commend the members of the Intelligence Committee for their diligent efforts to put together a new bill. They have taken their duties seriously, and they have made some notable improvements over the Protect America Act.

But their bill is deeply flawed, and I am strongly opposed to enacting it in its current form. This bill fails to protect Americans' constitutional rights and fundamental freedoms.

There are many problems with the bill.

It redefines ''electronic surveillance,'' a key term in FISA, in a way that is unnecessary and may have unintended consequences.

Court review occurs only after the fact, with no consequences if the court rejects the Government's targeting or minimization procedures.

It is not as clear as it should be that FISA and the criminal wiretap law are the sole legal means by which the Government may conduct electronic surveillance.

Its sunset provision is December 31, 2013. For legislation as complicated, important, and controversial as this, Congress should reevaluate it much sooner.

The bill purports to eliminate the ''reverse targeting'' of Americans, but does not actually contain language to do so. For instance, it has nothing analogous to the House bill's provision on reverse targeting, which prohibits use of the authorities if ''a significant purpose'' is targeting someone in the United States.

It does not fully close the loophole left open by the Protect America Act, allowing warrantless interception of purely domestic communications.

It does not require an independent review and report on the administration's warrantless eavesdropping program. Only through such a process will we ever learn what happened and achieve accountability and closure on this episode.

Add it all up, and the takeaway is clear: This bill is inconsistent with the

way FISA was meant to work, and it is inconsistent with the way FISA has always worked.

The Judiciary Committee's FISA bill shows that there is a better way. The Judiciary Committee's version is faithful to the traditional FISA balance. It shares the same basic structure, but it addresses all of the problems I listed above. The Judiciary bill was negotiated in public, which allowed outside groups and experts to give critical feedback. It was also negotiated later in time than the Intelligence bill, meaning we had the benefit of reviewing their work.

Like the Intelligence Committee's bill, the Judiciary Committee's version also gives the executive branch greater authority to conduct electronic surveillance than it has ever had before. Make no mistake, it too is a major grant of power to the intelligence community. But unlike the Intelligence Committee's bill, the Judiciary Committee's version sets some reasonable limits that protect innocent Americans from being spied on by their Government without any justification whatever.

No one should lose sight of how important title I of FISA is. The rules governing electronic surveillance affect every American. They are the only thing that stands between the freedom of Americans to make a phone call, send an e-mail, and search the Internet, and the ability of the Government to listen in on that call, read that e-mail, review that Google search. In our ''information age,'' title I of FISA provides Americans a fundamental bulwark against Government tyranny and abuse. If we enact the title I that is now before us, we will undermine that bulwark.

Unfortunately, the exact same thing would be true if we enact the Intelligence Committee's title II.

The Nation was shocked to learn earlier this month that the CIA had destroyed videotapes showing employees using severe interrogation techniques. The willful destruction of these tapes by the CIA obviously raises serious questions involving obstruction of justice.

But this is not the only coverup that the administration has been involved in lately. President Bush has been demanding that Congress grant retroactive immunity to telecommunications companies that cooperated with the administration's illegal surveillance program. He wants us to pretend that this whole episode never happened.

I oppose granting any form of retroactive immunity to these companies, and I urge my colleagues to support the amendment to strike title II from the FISA bill. Amnesty for telecommunication companies may help the administration conceal its illegal spying, but it will not serve our national security, and it will further undermine the rule of law.

Let's not forget why we are even talking about this issue. At some point in 2001, the Bush administration began a massive program of warrantless spying. New reports suggest that the administration began its warrantless spying even before 9/11. The administration never told Congress what it was doing. In clear violation of the FISA law and in complete disdain for the fourth amendment, it also never told the FISA Court what it was doing.

Because the Bush administration secretly ignored the law, we still do not know how deeply this program invaded the privacy of millions of innocent Americans. The push for immunity by this administration is a push to avoid all accountability for a wiretapping program that was a massive violation of the law.

FISA has been in force for 29 years. It was designed from the beginning to allow flexibility in pursuing our enemies. It was enacted with strong bipartisan support in 1978, and it has been amended on a bipartisan basis some 30 times since then. It has enhanced Americans' security and safeguarded our liberty. Every previous administration has complied with FISA. But the Bush administration apparently decided that FISA was an inconvenience. With the help of certain phone companies, it secretly spied on Americans for years, without any court orders or oversight.

There is still a great deal we don't know about this secret spying, but what we do know is alarming. Numerous reports indicate that it covered not only international communications, but also Americans' purely local calls with their friends, neighbors, and loved ones. A lawsuit in California has produced evidence that at the Government's request, AT&T installed a supercomputer in a San Francisco facility that copied every communication by its customers, and turned them over to the National Security Agency.

Think about that. The National Security Agency of the Bush administration may have been intercepting the phone calls and e-mails of millions of ordinary Americans for years.

The surveillance was so flagrantly illegal that even lawyers in the administration tried to fight it. Nearly 30 Justice Department employees threatened to resign over it. The head of the Office of Legal Counsel, Jack Goldsmith, testified that it was ''the biggest legal mess I had ever encountered.''

Mr. Goldsmith himself acknowledged that ''top officials in the administration dealt with FISA the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis of the operations.''

Think about that as well. The President's own head of the Office of . Legal Counsel states that the administration's policy has been to ''blow through'' laws it doesn't like, in secret, so that its actions cannot be challenged. The Bush White House has repeatedly failed to understand that our Government is a government of laws, and not of men.

The administration's secret spying program has taken a heavy toll on our country. Its failure to follow the law has made it more difficult for prosecutors to put terrorists behind bars; for intelligence professionals to avoid civil and criminal lawsuits; and for the public to trust its Government. In the name of making us safer, the administration's reckless disregard for the law has made us less safe, and countless Americans fear their rights have been endangered. That sorry record demands accountability, not immunity.

Here is another fact that no one should lose sight of. From the very beginning, telecommunications companies have always had immunity under FISA when they comply with lawful surveillance requests. In fact, the Senate Judiciary Committee worked closely with AT&T, and the company played a major role in drafting FISA's immunity provisions in the 1970s.

To be completely protected from any liability whatever, all a company needs under FISA is a court order or an appropriate certification from the Attorney General. That is it. Just get one of those two documents, and you are off the hook.

So in this debate, let us be clear that we are not talking about protecting companies that complied with lawful surveillance requests. We are talking about protecting companies that complied with surveillance requests that they knew were illegal.

Immunity for the phone companies would be bad policy on many levels. First, it is premature even to be talking about this subject. Even though the President is demanding immunity for companies that may have broken the law, he will not tell all Members of Congress which companies broke the law, how they broke the law, or why they broke the law. He is asking us to legislate in the dark.

Immunity for the telecoms for warrantless wiretapping violates the basic structure and purpose of FISA. The industry helped draft FISA, and they perform a major role under it. Here is how this system was explained in the House Intelligence Committee report on the original legislation:

> Requiring the court order or certification to be presented [to the carrier] before the assistance is rendered serves two purposes. It places an additional obstacle in the path of unauthorized surveillance activity, and, coupled with the provision relieving the third party from liability if the order or certification is complied with, it provides full protection to such third parties.

If phone companies can ignore these requirements, this system of checks and balances collapses. That is exactly what happened here. The telecoms are supposed to provide an essential safeguard for protecting Americans' private information. Because Congress and the courts usually don't know about wiretapping activities, this role of the telecoms is crucial. Immunity for the telecoms undermines the basic design of our surveillance laws.

Instead of undermining those laws, we should apply them in a court of law to discover and punish illegal activities. The administration has used the scare tactic of claiming that lawsuits will jeopardize national security by leaking sensitive information. That argument ignores the fact that the media have already exposed the existence of its warrantless surveillance program and the role of some telecoms in assisting this program. In addition, it would be foolish to assume that the terrorists don't already know that we are trying to intercept their phone calls and e-mails.

The administration's argument also ignores the numerous safeguards used by courts to protect sensitive information. No one is advocating that the NSA disclose its specific methods or targets in open court. Even if someone did seek such disclosure, the Federal courts have procedures that have protected Government secrets for generations.

The administration has also suggested that allowing these lawsuits to proceed might jeopardize national security by deterring phone companies from future cooperation with surveillance requests. This too is sheer nonsense. Under FISA, companies already have absolute immunity for any lawful cooperation. Future companies will be deterred only from cooperating with illegal surveillance requests, which is the whole point of the law. We do not want this shameful episode to happen again.

The phone companies will suffer only the same harm that befalls any company that violates the law. The administration contends that the telecoms may be bankrupted if the lawsuits continue. In other words, the administration is telling us these companies may have engaged in lawbreaking on a scale so massive they could not afford the penalty if they are brought to justice. But massive law breaking is an argument against immunity, not for it. If the concern is the companies' financial health, the answer is not to throw out the rule of law but to legislate reasonable remedies, such as damage caps.

Immunity for the telecoms would also violate basic principles of fairness and justice. The administration repeatedly claims immunity is ''a matter of basic fairness'' because the companies were doing their patriotic duty. That is a strange conception of fairness.

Telecom companies have clear duties under the law. They also have highly sophisticated lawyers who deal with these issues all the time. If a company violated its clear duties and conducted illegal spying, fairness demands it face the consequences.

It is precisely because fairness and justice are so important to the American system of government that we ask an independent branch—the judiciary—to resolve such legal disputes. There is nothing fair or just about Congress stepping into ongoing lawsuits to decree victory for one side and deny injured parties their day in court.

Frankly—frankly—the whole ''patriotic duty'' argument we have been hearing from the White House is hard to take seriously. If the allegations against the telecoms are true, then we are not talking about ambiguous points of law. As a Federal judge remarked in one of the leading cases:

> AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

We are not talking about what happened in the frantic weeks and months immediately following 9/11. We are talking about alleged violations of Americans' rights that went on for 5 years—5 years—in total secrecy, on a scale that has never been approached in our history.

If the telecoms had followed the law instead of the Bush administration, the administration could have come to Congress and obtained any needed changes in the law. In a democracy, it is the job of the legislature to amend laws to fit new circumstances. It is not the job of the legislature to rubber-stamp illegal conduct by the Executive.

Some of the telecoms might have been doing what they thought was good for the country. Some of them might simply have been doing what they thought would preserve their lucrative Government contracts. We simply do not know. But either way, it is not the role of the telecommunications companies to decide which laws to follow and which to ignore. FISA is a law that was carefully developed over many years to give the executive branch the flexibility it needs, while protecting the rights of Americans. It is the companies' legal duty—and their patriotic duty—to follow that law.

Nothing could be more dangerous for Americans' privacy and liberty than to weaken that law, which is precisely what retroactive immunity is meant to do. Yesterday's newspapers disclosed that in December of 2000, the National Security Agency sent the Bush administration a report asserting that the Agency must become a ''powerful, permanent presence'' on America's communications network—a ''powerful, permanent presence'' on America's communications network. Under this administration, that is exactly what the NSA has become. If the phone companies simply do the NSA's bidding in violation of the law, they create a world in which Americans can never feel confident that their e-mails and phone calls are not being tapped by the Government.

Finally, amnesty would stamp a congressional seal of approval on the administration's warrantless spying. If Congress immunizes the telecoms for past violations of the law, it will send the message Congress approves what the administration did. We would be aiding and abetting the President in his illegal actions, his contempt for the rule of law, and his attempt to hide his lawbreaking from the American people. Voting for amnesty would be a vote for silence, secrecy, and illegality. There would be no accountability, no justice, no lessons learned.

The damage will not stop there. The telecommunications companies are not the only private entity enlisted by this administration in its lawbreaking. Think about Blackwater and its brutal actions in Iraq, or the airlines that have flown CIA captives to be tortured in foreign countries. These companies may also be summoned to court one day to justify their actions. When that day comes, the administration may call yet again for retroactive immunity, claiming the companies were only doing their patriotic duty as ''partners'' in fighting terrorism.

The debate we are having now about telecom amnesty is not likely to be the last round in the administration's attempt to immunize its private partners. It is only the opening round. In America, we should be striving to make more entities subject to the rule of law, not fewer. Giving in to the administration now will start us down a path to a very dark place.

Think about what we have been hearing from the White House in this debate. The President has said American lives will be sacrificed if Congress does not change FISA. But he has also said he will veto any FISA bill that does not grant retroactive immunity—no immunity, no FISA bill. So if we take the President at his word, he is willing to let Americans die to protect the phone companies. The President's insistence on immunity as a precondition for any FISA reform is yet another example of disrespect for honest dialog and the rule of law.

It is painfully clear what the President's request for retroactive immunity is about. It is a self-serving attempt to avoid legal and political accountability and keep the American people in the dark about this whole shameful episode. Similar to the CIA's destruction of videotapes showing potentially criminal conduct, it is a desperate attempt to erase the past.

The Senate should see this request for what it is and reject it. We should pass this amendment to strike title II from the FISA bill. Our focus should be on protecting national security, our fundamental liberties, and the rule of law, not protecting phone companies that knew they were breaking the law.

I am second to no one in wanting to make sure our intelligence agencies have all the flexibility and authority they need to pursue the terrorists. We need to pass a FISA bill that will keep America strong and protect our liberty. The bill reported by the Judiciary Committee will do that.

Mr. DODD. Mr. President, will my colleague yield?

Mr. KENNEDY. I will be glad to.

Mr. DODD. Mr. President, I wish to commend the Senator from Massachusetts for his statement this afternoon. He has captured the essence of all this and the importance of the issue in

Title II. He made very many good points. But one point he made said it all: that the President of the United States would veto the FISA legislation if he does not get immunity for the phone companies. This administration would risk the entire law—a law designed to improve our surveillance of terrorists, while respecting privacy—simply to protect a handful of companies. Those are the lengths to which President Bush is prepared to go.

I think the Senator from Massachusetts made this point, but it is worth repeating: Not every company did what the administration asked them to do. There were those that stood up and said: ''No. Give me a court order, and I will comply under the law.'' They should be commended for what they did.

For those that said, ''We were just doing our patriotic duty,'' their legal departments were not made up of first-year law students. They knew what the law was. Yet they may have violated it and are now seeking immunity.

So I commend my colleague. I am going to offer—when I get a chance—an amendment that strikes title II from the legislation. I hope every Senator here supports it. This ought not be about party or ideology. It is about our Constitution.

The FISA law is a good law. It has protected us for almost 30 years. But it should not sanction retroactive immunity for a handful of phone companies that eavesdropped on millions of people's conversations.

So I commend my colleague for his words.

Mr. KENNEDY. Mr. President, I thank the Senator for his comments. I agree it never had to be this way. I can remember back in 1976 President Ford was President of the United States. He had Edward Levi as Attorney General, who was a distinguished Attorney General. This was in the wake of a good deal of abuse we had seen during President Nixon's period of wiretap abuse taking place in this country, which shocked the Nation.

At that time, the Attorney General insisted that we work together, that Congress work together. He called members of the Judiciary Committee down to the Justice Department and took their views into consideration. There was a variety of very sensitive issues about activities involving the Soviet Union and a good deal in terms of embassies in Washington, DC. There was very sensitive information. All of that was worked out with the Republicans and Democrats in the Judiciary Committee, and they passed the FISA bill. There was only one dissenting vote in the Senate—only one dissenting vote—on this proposal.

I must say many of us were enormously disappointed at the beginning of this whole pathway when Attorney General Gonzales came up before the committee and indicated: No, there was not any role to try to work in a constructive way and on a constructive path on this mission. No, there was no place for anyone to get adequately briefed. No, there was no sharing of information. No, there was going to be no—they understood what was going to happen. They understood what was going on. They had all the authority and the power under the executive branch. No, there was not going to be any activity whatsoever in trying to work together.

I have mentioned a variety of different points. But one of those we ought to keep in mind is that with the abuses that have taken place, we are endangering the prosecution of many of these terrorists. This is a real danger. Rather than trying to work that out through a process, with give-and-take, with Republicans and Democrats, in a bipartisan way, working with the Judiciary Committee—the Intelligence Committee obviously has enormous interest and experience; I see my friend and someone we all have such a high regard for, Senator ROCKEFELLER, who has done such a commendable job in this whole area—but not working it out and running off on this pathway, which is gradually being revealed through the national media and the press and through other activities, I think, rather than enhancing our national security, has indeed threatened it.

Mr. DODD. Mr. President, if I may further inquire of my colleague from Massachusetts, I was intrigued to learn how many the Washington Post recorded. I heard no one argue with these numbers. One of the arguments we have heard is that the FISA Court may not have been willing to agree with these court orders to the phone companies—not that that argument was even remotely legitimate.

The Washington Post reports that over the years, there have been over 18,000 requests for FISA court orders. Of those more than 18,000 requests, 5 have been rejected—5. So with over 18,000 requests, for 99.9 percent of those requests, that court has acquiesced to administration appeals 99.9 percent of the time.

So the idea this court was somehow going to serve as an obstruction to the administration's desire to get legitimate information is certainly belied by the statistics. I point that out to my colleague.

Mr. KENNEDY. Mr. President, I thank the Senator.

In the committee, we had some of the members of the FISA Courts testify. They indicated before the committee similar kinds of cooperation they have had in reviewing this, making the Senator's point even stronger. I thank the Senator from Connecticut. There may have been others, but I did notice him to be the first one in the Senate who spoke up on this issue when it first came up, and he has been a very strong protector of our national security and our liberty, and we have all benefited from his comments and his leadership in this area. I thank him for all of his good work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. I was in the midst of giving some remarks earlier, and my colleague from California, Senator FEINSTEIN, came on the Senate floor. I know she wanted to share her thoughts, so I yielded the floor to her to allow her to speak. I see my friend and colleague from Missouri is here. I know we have gone back and forth. I understand how this works. I don't know if he has some remarks he wants to give.

Mr. BOND. Mr. President, I am a little bit confused. We certainly don't want to cut short the remarks of our friend from Connecticut, but I thought this was supposed to go back and forth. I believe there is an hour limit under postcloture on time that can be consumed by any Senator. I thought we would go back and forth to enable people on both sides and let the chairman and me perhaps respond where necessary.

Mr. DODD. Fine.

Mr. BOND. I wanted to know, through the Chair, what the procedure is right now.

The PRESIDING OFFICER. There is no order of recognition at this time.

Mr. BOND. All right. Again, I seek recognition, and I thank my colleagues for sharing their views.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I wanted to share a few views on matters that have been just raised. I thought it was important to bring these up. I will have longer remarks when we actually get on the bill.

I appreciated hearing from our colleague, who is an original cosponsor of the first FISA bill, and to learn about the negotiations which went on then. But I was a little puzzled to hear how this bill—this bill, which includes significantly more protections for Americans' civil liberties and constitutional rights—somehow goes back on the original FISA. The original FISA required a court review of targeting of U.S. persons. We have gone far beyond that in this bill. As a matter of fact, the Protect America Act, which he decried, contained all of the protections that were in the original FISA bill.

Now, we have, on a bipartisan basis—I keep emphasizing that the Intelligence Committee, on a bipartisan basis, after being fully briefed—fully briefed—by several elements of the intelligence community—and we asked them questions. We had briefings. We went to the NSA to see how it worked. We went through all of these ideas with them. They said: We understand your objective. Here is how to accomplish it.

I think we have prepared a very good bill that by any fair reading—any fair reading—will extend the protections beyond what the original FISA, and even the Protect America Act, had for the surveillance, electronic surveillance of anybody either in the United

States or a U.S. person abroad. I am very much surprised that he says somehow, this bill, which provides more protection, doesn't provide the basic protections of FISA. I regret to say that is just not right.

I also want to address some questions about immunity which have been brought up. I thought our committee report, a bipartisan product, said it pretty well when talking about why providing immunity—and it is not amnesty because these companies, the companies alleged to have done wrong, did nothing wrong. This is what the Intelligence Committee said. We concluded:

> The providers had a good faith basis for responding to the request for assistance they received. The intelligence community cannot obtain the intelligence it needs without assistance from these companies. Companies in the future may be less willing to assist the government if they face the threat of private lawsuits each time they are alleged to have provided assistance. The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation. Allowing continued litigation also risks the disclosure of highly classified information regarding intelligence sources and methods. In addition to providing an advantage to our adversaries by revealing sources and methods during the course of litigation, the potential disclosure of classified information puts both the facilities and personnel of electronic communications service providers and our country's continued ability to protect our homeland at risk. It is imperative that Congress provide liability protection to those who cooperated with our country in the hour of need.

Now, there was some talk about article II, and some suggested that the FISA Court would not have—this could not have been approved by the FISA Court. Well, my understanding is the FISA Court knew about it. The FISA Court has acted on this measure, and in one of the few published reports of the FISA Court of Review, In Re: Sealed Case—that is a very compelling and provocative title, but that is the name of the case—it is stated in one of the footnotes dealing with the case that: The Truong case, where a warrantless search of U.S. persons in the United States was approved by the court, the FISA Court of Review said:

> The Truong court, as did all the other courts to have decided this issue, held that the President did have the inherent authority to conduct warrantless searches to obtain foreign intelligence information. It was incumbent upon the court, therefore, to determine the boundaries of that constitutional authority in the case before it. We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power.

The court went on to say:

> The question before us is the reverse, does FISA amplify the President's power by providing a mechanism that at least approaches a classic warrant and which therefore supports the government's contention that FISA searches are constitutionally reasonable.

That is the view of the FISA Court of Review. Everybody is saying, well, we need to find out what the FISA Court of Review has to say about these certifications, about the authorizations. What I just read is what the FISA Court has said. The President does have the power under article II of the Constitution to conduct warrantless surveillances. Once that determination is made, then to go back and say that any company, any U.S. person, or any corporation that got a notice from the Attorney General to carry out an order of the President through the Intelligence Committee to conduct foreign intelligence surveillance is breaking the law is just absolutely beyond the bounds.

I am very sorry we have such a disjoint in the reading and understanding of the constitutional powers. And to say now that these people should be dragged back into court where they will be subjected not only to the potential of large legal bills, the potential loss in terms of any judgment—although I think that is minimal; I don't think anybody is going to be able to show any harm that would warrant the court to grant a monetary recovery—but what they will find, what they will find is great damage to their reputation, as the people who are enemies of the United States go out actively and trash any company or any individual who cooperates with the United States.

There are evil people out there who would love to be able to get information and confirm what companies may have participated. Once that happens, those companies would be at great risk abroad. Their reputations would suffer, and they and their personnel could be at great risk of physical harm.

So there are many good reasons not to bring these cases in court against the providers. Please note, as we have stated before, that this measure only protects the private sector people who might have cooperated. It does not protect Government employees. I hope by clarifying this, people will get a better understanding of why immunity is necessary to protect the legitimate interests of the United States in collecting foreign information.

Many of my colleagues want to speak, so I appreciate the opportunity to clarify the question of immunity.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I congratulate the distinguished chairman and vice chairman of the Senate Select Committee on Intelligence for what I think is an outstanding product—a bipartisan product. I can't think of an area that is more important for us to act in the interests of our national security in a bipartisan manner than the subject before us today. We should resist with all of our might any impulse or tug that we might feel to emphasize partisan differences, but instead we ought to pull together to try to do what is necessary to keep our eyes open and our ears to the ground when it comes to the collection of foreign intelligence.

Of course, the Foreign Intelligence Surveillance Act was passed in 1978 to ensure that Americans' civil liberties were being protected. At the same time, we made sure we were able to listen to our enemies, which has become even more important today with terrorists taking advantage of the Internet, cellular phones, and other means of communications, and it is critical that we continue to take advantage of every opportunity to detect and deter future terrorists attacks on our own soil.

We were told last August by the Director of National Intelligence—this has been widely published since—that because of some of the archaic provisions in the FISA law, the Foreign Intelligence Surveillance Act, and because it had not kept up with changes in modern technology, that we were being blocked from receiving as many as two-thirds of the communications of one foreign terrorist to another foreign terrorist because of the way these calls were being routed. We were told time and time again that the burdensome requirement of getting the paperwork necessary in order to get a FISA authorization in cases where the Congress never intended to require that sort of authorization, which was required because of these changes in technology, that it was actually causing delays in our ability to get timely information in a way to protect our country and our men and women in uniform serving in places such as Afghanistan and Iraq.

We know the ability to obtain the right information at the right time is of critical importance in our struggle against radical Islamic terrorists who hide among civilian populations and who don't abide by the Geneva Conventions. They don't wear a uniform. They don't recognize a chain of command or the laws of war. They hide among civilian populations and quietly plot deadly attacks against civilians—innocent men, women, and children—as they did on September 11, 2001.

I serve on the Judiciary Committee, so I am very much aware of some of the arguments made during the time we considered this bill on a serial referral against providing immunity to the telephone companies that have cooperated with the President of the United States, the Attorney General, and the intelligence community in facilitating the collection of this actual intelligence.

Mr. President, I think the Intelligence Committee version got it about right. Why in the world would we want to do anything to discourage private citizens, whether they be individuals or corporate citizens, from cooperating in the security interests of our country? This is perhaps analogous to a police officer who knocks on your window and says, I need your car to go capture a dangerous criminal before they do harm to somebody else. Well, if an individual were worried that they would be sued as a result of their being a good volunteer and a good member of the

community in allowing a law enforcement officer the use of their car to capture a dangerous criminal, do you think they would be more inclined or less inclined to cooperate with the lawful authorities? I think it is pretty clear that they would be far less inclined.

If we don't do everything in our power—and it is within our power—to encourage individual and corporate citizens to cooperate in the security interests of our country, then shame on us. To tell them that you are going to have to endure ruinous litigation costs, that you are not even going to be able to defend yourself because some of the evidence is the subject of a State secrets privilege, and you are not even going to be able to explain what you did, while at the same time suffering the reputation damage that they could very well suffer if their participation was known in other parts of the world, is not fair. It is not fair to them and, even more importantly, it is not fair to us because to fail to give them the immunity for their cooperation with the lawful request of the President of the United States, after the Attorney General, the country's chief law enforcement officer, has said this is a lawful request, to fail to give them immunity and protection against that ruinous litigation and damage to their reputation is less than responsible.

I think the thing more likely to protect our security from this point forward is to show citizens who cooperate with the lawful authorities of the U.S. Government to help keep us safe that they are going to be protected against litigation and the vast costs that could be associated with it—not to mention the potential that classified information might become public and be known to our enemies. It makes absolutely no sense not to give that immunity to these individuals and these corporations.

The Protect America Act, which is scheduled to sunset in February, moved our intelligence capabilities in the right direction. But now we need to make those tools permanent. Changes in technology, combined with a court ruling that hampered the intelligence community, required that the Foreign Intelligence Surveillance Act be updated. That is what the Protect America Act was, although it was a temporary patch of about 6 months. Now we need to make those provisions permanent and take this opportunity to further expand and enhance the Foreign Intelligence Surveillance Act to make sure it works in the security interests of the American people, while taking the appropriate protections on American citizens here at home.

In the period between the court ruling that required the Government to obtain FISA orders for foreign intelligence that happened to pass through the infrastructure in the United States and the passage of the Protect America Act, collection of foreign intelligence information decreased by two-thirds. That is what prompted Congress to act in August without further delay, the likelihood that being blind to two out of every three communications between terrorists would likely make us less safe and would make it more likely that they would be successful in killing innocent Americans and our allies. Common sense informs us that this great drop in the percentage of intelligence collection harms our national security efforts.

Of course, as I mentioned, in August we took a temporary patch to close these intelligence gaps and clarify that the intelligence community does have the authority to monitor communications of foreign individuals without receiving a court approval first.

Now is the time for us to make that authority permanent. It has never been required, in listening in to foreign subjects talking to other foreign subjects, to get a court order, and the Protect America Act made that temporary fix. We need to make that permanent.

Some have made arguments which, in the end, would hamper our intelligence capabilities, requiring procedures never before in place. Intelligence community resources—both funding and expertise—are scarce and should be focused in the manner that best protects our national security. Our intelligence analysts should not be distracted from the important job of listening in and using information to deter further attacks by having to fill out a bunch of paperwork, particularly in areas that Congress never intended that they would have to do so.

The Senate and House Democratic Judiciary Committee proposals, I am sorry to say, would greatly hamper our intelligence community. As I mentioned a moment ago, I serve on the Judiciary Committee, and proudly so. Unfortunately, in voting this alternative out of the Judiciary Committee—along strictly partisan lines—I think we failed to meet the standards that were set by the Intelligence Committee version of this bill. Although there are changes that I think need to be made, by and large, the bipartisan vote in the Intelligence Committee—their product was superior to the product out of the Judiciary Committee.

The House bill would require court orders for foreign targets in foreign lands—something that has never been required in the 30 years since FISA was enacted and would completely reverse the important reforms, albeit temporary, we made a few months ago.

Delays inherent in obtaining court approval could, in fact, put American security interests in jeopardy.

Here is a concrete example. This last summer, three American soldiers were thought to be kidnapped by al-Qaida in Iraq. Because of delays in obtaining emergency authorization under the Foreign Intelligence Surveillance Act, our intelligence community was unable to set into place surveillance that may have saved the lives of these soldiers on May 12, 2007. There was a 10-hour delay while the authorities did the paperwork necessary for them to listen in on communications they never should have been required to get a FISA order to listen to in the first place—clearly, foreign-to-foreign communications. Instead, PFC Joseph Anzack was found dead a few weeks later in the Euphrates River, and an al-Qaida subsidiary claims to have killed and buried SPC Alex Jiminez and PFC Byron Fouty. Those 10 hours of delay, I believe, contributed to the deaths of these 3 American soldiers. If they hadn't been required to wait 10 hours to do the paperwork, I think there was a better chance that they could have been found safely and returned to the arms of their loved ones.

One of the key lessons the 9/11 attacks taught us was that we have to do a better job of connecting the dots. Erecting more walls and barriers to the collection and sharing of intelligence material ignores this important lesson and gives our adversaries an unacceptable tactical advantage, needlessly placing Americans in greater danger of another attack instead of doing everything within our power to keep them safe.

Unlike members of the Senate Intelligence Committee, I am sorry to say that House Democrats refused to work with committee Republicans, or with the Director of National Intelligence and the Department of Justice. How the House committee—or for that matter, the Senate Judiciary Committee—could hope to fashion a sensible, workable product without consulting with either the Department of Justice or the Director of National Intelligence is beyond me. I congratulate the members of the Senate Intelligence Committee on working so carefully, over a long period of time, in consultation with the appropriate authorities, to come up with a bipartisan product—one that I concede is not perfect, but no legislation is perfect.

We are going to be talking about ways that I think we can improve even that bill. But the Senate, unfortunately—the Judiciary Committee—saw important suggestions from the Intelligence Community rejected, again, along partisan lines. No attempt was made to craft a bipartisan proposal. Instead, the committee chose to come up with a party-line vote that raised serious operational concerns.

By working with the intelligence community, the Senate Intelligence Committee was able to provide the intelligence community with more flexibility in gathering foreign intelligence. This Senate bill will allow the Attorney General to authorize targeting persons outside of the United States to acquire this necessary information. No longer will they be required to go to the FISA Court for an approval to target foreign terrorists and spies overseas. This will ensure that our intelligence community has the agility and the speed it needs to collect actionable intelligence at a time when it counts.

The Senate bill does not restrict the types of foreign intelligence that may be collected. It also streamlines the Foreign Intelligence Surveillance Act, providing for more efficient, timely processing of FISA applications.

These are only a few examples of the tools the authors of the Senate Select Committee on Intelligence learned that the intelligence community needs to make our country safer, simply by working together across the aisle in a way that protects the American people more. They are to be applauded and congratulated for that effort.

When the security of our country is at stake, we should consult the very people in the best position to know what they need to make sure that they have the tools necessary, without causing unintended negative consequences.

We should learn from the bipartisan lead of the Senate Intelligence Committee and work with them to craft a responsible, bipartisan bill that keeps our eyes and our ears open, allows us to listen to our enemies, and will help us protect Americans against future terrorist attacks on our own soil and in places where Americans are located around the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, as a member of the Senate Intelligence Committee, I am aware that down at the Old Executive Office Building there are large stacks of documents, including the Justice Department legal opinions, that relate to the warrantless wiretapping program and letters from our Government to the telecommunications companies.

I have read these materials. But most Members of the Senate have been prohibited from being able to read these vital documents. I believe that a Senator who was allowed to read these materials would be astounded to see how flimsy the Government's case is on behalf of the warrantless wiretapping program.

The administration has fought tooth and nail to keep almost every Member of this body, and the entire membership of the other body, from being able to read these materials. I believe every Senator who has not read these documents ought to insist on their right to be able to read them before the Senate casts this critical vote. Having read these documents, I can say, as one Member of the Senate Intelligence Committee, that nothing in any of these opinions has convinced me that the administration's warrantless wiretapping program was legal. Now that the existence of the program has been confirmed, I can see no national security reason to keep most Members of the Senate from being able to see these materials. As far as I can tell, these materials are being classified in order to protect the President's political security, not our national security.

The Intelligence Committee has also reviewed written correspondence sent to certain telecommunications companies by the Government. I cannot get into the details of this correspondence, but I can say I am totally unconvinced, on the basis of having read these materials, that Congress should grant total immunity to the companies.

For years, there have been a number of laws on the books, such as the Wiretap Act, the Electronic Communications Privacy Act, and, of course, the Foreign Intelligence Surveillance Act. Together, they make it very clear that participating in a warrantless wiretapping program is against Federal law.

Many of my colleagues have argued that any companies that were asked to provide assistance after September 11 should be treated leniently since that was a period of national confusion and great fear. I think this argument personally has some merit, but the bill that was reported by the Intelligence Committee would not just grant immunity for 6 months or 1 year after September 11; it would grant immunity for actions taken up to 5 years after the attack. I think that is far too long, and I am going to briefly explain why.

If a phone company was asked to participate in warrantless wiretapping in the weeks after September 11, it is understandable that executives might not have had the time to question assertions from the Government that the wiretapping was legal. But that doesn't give the executive a free pass to participate in warrantless wiretapping forever and forever. At some point over the following months and years, this phone company executive has an obligation to think about whether they are complying with the law, and as soon as they realize they have not been in compliance, they have an obligation to stop it.

In the months and years following September 11, it should have been increasingly obvious to any phone company that was participating in the program that it just might not be following the law. For starters, in the week after September 11, Congress and the President got together to revise the Foreign Intelligence Surveillance Act, including the wiretapping provisions. But the Congress did not change the sections of the statute that state warrantless wiretapping is illegal. That, in my view, should have been a huge red flag to any phone company that was participating in this program.

Next, in the summer of 2002, the Director of the NSA, General Hayden, appeared before the Intelligence Committee in open session and testified about the need to get warrants when someone was inside the United States. I am sure General Hayden would argue that he was parsing his words carefully, but at a minimum, it was clear at this point that most of the Congress and most of the American people believed warrantless wiretapping was illegal.

The President has argued that the program was authorized through his Commander in Chief authority. But in the spring of 2004, the Supreme Court issued multiple rulings clearly rejecting this idea, and the President cannot do whatever he chooses to do. These rulings also have been giant red flags for any phone company engaged in warrantless wiretapping.

Finally, as the Intelligence Committee's recent report noted, most of the letters requesting assistance stated that the Attorney General believed the program was legal. But, as our report points out, one of the letters did not even say the Attorney General had approved. I have read this letter, and I believe that once again it should have set off loud alarm bells in the ears of anybody who received it.

In my view, as the years rolled by, it became increasingly unreasonable for any phone company to accept the Government's claim that warrantless wiretapping was legal. By 2004, at the very latest, any companies involved in the program should have recognized that the President was asking them to do things that seemed to be against the law.

The former CEO of Quest has said publicly that he refused requests to participate in warrantless surveillance because he believed it violated privacy statutes. I cannot comment on the accuracy of this claim, but I hope our colleagues will stop and think about its implications.

I also encourage my colleagues to insist on their right to see the communications that were sent to the telecommunications companies. My own view is, when they read these letters, if they are given a chance to read them, these letters seriously undermine the case for blanket retroactive immunity.

The legislation that passed the Intelligence Committee would grant immunity long past the point at which it was reasonable for the phone companies to believe the Bush administration. It would even grant immunity stretching past the point at which the program became public. By the beginning of 2006, the program was public and all of the legal arguments for and against warrantless wiretapping were subject to open debate. Clearly, any companies that participated in this program in 2006 did so with full knowledge of the possible consequences.

I cannot see any reason at all why retroactive immunity should cover this time period. When the Senate Intelligence Committee voted to grant total retroactive immunity, I voted no because I believed it was necessary to take more time to study the relevant legal opinion as well as the letters that were sent to the communications companies.

I have long felt that it is possible to fight terrorism ferociously and still address the civil liberties needs of our citizens. Now that I have studied these documents, I am convinced that granting 6 years of total retroactive immunity is not justified and it is not justified in the name of striking that crucial balance between fighting terrorism

aggressively and protecting the individual liberties of our citizens.

I very much want to support this essential legislation. Chairman ROCKEFELLER is here. He has done very good work, along with the distinguished vice chairman, Senator BOND, on what I think is the central issue of this debate, and that is modernizing the FISA law to make sure that now it is possible to apprehend the communications of dangerous individuals overseas who are foreigners.

The administration came to our committee and made a very reasonable case that the statute has not kept up with the times. Under the leadership of Chairman ROCKEFELLER and the vice chairman, Senator BOND, we went to work, and we went to work in a bipartisan way to address that concern. That was the original concern of the Bush administration, that the statute had not kept up with the times and it wasn't possible to get the communications of foreigners overseas. Under the leadership of Chairman ROCKEFELLER and Vice Chairman BOND, that issue was dealt with, and it was dealt with to the satisfaction of the Bush administration.

But the Bush administration wouldn't take yes for an answer. After the distinguished chairman of the committee and the vice chairman and all of us on a bipartisan basis went to work to try to address the reasonable concern of the Bush administration—that the statute had not kept up with the times—that wasn't good enough for the Bush administration. So that is when we were presented with the proposition that we had to have total retroactive immunity for the phone companies. Years after the administration had said how legal the program was, after we dealt with the administration's original concern about the surveillance statute, they came in and asked for something else—this total grant of immunity. In fact, most members of the Intelligence Committee would not even have gotten to see the documents I had seen had it not been for the fact that Chairman ROCKEFELLER and Vice Chairman BOND insisted on our right to do so.

This is an issue of enormous importance. I am very glad our colleagues have come to the floor to take the time to go through it. I suggest that every Member of the Senate who has not had the right to see those documents at the Old Executive Office Building ought to insist on their right to see those documents before they cast this vote. I think they will be flabbergasted at how flimsy the legal analysis is to justify this program.

Mr. President, I see my colleague, the distinguished Senator from Connecticut, on his feet. If I might, I would like to make one additional point, and then I will be happy to yield to my friend.

Mr. DODD. Mr. President, on this last point: obviously we are in public session, and the last thing I want to do is have the Senator from Oregon talk about what is in these documents; he cannot do that. But I am struck by the passion with which he just spoke about those documents and the value of having Members of this body see them, particularly considering the vote we are about to cast.

If this bill is adopted with retroactive immunity, then this issue disappears; it goes away forever. There will be no court proceedings, nothing. We will never have the opportunity to know until, perhaps, some of these documents might be released decades down the road under the Freedom of Information Act.

But I am struck by the Senator's passion in arguing that if people read these documents and saw them, they would have a very difficult time supporting the provision in this bill that grants retroactive immunity. Is that the suggestion the Senator has made by those comments?

Mr. WYDEN. That is my view, and I find particularly objectionable—and the Senator from Connecticut has touched on it—you would automatically assume that every Member of this body—we know all of our colleagues; I trust all of them explicitly with respect to protecting our national security—you would think they would certainly have a right to see those documents before this vote is to be cast. That is not the case. In fact, the only reason members of the Intelligence Committee got to see them was because of the outstanding work of Chairman ROCKEFELLER and Senator BOND, who battled for my right to see those documents.

Mr. DODD. As a senior member of the Foreign Relations Committee, I do not have the right to see these documents?

Mr. WYDEN. That is correct. That is absolutely correct.

Mr. DODD. Mr. President, with 26 years in the Senate and as a senior member of the Foreign Relations Committee, I do not have the right to see these documents?

Mr. WYDEN. The Senator is right. And we have in the chair serving as Presiding Officer of our distinguished body the Senator from Virginia, a decorated veteran. My understanding is he does not have the legal right to see these documents prior to the vote; that they were only made available to members of the Intelligence Committee and perhaps several others in the leadership. I think that is wrong. I think every Member of this body ought to insist on their right to be able to go down to the Old Executive Office Building and read the documents I have read, which I believe offer an extraordinarily skimpy case for total retroactive immunity.

I hope we will have a chance to discuss this issue further. I appreciate the Senator from Connecticut making the point that he has with respect to his seniority in the body, his membership on key committees, such as the Senate Foreign Relations Committee, and he is not provided the legal right to see these documents before he casts this vote.

I wish to discuss briefly one other amendment which has come up during the course of the morning, and that is an amendment I offered in the Senate Intelligence Committee which won bipartisan support in the Intelligence Committee addressing the rights of Americans who travel overseas. I offered it with the distinguished Senator from Wisconsin, Mr. FEINGOLD, and the distinguished Senator from Rhode Island, Mr. WHITEHOUSE. It was approved when the Intelligence Committee voted on that matter on a bipartisan basis.

Most of our citizens are probably not aware that the original Foreign Intelligence Surveillance Act only provided protections for Americans inside the United States and that it does not cover Americans who travel overseas. So if the Government wants to deliberately tap the phone calls of a businesswoman, for example in Roanoke, VA, or an armed services member in Pendleton, OR, the Government has to go to a judge, present evidence, and get a FISA warrant. But if that businesswoman or that serviceman is sent overseas, the Attorney General can personally approve the surveillance by making his own unilateral determination of probable cause. In my view, this formulation makes no sense at all. In the digital age, the rights and freedoms of individual Americans should not be dependent on physical geography. That is why I offered the amendment in the Intelligence Committee that would make it clear that Americans have the same rights when they travel overseas as they do inside the United States.

Now, some have raised concerns that my amendment may have unintended consequences. I certainly don't want to see that, and so I have worked with Members of this body, particularly Senators ROCKEFELLER and BOND, to address those concerns. We have made it clear that we are open to technical changes in the proposal so that there will not be the prospect of any unintended consequences, while at the same time protecting the rights of our citizens who travel overseas. Our staffs have been working for many weeks on a potential managers' amendment which would preserve the original intent of the provision, which is very straightforward, and that is to give Americans overseas the same legal protections they have in the United States to the maximum extent possible and to the maximum extent consistent with national security.

We have made progress, Mr. President, on this issue, but we are not quite there yet. I have gotten varying reports as to what may constitute a managers' package with respect to this legislation, but I consider the matter of the travel rights of Americans so fundamental in the digital age, it would be my intent to object to any unanimous consent agreement that waters down these travel rights of law-abiding Americans during these crucial days.

I continue to remain hopeful that, working closely with the distinguished chairman of our full committee, Senator ROCKEFELLER, and the vice chairman, Senator BOND, who is not on the floor, we can reach an agreement. All sides are working in good faith, but without the proper language on this matter, which I do think is once again fundamental to striking that balance between fighting terrorism aggressively and protecting individual liberty, without this amendment I would have to object to any unanimous consent agreement in a managers' package which didn't address the amendment that won bipartisan support in the committee. I hope it will not come to that, and I want to make it clear again to the chairman of the full committee, Senator ROCKEFELLER, and to the vice chairman that I intend to work very closely with them in the upcoming hours to see if we can work this out so I will not have to object to the managers' amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican leader.

BURMA DEMOCRACY PROMOTION ACT OF 2007

Mr. MCCONNELL. Mr. President, later today we hope to clear the Burma Democracy Promotion Act of 2007. This legislation, which ratchets up our already tight sanctions against the Burmese junta, has bipartisan support in the House and Senate and comes at a critical time for the suffering people of Burma.

I am pleased to be joined by Senator BIDEN, the chairman of the Foreign Relations Committee, on this legislation, who has been an ally of mine on other sanctions legislation, and by Senator FEINSTEIN, as always in the forefront of any issue related to Burma. The Burmese people have no greater friend than Senator FEINSTEIN. Sixteen other cosponsors have offered their support to this important and timely bill.

The Senate bill would take a number of steps. It would first put in place new financial sanctions and an extended visa ban on senior junta officials. It would close existing loopholes that allow indirect importation of Burmese gems and timber, and it urges an international arms embargo on Burma, which faces no external military threats.

This legislation would also establish a special representative and policy coordinator for Burma, appointed by the President and subject to Senate confirmation. The United States is fortunate to already have a stellar chargé d'affaires in Rangoon. However, her focus is, as it should be, on bilateral relations with Burma. The new envoy would help to ensure that U.S. diplomacy is multilateral in scope, sustained, and fully coordinated with other international efforts.

Now, the House passed its version of enhanced Burma sanctions last week. I am hopeful the two bodies will soon reconcile these bills so we can get this legislation signed into law.

Mr. President, the entire world was inspired by the brave Burmese protesters who peacefully protested for justice earlier this year, and we were appalled at the violent Government reprisals that followed. We mourn the dead, and we pray for those who are still missing.

Since those sad days, a fickle news cycle has moved on to other matters. But with this legislation, we show that the U.S. Congress has not forgotten the people of Burma, and neither has the administration, as witnessed by the strong leadership of the First Lady on this issue. It is my hope the U.N. Security Council has an equally long memory and will soon take up and pass an arms embargo against the Burmese regime. In the end, multilateral sanctions are the most effective means of pressuring this regime to change its misbegotten course. With this legislation, we aim to lead by example. Our hope is that others will soon follow.

Mr. President, I yield the floor.

Mr. WYDEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 39 minutes remaining under cloture.

Mr. WYDEN. Mr. President, I choose to yield the remainder of my time to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Oregon. I thank him for his eloquent statement and for his admonition as well about the importance of these documents and how relevant they are to the discussion—and the inability of most of us here to have any idea what is in them. I admire the Senator from Oregon for insisting on his right to see them and therefore sharing with us at least in general terms the substance of those documents and their relevance to the request for seeking retroactive immunity, going back 5 years. I think his comments should carry great weight with our colleagues on both sides of the aisle. As he has pointed out so many times, these issues should never be associated with partisan debate.

The idea of striking that balance between security and protecting the rights of individuals was exactly the motivation for the original FISA legislation almost 30 years ago. As the Senator from Massachusetts, Mr. KENNEDY, pointed out, there have been 30 modifications to that legislation over 30 years in order to make it relevant. As the world changed and technology improved, it was important to modify that legislation so we would have the capacity to minimize the threats against our Nation.

Earlier today, Mr. President, I began some comments and interrupted them when I allowed the Senator from California, Mrs. FEINSTEIN, to make her remarks. I want to pick up where I left off.

Mr. President, both versions of the bill—that is, the version prepared by my friend from West Virginia, Senator ROCKEFELLER, and Senator BOND, and the version prepared by the Senate Judiciary Committee—authorize the President of the United States to conduct overseas surveillance without individual warrants. I think that needs to be repeated. You can conduct overseas surveillance without individual warrants. That is not the subject of the debate here at all. Both of these bills allow the President to submit his procedures for this new kind of surveillance for the review of the FISA Court—after those procedures are already in place. But only one version of the bill balances these significant new procedural powers with real oversight from the Congress and the courts, and that is the Judiciary Committee version.

I say respectfully that the version by the Intelligence Committee, I am afraid, is a bill of token oversight and weak protections for innocent Americans, and the Senate ought to vote it down. Specifically, the bill fails on five counts.

First, its safeguards against the targeting of Americans—its minimization procedures—are insufficient. It significantly expands the President's surveillance power, while leaving checks on that power unchanged. This version of the bill provides practically no deterrent against excessive domestic spying—no consequences if the court finds the President's minimization procedures, in fact, lacking. If his targeting procedures are found lacking, the President hardly has to worry; he can keep and share all the information he obtained, and he can continue his actions all the way through the judicial review process, which could take, of course, months.

It should be clear to all of us that real oversight includes the power to enforce. The Intelligence Committee's version of this bill offers us the semblance of judicial oversight but not the real thing. Imagine a judge convicting a bank robber and then letting him keep the loot as long as he promises to never, ever, ever do it again. That might as well be the bill before us. In fact, the bill before us would allow the President to immediately target anybody on a whim. Wiretapping could start even before the court has approved it. In this bill, oversight is exactly where the President would like it—after the fact.

Don't get me wrong: when a President needs immediate emergency authority to begin wiretapping, he should have it. If you need it immediately, you ought to get it immediately. I think all of us find that obvious. The question is what to do in those cases that aren't emergencies. In those cases, I believe there is no reason the court shouldn't give advice and approval beforehand. President Bush disagrees. He believes in a permanent emergency.

Second, the Intelligence Committee bill fails to protect American citizens

from reverse targeting—the practice of targeting a foreign person on false pretenses, without a warrant, in order to collect the information of the American on the other end of the conversation.

Admiral McConnell said:

> Reverse targeting is not legal. It would be a breach of the Fourth Amendment.

He is absolutely correct, of course, which is why it is so vital that this bill contain strong, enforceable protection against it. This bill doesn't have one.

Thirdly, this bill, while purporting to end warrantless wiretapping of Americans, might actually allow it to continue unabated. That is because it lacks strong exclusivity language—language stating that FISA is the only controlling law for foreign intelligence surveillance. With that provision in place, surveillance has a place inside the rule of law. Without it, there is no such guarantee.

Who knows what specious rationale of this or any other future administration might cook up for lawless spying? The last time, as we have seen, Alberto Gonzales laughably tried to find grounds for warrantless wiretapping on the authorization of force against Afghanistan. Those are the legal lengths to which the administration has proved it is willing and able to go.

What next? Without strong exclusivity language, that question will remain hanging over all our heads.

Fourth, unlike the Judiciary version of the bill, the Intelligence version lacks strong protections against bulk collection—the warrantless collection of all overseas communications, a massive dragnet with the potential to sweep up thousands or millions of Americans without cause. Today, bulk collection is infeasible, but Admiral McConnell said:

> It would be authorized, if it were physically possible to do so.

Before any administration has that chance, we should clearly and expressly prohibit such an unprecedented violation of privacy. This bill fails to do that.

Fifth and finally, this bill stays in effect until 2013, through the next Presidential term and into the next one. Compare that to the 4-year sunset in the Judiciary version. I believe that, when making such dramatic changes to the Nation's terrorist surveillance regime, we should err on the side of caution. Once the new regime has been tested, once its effectiveness against terrorism and its compromises of privacy have been weighed, we deserve to have this debate again. It will, I predict, be a much less speculative and more informed debate. The Judiciary bill is wise not to put it off any longer than necessary.

I oppose this legislation on these five counts for the same reason I oppose retroactive immunity—because when the President's power is strongest, the rule of law should be the strongest, as well. The Intelligence Committee's bill means more power and less law. It reduces court oversight nearly to the point of symbolism. It would allow the targeting of Americans on false pretenses. It opens us to new, twisted rationale for wireless wiretapping, the very thing it seeks to prevent. It could allow bulk collection as soon as the administration has the wherewithal to build such an enormous dragnet. And it sets all of these deeply flawed provisions in stone for the next 6 years.

In sum, this is entirely too trusting a piece of legislation. With its immunity, with its wiretapping provisions, it answers George Bush's, ''Trust me,'' with an all too eager ''Yes!''

I leave my colleagues with a simple question: Has that trust been earned?

I don't know how many of my colleagues have ever seen the wonderful movie ''A Man For All Seasons,'' the story of St. Thomas More. There is a wonderful scene in that movie in which More is asked whether he'd be willing to cut down every law in England to get his hands on the devil.

And More replies, absolutely not. ''When the last law was down, and the Devil turned 'round on you, where you hide, the laws all being flat? This country is planted thick with laws, from coast to coast—Man's laws, not God's! And if you cut them down . . . do you really think you could stand upright in the winds that would blow then?''

Maybe we could find excuses for every one of this president's abuses of power: ''It was just a little overreach.'' ''You just have to give a little.''

But if you do that day after day, week after week, month after month, year after year, all of a sudden you look up to find that all of the laws have been cut down, that there is nothing to protect us from the winds. Before that day comes, Mr. President, we must draw a line. I am here today to draw it.

So I will do everything I can to see to it that this bill does not go forward. Unless retroactive immunity is struck, I will resist this bill with all the tools available to me as one Member of this body. We can do better than this.

This goes beyond ideology—or at least it should. We all care about the security of our country; the FISA law protects that security, and it protects our privacy at the same time, from those who would overreach.

We have struggled to strike that balance throughout our history. Today, it is more important than ever that we stand firm in our determination not to give up or erode these very rights that are critical for our security.

The idea that we can become more secure by giving up rights is fundamentally flawed. It needs to be addressed on every possible occasion. It is a dangerous notion. It is a totally false dichotomy. It needs to be defeated as an idea.

When we insist upon our rights, we only grow stronger. We know it can be done. For 30 years now, this law has worked well. It needs to be modernized, clearly, to protect us against those who also have access to modern techniques to do us great harm and injury. But this is not a battle between those who want to keep us secure and those who want to keep our rights. It is a battle about whether we understand that we are more secure precisely when we protect these rights.

A year ago, when the Military Commissions Act came up for a vote, I felt very strongly about it. I spoke against it. I voted against it. The idea of walking away from habeas corpus, the idea of allowing torture, the idea of walking away from the Geneva Conventions—I regretted deeply then that I didn't do what I am prepared to do today, and that is to vigorously fight against that legislation.

I think most of us today recognize what a great mistake that was, to give away those rights. I think most of us recognize how it hurt our country. I am determined not to let that happen again. As long as it takes, I will stand here and insist that we need to strip immunity out of this bill.

I am prepared to listen to ideas about putting caps on liability, to prevent the telecom companies from paying outrageous fees. But if we grant this immunity, we will never know whether their actions were right or wrong.

Then why not your medical records the next time? Why not your financial records? What is the difference? If I can reach in and listen to your phone conversation, why not grant immunity to someone who would like to know your medical records or financial records? Why not grant immunity to companies that would turn over those documents? Where do you stop? Where do you put your foot down and say, ''That is not right''?

Today it is the phone records. Today it is the phone conversations. It is e-mail traffic—without a warrant. So why not the next step? If we don't put our foot down and stand up, we will be faced with the argument that we have already granted it. We established the precedent; 75 Senators, Democrats and Republicans, agreed we ought to provide that immunity. That argument will be heard, as it has been heard on the Military Commissions Act.

I respect immensely the work of the people who spent a lot of time on these issues. But this is a critical moment. They don't happen every day; but this is an important one. This goes right to the heart of who we are. This is not about selling our souls. It is about giving them away, if we don't stand up for these rights.

So I look forward to continuing debate and discussion on this vital issue.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have listened very closely to the remarks of my dear friend from Connecticut. I have a lot of respect for him. However, it was an easy thing for 13 members of the Senate Select Committee on Intelligence to vote to grant retroactive immunity to companies that patriotically

adhered to legal letters to provide the means whereby we might be able to protect citizens in this country and perhaps all over the world.

Because of that work, we have been able to protect this country in ways that most people will never know because this area is one of the areas that we don't talk about. It is, this whole area, highly classified. We can talk about the law here.

Close inspection of the lawsuits against the telecoms reveals dubious claims. The plaintiffs have confused speculation for established facts. This is dangerous and the continuation of these lawsuits could lead to serious consequences for our national security.

It is very simple—Congress should not condone oversight through litigation.

A quick scan of what plaintiffs seek in many of these cases should send a chill down our spine. They are not, as many are suggesting, simply saying: ''You went along with the President's Terrorist Surveillance Program, now give us money.'' Rather, the lawsuits seize on the President's brief comments about the existence of a limited program to go on a fishing expedition of NSA activities. But this is really worse than a fishing expedition; this is draining the Loch Ness to find a monster. Sometimes what you are looking for just doesn't exist.

The lawsuits represent irrational fears of Government conspiracy, and seek to expose classified information, regardless of who is harmed in the process.

We all realize that the sources and methods our intelligence community utilizes to conduct surveillance are highly classified. The risks that classified details could be revealed through these lawsuits are severe. Remember, the very point of these lawsuits is to prove plaintiffs' claims by disclosing classified information.

Our enemies have tough decisions to make regarding how they communicate. They can't stay silent forever, and they have to weigh the need to communicate against the chance that their communications are intercepted. Given this, they are carefully watching us and reading every proceeding to see how our government collects information. If they think they see a weakness in our collection capabilities, they will certainly try and take advantage of it.

Given the legitimate problems that these lawsuits pose, the Senate Intelligence Committee adopted a bill which will alleviate them. The committee worked in a bipartisan manner to craft an immunity provision that met the needs of Congress, the Government, and the American people.

In an overwhelmingly bipartisan tally, the committee voted to include retroactive immunity for service providers that were alleged to have cooperated with the intelligence community following 9/11. Senators from both sides of the aisle, after careful consideration, came to this conclusion. Make no mistake, this was the right conclusion.

It was the right conclusion for the Intelligence Committee, and it should be the right conclusion for the full Senate today.

Our Senate Intelligence Committee has already noted that the intelligence community cannot obtain the intelligence it needs without the assistance of these companies. It goes without saying, companies in the future will certainly be less willing to assist the Government if they face the threat of extremely costly lawsuits each time they are alleged to have provided assistance.

The companies will shy away. Their attorneys will scour future Government requests, feverishly looking for any technicality to avoid compliance. And even if these private attorneys approve future participation, the company will have to listen to cautious stockholders, whose financial interests will undoubtedly make them adamantly opposed to situations which could lead to any financial risk or exposure.

But let's be clear: The telecoms are not threatening anyone. They are not saying ''do this, or we will never help you again.'' But, they don't need to say these things for us to understand the obvious. If the financial foundations of these companies crumble due to frivolous litigation, they will rebuild it to withstand future Government requests that may again lead to their collapse.

Now some have asked a valid question: If the companies did not break the law, why do they need immunity? Quite simply, the Government's assertion of the state secrets privilege prevents these companies from defending themselves.

This assertion by the Government is absolutely essential, as the possible disclosure of classified materials from ongoing court proceedings is a grave threat to national security. Simply put, you don't tell your enemies how you track them. This is why the NSA and other Government agencies won't say what they do, how they do it, or who they watch. Nor should they! To confirm or deny any of these activities, which are at the heart of the civil lawsuits, would harm national security. We should not discuss what our capabilities are.

Given the necessity for the state secrets privilege, the drawback is that the companies being sued are forbidden from making their case. In fact, the companies cannot even confirm or deny any involvement in the program whatsoever. They have no ability to defend themselves, and that is after patriotically doing what has to be done to protect each and every citizen in this country.

Ordinarily, these companies would be able to address allegations and make their case. However, the classified nature of the topic means the companies are not free to do so. They cannot even have discussions with shareholders or business partners.

But we need to remember, lawful silence does not equate to guilt. There is no guilt here. These are companies that cooperated with the Federal Government in helping us track terrorists to protect our citizens.

The identities of any company that assisted the Government following the attacks of September 11 are highly classified. While there have been numerous allegations, they are nothing more than accusations. If the identities of these companies are revealed and officially confirmed through litigation, they will face irreversible harm: harm in their business relations with foreign governments and companies and possible harm to their employees both here and abroad, who are truly soft targets for terrorist attacks.

My admiration and respect for the companies that did their part to defend Americans is well known. As I have said in the past, any company that assisted us following the attacks of 9/11 deserves a round of applause and a helping hand, not a slap in the face and a kick to the gut.

When companies are asked to assist the intelligence community based on a program authorized by the President and based on assurances from the highest levels of Government that the program has been determined to be lawful and necessary, they should be able to rely on those representations. For those who argue we need a compromise, let me be clear: We already have a compromise. The Government certainly wanted more than what is represented in this Intelligence Committee bill. And they did not get all they wanted. I think they should have. The chairman of the Senate Select Committee on Intelligence stated the following in the Intelligence Committee report:

> This immunity provision is not the broad and vague immunity sought by the administration. The committee did not endorse the immunity provision lightly. It was the informed judgment of the Committee after months in which we carefully reviewed the facts in this matter. The Committee reached the conclusion that the immunity remedy was appropriate in this case after holding numerous hearings and briefings on the subject and conducting a thorough examination of the letters sent by the U.S. Government to the telecommunications companies.

That is after numerous top-secret Intelligence Committee hearings. The immunity provisions in this bill are limited in scope. Not everyone will be happy with them, and that is the whole point. I, for one, wanted to see more protections for companies and Government officials in this bill. But I am willing to accept a compromise. My colleagues should be willing to do the same.

We are not all getting what we want. We are getting what the public needs for its protection. I will continue to oppose any efforts to weaken the Rockefeller-Bond immunity provision.

For nearly 2 months, Congress and the public have had the ability to review the immunity provisions in this

bill. Today we are hearing a great deal about how the Intelligence and Judiciary Committees handled the immunity provision. So let's look at how they voted.

The Intelligence Committee rejected an amendment to strip immunity from the bill, 12 to 3, and the committee voted to favorably report the bill, including the immunity provision, 13 to 2.

In addition, the Judiciary Committee rejected an amendment to strike the immunity provision from the bill, 12 to 7. What do all those votes have in common? They supported immunity and they were bipartisan. How many times are we going to hear about alternatives to S. 2248 which simply do not address the problem? How many trial balloons are going to be released? The first alternative we heard was the Government should indemnify the companies following possible adverse rulings in the cases.

There are myriad reasons why this option was lacking. The idea of indemnification apparently was not well received, as we now hear very little discussion of it. So let us call indemnification the first trial balloon to pop.

The next alternative we heard was the Government should be substituted in place of the companies being sued. But this alternative was full of problems, given that there is no way to remove the companies from the litigation. Remember, it is their very conduct that is in question. In order to try to prove their claims, plaintiffs will continue to seek discovery, including: document requests, depositions, interrogatories, technical data, trade secrets, proprietary company information and confidential, secret and highly classified information and the list goes on and on.

Obviously, the companies would still face many burdens of litigation, even though they are not parties because the Government is substituted for them.

This idea has also been skeptically viewed and the Judiciary Committee on Thursday rejected an idea in a resounding 13 to 5 bipartisan vote. So let's call Government substitution the second trial balloon to pop.

Now we are hearing another alternative which would dramatically expand the jurisdiction of the Foreign Intelligence Surveillance Court, and utilizes ambiguous terms such as ''objectively reasonable belief.''

The FISA Court was not created to review classified programs or the conduct of private companies. This new proposed alternative would completely revise the mission of the FISA Court, putting them in a role they have not had in their nearly 30 years of existence. This judicial expansion should be the third trial balloon to pop.

How long are we going to entertain inadequate alternatives and appease fringe political groups? Is it not time that we embrace the bipartisan compromise that puts the interest and safety of Americans over political interests? How long will it take? Are we willing to take that stand?

Let me also take a few minutes to unequivocally state my opposition to the Judiciary substitute. One of the basic requirements of any FISA modernization proposal is we should not have any provisions which could be interpreted as requiring warrants to target foreign terrorists overseas.

Quite simply, foreign terrorists living overseas should never receive protections provided by the fourth amendment to the Constitution. The Constitution never contemplated that. One of the controversial provisions added in the Judiciary Committee relates to ''reverse targeting.'' Reverse targeting is the practice of targeting a foreign person when the real intention is to target a U.S. person, thus circumventing the need to get a warrant for the U.S. person.

Reverse targeting has always been unlawful, in order to protect the communications of U.S. persons. Now, contrary to what most people believe, the legal definition of ''U.S. person,'' is not limited to U.S. citizens. See this chart: What is a U.S. person?

> An ''alien lawfully admitted for permanent residence,'' a ''corporation which is incorporated in the United States.''

Now, that is according to 50 U.S.C. 1801. The U.S. person definition includes aliens lawfully admitted, legal residence, legal permanent residence. A U.S. person is also defined as a business incorporated within the United States.

From an intelligence-gathering standpoint, reverse targeting makes no sense. From an efficiency standpoint, if the Government was interested in targeting an American, it would apply for a warrant to listen to all the American's conversations, not just his conversations with a terrorist overseas.

But let's not let logic get in the way of a good conspiracy theory. Even though reverse targeting is already considered unlawful, a provision is included in the Intelligence bill which makes it explicit. This provision is clearly written and universally supported. However, the Judiciary Committee passed an amendment by a 10-to-9 partisan party-line vote which altered the clear language of that provision.

Now, where before the provision said you cannot target a foreign person if the purpose is to target a U.S. person, the new language adds the ambiguous term ''significant purpose.''

Now, words have meaning and in this context have very serious meaning. If this amendment becomes law, an analyst would now have to ask himself this question when targeting a terrorist overseas: Is a ''significant purpose'' of why I am targeting this foreign terrorist overseas the fact that the terrorist may call an airline in America to make flight reservations or a terrorist with a green card living in the USA?

If the answer is yes, then the language in this amendment would require the analyst to get a warrant to listen to that foreign terrorist overseas.

Now, if there is one thing we can all agree on, it is we should never, ever need a warrant to listen to a foreign terrorist overseas. The ambiguous and unnecessary text of this amendment should not be left up to judicial interpretation. Enactment of this amendment could lead to our analysts seeking warrants when targeting any foreign terrorists, since the analyst may be afraid he or she is otherwise breaking our new law.

Now, remember, the Intelligence Committee spent months working on a bipartisan compromise bill. This amendment I have been talking about was not in the Intelligence bill. So people should assume the Judiciary Committee spent a great deal of time debating this amendment, right? Wrong. The Judiciary Committee spent 7 minutes debating this amendment before it was adopted, again, on a 10-to-9 partisan vote, party-line vote.

Let me repeat that. Seven minutes on something that is this important. The Intelligence Committee spent months coming up with a compromise that the leaders of the intelligence community say is the minimum—minimum—they need to have.

We are enacting national security legislation, and it is our responsibility to ensure this bill does not lead to unintended consequences which provide protections to terrorists. This provision is one example of an amendment adopted by the Judiciary Committee which could and probably would, if it were enacted, harm national security. It also serves as yet another reason why we should not support the Judiciary substitute or any aspect of it.

I am a member of both committees. In fact, I believe I am probably the longest serving member on the Intelligence Committee. The Judiciary bill includes provisions that could weaken national security. Why are we thinking of handcuffing ourselves? We should not blindfold our intelligence agencies, spin them around to disorient them, and then send them out to find terrorists. We are not playing pin the tail on the donkey. We are legislating on national security, and the stakes are too high to allow legal loopholes in the Judiciary substitute to go forward.

Now, I am not alone in this view, as the Executive Office of the President today released a statement of administration policy which stated:

> If the Judiciary Committee substitute amendment is part of the bill that is presented to the President, the Director of National Intelligence, the Attorney General of the United States, and the President's other senior advisers will recommend that he veto this bill.

Mr. President, I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

S. 2248—TO AMEND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978, TO MODERNIZE AND STREAMLINE THE PROVISIONS OF THAT ACT AND FOR OTHER PURPOSES

Protection of the American people and American interests at home and abroad requires access to timely, accurate, and insightful intelligence on the capabilities, intentions, and activities of foreign powers, including terrorists. The Protect America Act of 2007 (PAA), which amended the Foreign Intelligence Surveillance Act of 1978 (FISA) this past August, has greatly improved the Intelligence Community's ability to protect the Nation from terrorist attacks and other national security threats. The PAA has allowed us to close intelligence gaps, and it has enabled our intelligence professionals to collect foreign intelligence information from targets overseas more efficiently and effectively. The Intelligence Community has implemented the PAA under a robust oversight regime that has protected the civil liberties and privacy rights of Americans. Unfortunately, the benefits conferred by the PAA are only temporary because the act sunsets on February 1, 2008.

The Director of National Intelligence has frequently discussed what the Intelligence Community needs in permanent FISA legislation, including two key principles. First, judicial authorization should not be required to gather foreign intelligence from targets located in foreign countries. Second, the law must provide liability protection for the private sector.

The Senate is considering two bills to extend the core authorities provided by the PAA and modernize FISA. In October, the Senate Select Committee on Intelligence (SSCI) passed a consensus, bipartisan bill (S. 2248) that would establish a sound foundation for our Intelligence Community's efforts to target terrorists and other foreign intelligence targets located overseas. Although the bill is not perfect and its flaws must be addressed, it nevertheless represents a bipartisan compromise that will ensure that the Intelligence Community retains the authorities it needs to protect the Nation. Indeed, the SSCI bill is an improvement over the PAA in one essential way-it would provide retroactive liability protection to electronic communication service providers that are alleged to have assisted the Government with intelligence activities in the aftermath of September 11th.

In sharp contrast to the SSCI's bipartisan approach to modernizing FISA, the Senate Judiciary Committee reported an amendment to the SSCI bill that would have devastating consequences to the Intelligence Community's ability to detect and prevent terrorist attacks and to protect the Nation from other national security threats. The Judiciary Committee proposal would degrade our foreign intelligence collection capabilities. The Judiciary Committee's amendment would impose unacceptable and potentially crippling burdens on the collection of foreign intelligence information by expanding FISA to restrict facets of foreign intelligence collection never intended to be covered under the statute. Furthermore, the Judiciary Committee amendment altogether fails to address the critical issue of liability protection. Accordingly, if the Judiciary Committee's substitute amendment is part of a bill that is presented to the President the Director of National Intelligence, the Attorney General, and the President's other senior advisors will recommend that he veto the bill.

The Senate Select Committee on Intelligence bill

Building on the authorities and oversight protections included in the PAA, the SSCI drafted S. 2248 to provide a sound legal framework for essential foreign intelligence collection in a manner consistent with the Fourth Amendment. As in the PAA, S. 2248 permits the targeting of foreign terrorists and other foreign intelligence targets outside the United States based upon the approval of the Director of National Intelligence and the Attorney General.

The SSCI drafted its bill in extensive coordination with Intelligence Community and national security professionals—those who are most familiar with the needs of the Intelligence Community and the complexities of our intelligence laws. The SSCI also heard testimony from privacy experts in order to craft a balanced approach. As a result, the SSCI bill recognizes the importance of clarity in laws governing intelligence operations. Although the Administration would strongly prefer that the provisions of the PAA be made permanent without modification, the Administration engaged in extensive consultation in the interest of achieving permanent legislation in a bipartisan manner.

The SSCI bill is not perfect, however. Indeed, certain provisions represent a major modification of the PAA and will create additional burdens for the Intelligence Community, including by dramatically expanding the role of the FISA Court in reviewing foreign intelligence operations targeted at persons located outside the United States, a role never envisioned when Congress created the FISA court.

In particular, the SSCI bill contains two provisions that must be modified in order to avoid significant negative impacts on intelligence operations. Both of these provisions are also included in the Judiciary Committee substitute, detailed further below.

First, as part of the debate over FISA modernization, concerns have been raised regarding acquiring information from U.S. persons outside the United States. Accordingly, the SSCI bill provides for FISA Court approval of surveillance of U.S. persons abroad. The Administration opposes this provision. Under executive orders in place since before the enactment of FISA in 1978, Attorney General approval is required before foreign intelligence surveillance and searches may be conducted against a U.S. person abroad under circumstances in which a person has a reasonable expectation of privacy. More specifically, section 2.5 of Executive Order 12333 requires that the Attorney General find probable cause that the U.S. person target is a foreign power or an agent of a foreign power. S. 2248 dramatically increases the role of the FISA Court by requiring court approval of this probable cause determination before an intelligence operation may be conducted beyond the borders of the United States. This provision imposes burdens on foreign intelligence collection abroad that frequently do not exist even with respect to searches and surveillance abroad for law enforcement purposes. Were the Administration to consider accepting FISA Court approval for foreign intelligence searches and surveillance of U.S. persons overseas, technical corrections would be necessary. The Administration appreciates the efforts that have been made by Congress to address these issues, but notes that while it may be willing to accept that the FISA Court, rather than the Attorney General, must make the required findings, limitations on the scope of the collection currently allowed are unacceptable.

Second, the Senate Intelligence Committee bill contains a requirement that intelligence analysts count ''the number of persons located in the United States whose communications were reviewed.'' This provision would likely be impossible to implement. It places potentially insurmountable burdens on intelligence professionals without meaningfully protecting the privacy of Americans, and takes scarce analytic resources away from protecting our country. The Intelligence Community has provided Congress with a detailed classified explanation of this problem.

Although the Administration believes that the PAA achieved foreign intelligence objectives with reasonable and robust oversight protections, S. 2248, as drafted by the Senate Intelligence Committee, provides a workable alternative and improves on the PAA in one critical respect by providing retroactive liability protection. The Senate Intelligence Committee bill would achieve an effective legislative result by returning FISA to its appropriate focus on the protection of privacy interests of persons inside the United States, while retaining our improved capability under PAA to collect timely foreign intelligence information needed to protect the Nation.

The Senate Judiciary Committee proposal

The Senate Judiciary Committee amendment contains a number of provisions that would have a devastating impact on our foreign intelligence operations.

Among the provisions of greatest concern are:

An Overbroad Exclusive Means Provision That Threatens Worldwide Foreign Intelligence Operations. Consistent with current law, the exclusive means provision in the SSCI's bill addresses only ''electronic surveillance'' and ''the interception of domestic wire, oral, and electronic communications.'' But the exclusive means provision in the Judiciary Committee substitute goes much further and would dramatically expand the scope of activities covered by that provision. The Judiciary Committee substitute makes FISA the exclusive means for acquiring ''communications information'' for foreign intelligence purposes. The term ''communications information'' is not defined and potentially covers a vast array of information—and effectively bars the acquisition of much of this information that is currently authorized under other statues such as the National Security Act of 1947, as amended. It is unprecedented to require specific statutory authorization for every activity undertaken worldwide by the Intelligence Community. In addition, the exclusivity provision in the Judiciary Committee substitute ignores FISA's complexity and its interrelationship with other federal laws and, as a result, could operate to preclude the Intelligence Community from using current tools and authorities, or preclude Congress from acting quickly to give the Intelligence Community the tools it may need in the aftermath of a terrorist attack in the United States or in response to a grave threat to the national security. In short, the Judiciary Committee's exclusive means provision would radically reshape the intelligence collection framework and is unacceptable.

Limits on Foreign Intelligence Collection. The Judiciary Committee substitute would require the Attorney General and the Director of National Intelligence to certify for certain acquisitions that they are ''limited to communications to which at least one party is a specific individual target who is reasonably believed to be located outside the United States.'' This provision is unacceptable because it could hamper U.S. intelligence operations that are currently authorized to be conducted overseas and that could be conducted more effectively from the United States without harming U.S. privacy rights.

Significant Purpose Requirement. The Judiciary Committee substitute would require a FISA court order if a ''significant purpose''

of an acquisition targeting a person abroad is to acquire the communications of a specific person reasonably believed to be in the United States. If the concern driving this proposal is so-called ''reverse targeting''—circumstances in which the Government would conduct surveillance of a person overseas when the Government's actual target is a person in the United States with whom the person overseas is communicating—that situation is already addressed in FISA today: If the person in the United States is the target, a significant purpose of the acquisition must be to collect foreign intelligence information, and an order from the FISA court is required. Indeed, the SSCI bill codifies this longstanding Executive Branch interpretation of FISA. The Judiciary Committee substitute would place an unnecessary and debilitating burden on our Intelligence Community's ability to conduct surveillance without enhancing the protection of the privacy of Americans.

Part of the value of the PAA, and any subsequent legislation, is to enable the Intelligence Community to collect expeditiously the communications of terrorists in foreign countries who may contact an associate in the United States. The Intelligence Community was heavily criticized by numerous reviews after September 11, including by the Congressional Joint Inquiry into September 11, regarding its insufficient attention to detecting communications indicating homeland attack plotting. To quote the Congressional Joint Inquiry: ''The Joint Inquiry has learned that one of the future hijackers communicated with a known terrorist facility in the Middle East while he was living in the United States. The Intelligence Community did not identify the domestic origin of those communications prior to September 11, 2001 so that additional FBI investigative efforts could be coordinated. Despite this country's substantial advantages, there was insufficient focus on what many would have thought was among the most critically important kinds of terrorist-related communications, at least in terms of protecting the Homeland.'' (S. Rept. No. 107–351, H. Rept. No. 107–792 at 36.) To be clear, a ''significant purpose'' of Intelligence Community activities is to detect communications that may provide warning of homeland attacks and that may include communication between a terrorist overseas who places a call to associates in the United States. A provision that bars the Intelligence Community from collecting these communications is unacceptable, as Congress has stated previously.

Liability Protection. In contrast to the Senate Intelligence Committee bill, the Senate Judiciary Committee substitute would not protect electronic communication service providers who are alleged to have assisted the Government with communications intelligence activities in the aftermath of September 11th from potentially debilitating lawsuits. Providing liability protection to these companies is a just result. In its Conference Report, the Senate Intelligence Committee ''concluded that the providers . . . had a good faith basis for responding to the requests for assistance they received.'' The Committee further recognized that ''the Intelligence Community cannot obtain the intelligence it needs without assistance from these companies.'' Companies in the future may be less willing to assist the Government if they face the threat of private lawsuits each time they are alleged to have provided assistance. The Senate Intelligence Committee concluded that: ''The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation.'' Allowing continued litigation also risks the disclosure of highly classified information regarding intelligence sources and methods. In addition to providing an advantage to our adversaries by revealing sources and methods during the course of litigation, the potential disclosure of classified information puts both the facilities and personnel of electronic communication service providers and our country's continued ability to protect our homeland at risk. It is imperative that Congress provide liability protection to those who cooperated with this country in its hour of need.

The ramifications of the Judiciary Committee's decision to afford no relief to private parties that cooperated in good faith with the U.S. Government in the immediate aftermath of the attacks of September 11 could extend well beyond the particular issues and activities that have been of primary interest and concern to the Committee. The Intelligence Community, as well as law enforcement and homeland security agencies, continue to rely on the voluntary cooperation and assistance of private parties. A decision by the Senate to abandon those who may have provided assistance after September 11 will invariably be noted by those who may someday be called upon again to help the Nation.

Mandates an Unnecessary Review of Historical Programs. The Judiciary Committee substitute would require that inspectors general of the Department of Justice and relevant Intelligence Community agencies audit the Terrorist Surveillance Program and ''any closely related intelligence activities.'' If this ''audit'' is intended to look at operational activities, there has been an ongoing oversight activity by the Inspector General of the National Security Agency (NSA) of operational activities and the Senate Intelligence Committee has that material. Mandating a new and undefined ''audit'' will divert significant operational resources from current issues to redoing past audits. The Administration understands, however, the ''audit'' may in fact not be related to technical NSA operations. If it is the case that in fact the Judiciary Committee is interested in historical reviews of legal issues, the provision is unnecessary. The Department of Justice Inspector General and the Office of Professional Responsibility are already doing a comprehensive review. In addition, the phrase ''closely related intelligence activities'' would introduce substantial ambiguities in the scope of this review. Finally, this provision would require the inspectors general to acquire ''all documents relevant to such programs'' and submit those documents with its report to the congressional intelligence and judiciary committees. The requirement to collect and disseminate this wide range of highly classified documents—including all those ''relevant'' to activities ''closely related'' to the Terrorist Surveillance Program—unnecessarily risks the disclosure of extremely sensitive information about our intelligence activities, as does the audit requirement itself. Taking such national security risks for a backwards-looking purpose is unacceptable.

Allows for Dangerous Intelligence Gaps During the Pendency of an Appeal. The Judiciary Committee substitute would delete an important provision in the SSCI bill that enables the Intelligence Community to collect foreign intelligence from overseas terrorists and other foreign intelligence targets during an appeal. Without that provision, we could lose vital intelligence necessary to protect the Nation because of the views of one judge.

Limits Dissemination of Foreign Intelligence Information. The Judiciary Committee substitute would impose significant new restrictions on the use of foreign intelligence information, including information not concerning United States persons, obtained or derived from acquisitions using targeting procedures that the FISA Court later found to be unsatisfactory for any reason. By requiring analysts to go back to the databases and pull out certain information, as well as to determine what other information is derived from that information, this requirement would place a difficult, and perhaps insurmountable, burden on the Intelligence Community. Moreover, this provision would degrade privacy protections, as it would require analysts to locate and examine U.S. person information that would otherwise not be reviewed.

Requires FISA Court Approval of All ''Targeting'' for Foreign Intelligence Purposes. The Judiciary Committee substitute potentially requires the FISA Court to approve ''[a]ny targeting of persons reasonably believed to be located outside the United States.'' Although we assume that the Committee did not intend to require these procedures to govern all ''targeting'' done of any person in the world for any purpose—whether it is to gather human intelligence, communications intelligence, or for other reasons—the text as passed by the Committee contains no limitation. Such a requirement would bring within the FISA Court a vast range of overseas intelligence activities with little or no connection to civil liberties and privacy rights of Americans.

Imposes Court Review of Compliance with Minimization Procedures. The Judiciary Committee substitute would require the FISA Court to review and assess compliance with minimization procedures. Together with provisions discussed above, this would constitute a massive expansion of the Court's role in overseeing the Intelligence Community's implementation of foreign intelligence collection abroad.

Amends FISA to Impose Burdensome Document Production Requirements. The Judiciary Committee substitute would amend FISA to require the Government to submit to oversight committees a copy of any decision, order, or opinion issued by the FISA Court or the FISA Court of Review that includes significant construction or interpretation of any provision of FISA, including any pleadings associated with those documents, no later than 45 days after the document is issued. The Judiciary Committee substitute also would require the Government to retrieve historical documents of this nature from the last 5 years. As drafted, this provision could impose significant burdens on Department of Justice staff assigned to support national security operational and oversight missions.

Includes an Even Shorter Sunset Provision Than That Contained in the SSCI Bill. The Judiciary Committee substitute and the SSCI bill share the same flaw of failing to achieve permanent FISA reform. The Judiciary Committee substitute worsens this flaw, however, by shortening the sunset provision in the SSCI bill from 6 years to 4 years. Any sunset provision, but particularly one as short as contemplated in the Judiciary Committee substitute, would adversely impact the Intelligence Community's ability to conduct its mission efficiently and effectively by introducing uncertainty and requiring retraining of all intelligence professionals on new policies and procedures implementing ever-changing authorities. Moreover, over the past year, in the interest of providing an extensive legislative record and allowing public discussion on this issue, the Intelligence Community has discussed in open settings extraordinary information dealing with intelligence operations. To repeat this process in several years will unnecessarily highlight our intelligence sources and methods to our adversaries. There is now a lengthy factual record on the need for this

legislation, and it is time to provide the Intelligence Community the permanent stability it needs.

Fails to Provide Procedures for Implementing Existing Statutory Defenses. The Judiciary Committee substitute fails to include the important provisions in the SSCI bill that would establish procedures for implementing existing statutory defenses and that would preempt state investigations of assistance allegedly provided by an electronic communication service provider to an element of the Intelligence Community. These provisions are important to ensure that electronic communication service providers can take full advantage of existing liability protection and to protect highly classified information.

Fails to Address Transition Procedures. Unlike the SSCI bill, the Judiciary Committee bill contains no procedures designed to ensure a smooth transition from the PAA to new legislation, and for a potential transition resulting from an expiration of the new legislation. This omission could result in uncertainty regarding the continuing validity of authorizations and directives under the Protect America Act that are in effect on the date of enactment of this legislation.

Fails to Include a Severability Provision. The Judiciary Committee substitute, unlike the SSCI bill, lacks a severability provision. Such a provision should be included in the bill.

The Administration is prepared to continue to work with Congress towards the passage of a permanent FISA modernization bill that would strengthen the Nation's intelligence capabilities while protecting the constitutional rights of Americans, so that the President can sign such a bill into law. The Senate Intelligence Committee bill provides a solid foundation to meet the needs of our Intelligence Community, but the Senate Judiciary Committee bill represents a major step backwards from the PAA and would compromise our Intelligence Community's ability to protect the Nation. The Administration calls on Congress to forge ahead and pass legislation that will protect our national security, not weaken it in critical ways.

Mr. HATCH. To my distinguished colleagues, I urge you to support the bipartisan Rockefeller-Bond compromise bill, one that has been superbly debated within the Intelligence Committee and has been carefully thought out.

It provides protections to civil liberties and ensures that technological changes do not outpace our laws.

I wanted to personally pay tribute to the distinguished Chairman of the Intelligence Committee and the distinguished Vice Chairman. They know what they accomplished in the Intelligence Committee was very important, and it should be followed by us on the floor.

We cannot even begin to talk about some classified issues on this floor. We cannot even begin to talk about the dangers that will come from going beyond that bill that passed 13 to 2 in the Senate Intelligence Committee. I refuse to place our country at risk. I refuse to do anything that would make our country be at risk. I suggest to you that if we follow the Judiciary Committee bill, I think we would be doing exactly that.

Mr. President, I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I would like to speak on the bill and ask for approximately 10 minutes.

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

Ms. MIKULSKI. Mr. President, we have a great country. Here we are, we are debating essentially what is going to be the Federal statute on electronic surveillance on the American people and on those who might have predatory intent toward us.

We are doing it in an open, public session, with the world to watch on C–SPAN and talking about what are the right parameters to be able to protect the American people and yet protect the American Constitution.

I think this shows the strength of our democracy and also calls upon us, as we deliberate, to come up with the widest and most prudent choice. For those who are following this debate, I would encourage them to turn to the report that has been put out by the committee, called the Foreign—note it said ''Foreign''—Foreign Intelligence Surveillance Act, the amendments of 2007 to the act of 1978.

This report will go into detail about the deliberations of the committee, the amendments that were offered, the debate we had, and additional views offered by colleagues. I commend it to their attention because it goes through the background in more detail. We are talking about law, which can be quite technical, but we are also talking about the consequences of the law which are quite important.

I sit on the Intelligence Committee. In that job, I have two responsibilities: No. 1, to protect the American people and, No. 2, to protect the Constitution of the United States. Implicit in that is the right of privacy and explicit in that is their civil liberties. The Intelligence Committee's job was to modernize FISA in a way that would do both—protect the American people against predatory attacks and yet at the same time protect their constitutional rights, explicit and implicit. What this legislation does is gives our intelligence community the tools it needs to prevent, disrupt, detect, and derail terrorist plots while at the same time safeguarding the rights of American citizens.

The FISA law, the Foreign Intelligence Surveillance Act, was created in 1978. Since then, technology has changed with great speed and sophistication. I have at my home in Baltimore a rotary phone. I bought it in 1977, when I remodeled my home in Fells Point. My nieces and nephews are regaled with laughter when they say: Oh, Aunt Barb, how '70s. But when we look at the rotary phones and a blackberry was something you ate with cereal, look how far we have come since 1978. Technology has changed with speed and will continue to change with ever increasing sophistication. At the same time we are facing constantly emerging, radical, and treacherous threats that demand a new reform of the FISA law. Yet while technology and the nature of the threats have changed, we have to be very clear that our democratic values and the Constitution have not. It is an imperative that this Congress uphold both, our Constitution and our democratic values.

I believe our Intel Committee bill will do exactly that. It will make America safer. It does this by giving the U.S. intelligence professionals the tools they need to safeguard and protect against predatory attacks. Six years ago, after September 11, terrorists remained—and continue to remain—on the hunt for U.S. vulnerabilities. They use now disposable phone cards, laptop computers, and different e-mail addresses. They are always on the run, and they are always probing to find our vulnerabilities. The old FISA law made it impossible for the U.S. intel community to engage in any kind of realistic techno hot pursuit, unless we change the law. This bill enables intel professionals to keep pace with those who have this predatory intent. They have to be able to monitor terrorists overseas with speed and flexibility.

This reform legislation empowers the intel community to detect, disrupt, and prevent terrorist attacks. It does it, though, in a way that protects the constitutional rights of American citizens, both in the United States and when they travel overseas.

This bill protects their privacy in two important ways. First, it strengthens the role of the Foreign Intelligence Surveillance Court. The Intel Committee requires a FISA court to approve a warrant in order for a U.S. person to be monitored in the United States. Let me repeat that. If a U.S. person is at home in the United States, not only their home address but on the physical territory of the United States, any surveillance of them requires a warrant that is approved by the FISA Court. This means the FISA Court determines whether the surveillance is legal and necessary. The FISA Court must also judge the procedures used. The FISA Court, also looking at terrorists, takes a look at the procedures used to target them to be sure there is no reverse targeting of U.S. citizens.

Second, this bill protects the privacy rights of all Americans, whether or not they are in the United States. One can ask: What about those U.S. citizens who are traveling overseas or who are actually living overseas? What about people who are students? What about those conducting business? What about those on the cruise of a lifetime? Our good colleague from Oregon, Senator WYDEN, offered a terrific amendment which said: Your privacy rights as an American don't stop when you leave the borders of the United States. I am giving plain English. I am using BARBARA MIKULSKI language rather than committee language. In a nutshell, the Wyden amendment requires the FISA

Court to approve any targeting of Americans overseas. The FISA Court approval is required in order to do this. It means your constitutional rights are based on your citizenship, not your geographic location. It is your right as a citizen that gives you the right of constitutional protections, not what ZIP Code or area code you are in at any given time. The Constitution travels with you wherever you go. This is absolutely important. I believe the Wyden amendment sets out very clear language about this.

Let's talk about the immunity for the telecommunications industry. Ordinarily I am skeptical of any giveaway to these corporations, whether tax breaks or whatever. But this is one I do support. I understand there are a lot of concerns about that, and they have been raised by my colleagues in a very eloquent way. But let's examine what the telecom community was asked to do, what legal assurances they were given and by whom, and the context in which they acted. Think about where we were on September 11. There had been an attack on the World Trade Center and the Pentagon. The people of Flight 93 had given their lives in the most gallant kind of way, ostensibly to protect us against a plane that was heading to the Capitol. All of us will tell you where we were that day. Quite frankly, I was in a meeting with Senator Daschle when the Pentagon was hit. Sixty Marylanders died, and I thought I might die that day. I think there were a lot of other people here who worried about that as well. We got through that day, and we stood on the Capitol steps and linked arms and said: God bless America. But we were filled with fear and apprehension. We were concerned that other attacks were being planned, that another attack might even be imminent. We were worried about the Sears Tower in Chicago, the Golden Gate bridge, about getting on planes, about getting on trains, about riding subways. We were even worried about going to football games.

I remember on the eve of the Army-Navy game, wondering what would that mean with the best and brightest of our leadership, would even the Army-Navy game be attacked? The U.S. Capitol at that same time was hit by an anthrax attack. Don't you remember the wonderful day when they sealed the Hart Building, when I was told that my office was a crime scene and a public health incident? My chief of staff, who was a new nursing mother, was filled with fear that she might have anthrax. I remember taking that little swab with the Navy medic who shook my hand and said: Good luck. Good luck? I wanted Cipro. I didn't want good luck. We were scared to death. People were snapping up gas masks and survival kits. You walk around this Capitol today, you see all of that.

So every single American was clear that they wanted to do anything to prevent or disrupt the next attack. We were all asked to do our part. It was in this context, then, that the Bush administration went to the telecom companies. These companies were asked to assist with a communications program to prevent further attacks. They were given letters of assurance that essentially said: The Attorney General of the United States, then John Ashcroft, deemed what they were being asked to do legal and necessary. There was a subsequent letter where then White House counsel Alberto Gonzales also assured these companies that what they were doing was legal and necessary. The correspondence declares that these activities were also authorized by the President of the United States during this time of anxiety.

I know my colleagues would say the lawyers knew that and it was law school and so on. But what would you have done if you headed up a company in the law department? Would you have fretted over the law or would you look at how maybe you could cooperate, how maybe when you see the Beamer family on TV and they said they were ready to roll and we all felt as though we were ready to roll, maybe if you were a telecom company, you were ready to roll too? Maybe you were rolling the dice. But you did have a letter that assured you what was legal and necessary from the Attorney General, the White House, and that also had been authorized by the President.

Within this context, the telecom companies thought what they were doing was patriotic and legal. At a time when the United States felt it was under imminent threat of an attack by a new kind of emerging threat, they were given these assurances. That is why I support giving them focused immunity, because they thought what they were doing was patriotic. Look at the context. At the same time they had these letters of assurance. What I do not support is what the Government additionally wanted, which was to give immunity to all persons connected to this, which means essentially the Bush officials, officials in the Bush administration who either knowingly broke or sidestepped the law. That is not what the committee bill would do. What the committee bill does is focus only on the telecom community. It does not give immunity to these Bush administration people.

When we look at this, I ask everybody to remember what this was. This bill also has a sunset of 6 years which I think we need. We are now in the heat of war, and we must continue to reevaluate and improve this law when cool heads will prevail.

I know others want to speak. I will speak later on on this bill in a more amplified and legal way. But I think the time has come to reform FISA, to make ourselves modern and contemporary and, at the same time, not to punish those who thought they were working with us; last, but not at all least, to protect the American people, both in terms of their safety but also their constitutional rights.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would first just express my appreciation for the thoughtfulness and eloquence of the Senator from Maryland. I think she has analyzed the matter very well and has called us to a compromise agreement that we should rally around and pass—an agreement that will protect our country and also protect our liberty; and that is, the agreement that came out of the Intelligence Committee 13 to 2. It is the kind of agreement that reflects weeks, even months, of study, both of law and of technology.

Our Intelligence Committee, more than our Judiciary Committee, of which I am a member, was deeply involved in exactly what is being done in foreign intelligence and how it was being done. They studied it carefully. There are a lot of members of the Intelligence Committee who would not hesitate to object if they thought what was being done was in error or certainly if it violated our Constitution. As a result, we have moved forward with their bill.

Unfortunately, the Senate Judiciary Committee that had referral on the matter has now come forward with additional ideas and proposals that are not wise, in my view. We did not spend nearly as much time on the matter. We are not nearly as involved and knowledgeable of the details of what has gone on as the Intel Committee is. I believe we should not move forward on the Judiciary Committee bill. I opposed it in committee and remain in opposition to it.

With regard to this matter of immunity for our telecom companies that cooperated with the President, the Senator from Maryland has explained how we got to this point. Mr. President, 9/11 occurred. We had a 9/11 Commission that said we did not have good intelligence, we did not share the intelligence we had correctly, we were not analyzing properly the intelligence we had, and we ought to do much better with regard to intelligence.

That was a uniform view, and the President authorized these programs, some of which basically had been authorized for years and had never been considered to be improper in any way. Government officials met with the telecom providers and asked for their assistance because the Government does not handle these communications systems. It is private companies that do. These companies were given a legal statement from the Attorney General that said the President had declared their cooperation to be important to national security, that it was legal, and asked them to help.

Now, we discussed the basic principle in the Judiciary Committee at some length, and I would like to go back to it. The basic principle that has been embedded in our law for hundreds of years, from our British heritage, is that a citizen—when called upon by a law officer, the gendarme, the Federal

official, or the State law officer who has apparent legal authority, to help in a situation involving a danger in the community—that citizen should respond. OK. How have we dealt with that?

We are so committed to that fundamental principle that we have embedded in our common law the concept that if the Government official was in error and should not have asked the citizen to do something—an example would be where somebody is running from a building, and apparently, a burglary has occurred. Several uniformed police officers are chasing the apparent burglar. They ask a citizen to help. The citizen assaults, tackles, and holds the person he has been told to try to capture. He helps the police officers capture that person, and it turns out he is not the burglar, but an innocent person.

It is absolutely clear as a matter of Anglo-American law—this is not some new deal; this is our heritage—that the citizen is not responsible and cannot be held legally liable because the only question is: Was he or she responding to what appeared to be a legitimate request by the Government to assist them?

So that is the deal. That is what our telecom companies did. More than that, they did not just respond to some police officer in uniform, they did not just respond to a military officer or a National Guardsman or a Coast Guardsman to help, they responded to the Attorney General of the United States of America requesting in a formal letter saying that he was authorized by the President of the United States to ask for their assistance to preserve and protect the safety of American citizens. They were given assurance that what they were being asked to do by the Attorney General was lawful.

How could we possibly suggest that these companies now are going to be rightfully sued for money damages? It is unthinkable we would allow that to happen. It would contradict our fundamental principles as a country.

They say: Well, how do we know? We need to have a lawsuit. Well, we have all kinds of telecom communications statutes that we have imposed over the years. Apparently, a court, in reviewing these matters, interpreted one of these statutes in a way that rendered the procedures then utilized under the request of the White House incorrect. The court did not say that the program could not be done, but that it had to be done using different techniques and different procedures. But the practical effect of that decision, it turns out, was to make it impossible for those techniques to be continued to be used. You just could not do it. As a practical matter, you could not continue to conduct the surveillance the Intelligence community said was required.

So the net result was we passed the Protect America Act this summer so the surveillance could continue because we, after great study, concluded it was needed and basically a lawful procedure. We passed the Protect America Act that allowed it to continue.

So I want to go back to say, the fact there was an alteration in the way this process was ongoing does not mean American companies that agreed to be supportive of the Attorney General and the President of the United States in a time of national emergency ought to have been sued. The person responsible if there was an error was the Government, not the companies—the Government. And many of these matters are very complex.

If we now are going to place the burden on the CEO or the legal counsel of every company in America to conduct their own independent research as to whether a request to participate in helping to defend America is constitutional, and they now are required to go beyond a certified letter from the Attorney General of the United States and have their lawyers express their own opinion, we are at a point where we are not going to get help in the future. It is just that simple.

So I think we ought to be careful about it. In fact, in the letter Senator HATCH has referred to, which is a Statement of Administration Policy—what they call a SAP—issued today by the Executive Office of the President, the President's advisors indicate they would recommend to the President that this important, critical legislation be vetoed if certain objectionable matters are in it.

One of the matters they are concerned about is this question of liability. I would like to read from page 4 from that SAP that deals with this issue. It sets out the question clearly. It says:

> In contrast to the Senate Intelligence Committee bill, the Senate Judiciary Committee substitute would not protect electronic communication service providers who are alleged to have assisted the Government with communications intelligence activities in the aftermath of September 11th from potentially debilitating lawsuits. Providing liability protection to these companies is a just result. In its Conference Report, the Senate Intelligence Committee ''concluded that the providers . . . had a good faith basis for responding to the requests for assistance they received.''

That was a bipartisan vote, 13 to 2. Senator ROCKEFELLER, the Democratic chairman, and Senator BOND, the ranking Republican, and all members voted on that language.

I am still quoting now from this SAP:

> The Committee further recognized that ''the Intelligence Community cannot obtain the intelligence it needs without assistance from these companies.''

In other words, we cannot get this intelligence without the cooperation of these companies, for heaven's sake. This is not a matter of dispute. This is an absolutely undeniable fact. It goes on to say:

> Companies in the future may be less willing to assist the Government if they face the threat of private lawsuits each time they are alleged to have provided assistance. The Senate Intelligence Committee concluded that: ''The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation.''

It is unacceptable. This SAP goes on to say:

> Allowing continued litigation also risks the disclosure of highly classified information regarding intelligence sources and methods. In addition to providing an advantage to our adversaries by revealing sources and methods during the course of litigation, the potential disclosure of classified information puts both the facilities and personnel of electronic communication service providers and our country's continued ability to protect our homeland at risk. It is imperative that Congress provide liability protection to those who cooperated with this country in its hour of need.

It goes on to say this:

> The ramifications of the Judiciary Committee's decision to afford no relief to private parties that cooperated in good faith with the U.S. Government in the immediate aftermath of the attacks of September 11 could extend well beyond the particular issues and activities that have been of primary interest and concern to the Committee. The Intelligence Community, as well as law enforcement and homeland security agencies, continue to rely on the voluntary cooperation and assistance of private parties. A decision by the Senate to abandon those who may have provided assistance after September 11 will invariably be noted by those who may someday be called upon again to help the Nation.

I think that is indisputable. So I do not know how we got to a place where we are supporting an effort by some to allow these companies, these good corporate citizens, to be sued. I know it is being driven by a lot of leftist, the ''blame America first'' folks who seek to undo every single thing that is done to protect America from attack by foreign adversaries. They go through it. They attempt to find anything that can be complained about, and we end up having a big debate on these issues. But these matters have serious consequences.

So I would say to my colleagues, we did not deny moveon.org any right to be heard. They have been heard—moveon.org, that's the organization that declared our fabulous General Petraeus to be a betrayer. But we have listened to all of their complaints. We have listened to the ACLU. The Intelligence Committee has spent months looking at it. The Department of Justice has been involved in it. The Senate Judiciary Committee has been involved in it. I would submit we have found that these surveillance procedures are not an extreme thing, that this is all consistent with the law of America and that it is legitimate in the way it was done. We ratified these procedures just this summer in the Protect America Act. I said a little earlier this morning that I know it is too much to expect that we would apologize to our security officers and the President for saying—as some have done—that they violated our Constitution to do these procedures because, after all this debate and

effort, we have now passed laws, including the Protect America Act, that allows them to continue. If they are so horrible, why did we overwhelmingly vote to allow them to continue? I would say there was nothing fundamentally wrong with what was being done to begin with. This was necessary and legitimate.

One more thought I wish to share on the basic question of surveillance abroad is this: American citizens abroad are protected by a rather strong Presidential order—Executive Order 12333—that protects them from surveillance without probable cause having been shown. It is a pretty strong order. Why have we never had the Supreme Court, which has ruled on surveillance in the United States, declare its power on the issue of surveillance abroad? Think about this: Can the Supreme Court—can a Federal judge in America approve a surveillance, electronic surveillance in a foreign country of an American citizen? The answer is, no, because they don't have jurisdiction. Federal judges don't have jurisdiction in France or Russia or Afghanistan. If you don't have jurisdiction to authorize a surveillance, you don't have jurisdiction to issue warrants or to assert jurisdiction at all, and that is the way it has always been interpreted. But because people were concerned about American citizens abroad, President Reagan issued an Executive order that controls those situations and that is being followed today.

So I wish to say we need to be careful about our thought processes as we go forward. There has never, ever been any doubt that an American intelligence operative can surveil foreign persons abroad whom they believe may pose a threat to the United States or may possess information valuable to the United States. That has never been in doubt.

So as we go through with this, I hope we will listen to the work of the Intelligence Committee. I think, for the most part, it is a pretty good bill. Their bill is something I can support. It has some things in it I don't believe are necessary that put restrictions on our efforts to make sure our officials don't overreach. We can create safeguards in a bipartisan way, and I hope we will. But in truth, we need to pass legislation soon because the current bill, the Protect America Act, expires in February.

I went out a few weeks ago to the National Security Agency and got a full briefing, as a number of Senators have, on what is being done there. I was so proud of our personnel. These are fabulous Americans. The suggestions that have been made by some that they are sitting out there trying to listen in on somebody's private conversation about Christmas from Paris or Afghanistan is beyond reality. They are out there trying to protect America. They are looking to see if they have any information that they can legally pick up that would indicate an attack may be imminent or that people are plotting to attack the United States.

So I thank the Chair. I hope we will move forward with this legislation based on the Intel bill and that we will reject efforts to deny liability protection to Americans who serve our country. Also, I hope we will reject the Wyden language in the Intel bill because I think it goes far too far in constricting the ability of our intelligence personnel to do their job, and it is not legally or constitutionally required.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Ms. LANDRIEU). The Senator from Maryland is recognized.

Mr. CARDIN. Madam President, I wish to take this time to talk a little bit about the FISA bill we are considering today. I heard my friend from Alabama talk about the work that is being done at the National Security Agency. I have also taken the opportunity to visit with NSA to see firsthand the work they are doing. It wasn't my first visit. NSA, as my colleagues know, is located in Maryland. I have been there on numerous occasions. I had an opportunity to observe the manner in which our security intelligence agencies operate, and I must tell my colleagues these men and women are dedicated public servants doing a great job on behalf of their country and trying to get it done right. They are trying to do it the way it is supposed to be done and complying with laws, but they need the right legal basis, and it is our responsibility in Congress to get the statutes right to allow them to obtain the information they need in order to keep us safe. There is a right way of doing it. Congress needs to get this bill done right.

We passed this bill in a hurry in August. We didn't have an opportunity at that time to review the classified information about the advice that was given in regard to the collection of data. Since that time, some of us have had that opportunity. I regret all of us have not had that opportunity. I have taken advantage of that opportunity as a member of the Judiciary Committee, and I have seen the information. I have seen the opinions of counsel. I have seen the information the telecommunications companies operated under. I have had a chance to review that information. It makes it a lot easier for me now to evaluate what we should do.

I will tell my colleagues I wish to get this bill done. I think it is important that our intelligence community have the legal authority to be able to intercept communications that are foreign to foreign. That was the basic reason why they asked for us to modify the FISA law, because technology changed and we had a lot of foreign-to-foreign communications. But it was through facilities that were located within the jurisdiction of the United States; therefore, the FISA laws applied. The administration thought originally they didn't apply, but then the court said: Hey, wait a minute. Read the statute. It does apply. You have to come to Congress and get it done right. That is why they came to us. They wouldn't have come to us if the courts didn't demand they come to us. Now it is our responsibility to get the statute right.

I wish to thank Senator ROCKEFELLER and Senator BOND for the work they did in the Intelligence Committee. I serve on the Judiciary Committee. I can tell my colleagues, Senator LEAHY, Senator SPECTER, and every member of our committee has taken our responsibility very seriously to try to understand the circumstances. But I can tell my colleagues it is important we modify the bill that has come out of the Intelligence Committee. I call my colleagues' attention to the work of the Judiciary Committee because we wanted to make sure the bill we recommended gives the intelligence community the tools they need, particularly as it relates to foreign-to-foreign communications but also protects the constitutional rights of the citizens of our own country, and it will be defensible before our courts. That is our responsibility. I think we got it right.

So we are going to see some differences between these two bills, besides the big difference which is the immunity. I am going to get to the retroactive immunity in a moment. However, there are other differences which are very important, including exclusivity, to make it clear this statute controls so the administration can't say: Well, we have additional authority and we are going to do it our way, regardless of what the Congress says. That is an important provision. It is in the Senate bill. We need to make sure it is in the final bill that is sent to the President.

There are other provisions that are important that are in the Senate bill but not in the House bill: Changes in minimization rules; changes in how—when we target an American overseas—we do, in fact, get appropriate court authorization to do it. I thank Senator WHITEHOUSE for his contributions in that regard. These might be technical changes, but they are important to make sure they get into the bill that is finally passed and sent to the President.

Let me talk for a moment, if I might, about the retroactive immunity because there has been a lot of conversation about retroactive immunity. I oppose retroactive immunity. I think it is the wrong way to help the carriers. Retroactive immunity, to me, violates our responsibility to respect each branch of Government. I want the courts to be able to look at what the executive branch is doing. I want the courts to protect individual rights. I think that when we start looking at retroactive immunity, we start violating the basic separation of powers.

I must tell my colleagues that the telecommunications carriers that cooperated with the Government, believing that the authority was there and

operating in good faith, are entitled to relief. But they shouldn't be given retroactive immunity.

There are other suggestions which have been made. I hope my colleagues will listen to some of the amendments that are being offered. Senator SPECTER has an amendment that I call to the attention of my colleagues. Because if you believe that Government is responsible—and I have heard many of my colleagues say this—that if the Government was wrong, let them be sued and held accountable. That is exactly what Senator SPECTER's amendment does. It substitutes the Government for the carriers in the same position that the carriers would be so we can get the protection of the courts and the carriers get the protection they need, and the Government can control the case for national security purposes. It seems to be a compromise that if, in fact, the carriers were operating in good faith, then let the Government be there to take its responsibility in this matter.

I call my colleagues' attention to another amendment offered by Senator FEINSTEIN. I think it is a good amendment on this issue. It may be able to help us in trying to find common ground. Her amendment says: Look, the bill we passed that is supported by the Intelligence Committee—the bill we passed last August, now amended by the Intelligence Committee, would say: OK, we are going to grant retroactive immunity, and guess who is going to make the decision as to whether the carrier operated in good faith according to law. It is going to be the Attorney General, the administration. Well, to me, that doesn't sound quite objective. After all, we know it was the Attorney General who gave the advice. So at least let's have an objective review. The Feinstein amendment says: Let the FISA Court, which was set up for this purpose and which has the expertise in this area, make the judgment as to whether the carriers followed the law in good faith. Because I tell my colleagues, if they did, I believe they are entitled to relief. I do. But I don't think we should strip the court of its jurisdiction in solving that problem. I think there are better ways to do it. I urge my colleagues to look at the work of the Judiciary Committee because I think they will find some help in a product that will be submitted vis-a-vis amendments as we consider this legislation.

I wish to mention one additional item I am going to bring to the attention of my colleagues, and that is an amendment I offered in the Judiciary Committee that was approved and one I hope will have bipartisan support: A 4-year sunset on the legislation. Why do I want to see this sunset in 4 years? The Intelligence bill has 6 years. I want the next administration to focus on this issue. I want them to come to Congress and cooperate with us on how they are using this power. It is interesting we have gotten tremendous cooperation, since August, from the administration because they knew they had to come back here in February, so we got their cooperation. We got the information we needed. But I don't know if we are going to see any information from the next administration. When they know they have the authority during the entire time, they don't have to come back to us.

So I hope this 4-year sunset provision will be agreed to by all of us, so this Congress can exercise its appropriate oversight as to how this administration and the next administration use this extraordinary power.

FISA is extraordinary power. These are secret courts. These aren't courts that issue written opinions that people can attend. These are secret courts, in order to protect the security of America but also the rights of the people of our Nation. They should at least have the ability for Congress to exercise appropriate oversight responsibility. A 4-year sunset will give us that opportunity in the next administration, and I hope that will be improved.

So this is an important bill. This is a bill I hope will reach the President's desk and will be signed into law. But let's make sure we get it right. Let's make sure it is legislation we are proud of to protect the safety of the people of America and our civil liberties and legislation that can withstand the review of our courts as to constitutionality.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Madam President, this morning I laid out the reasons why I opposed cloture on the motion to proceed. Now I would like to describe in more detail the reasons that the Senate should be considering the Judiciary bill rather than the Intelligence Committee bill. And I will lay out again why I strongly oppose the immunity provision in the Intelligence Committee bill.

There are a number of similarities between the bills reported by the Intelligence and Judiciary Committees. Their basic structure is the same. Both bills authorize the Government to conduct surveillance of individuals reasonably believed to be overseas without court approval for individual warrants. Both bills authorize the Government to develop and implement procedures to govern this new type of surveillance, and provide the procedures to the FISA Court for review after they have gone into effect.

But in critical ways, the bills take different approaches. The Judiciary bill contains a number of important changes to improve court oversight of these broad new executive branch authorities, and to protect the privacy of law-abiding Americans.

Let me be clear: The differences between these two bills have nothing to do with our ability to combat terrorism. They have everything to do with ensuring that the executive branch adheres to the rule of law and doesn't unnecessarily listen in on the private communications of Americans.

This debate is about whether the court should have an independent oversight role, and what protections should apply to the communications of Americans that get swept up in these broad new surveillance powers.

If you believe that courts should have a meaningful oversight role with respect to Government surveillance, then you should support the Judiciary bill. And if you believe that Congress should try to limit the number of communications of Americans here at home that will be swept up in a broad new surveillance program that is supposed to be focused on foreigners overseas, then you should support the Judiciary bill.

That said, the Judiciary bill is not perfect. More still needs to be done to protect the privacy of Americans. But that is why it should be such an easy decision to support the Judiciary bill as a starting point.

Let me also remind my colleagues that the process by which the Judiciary Committee considered, drafted, amended and reported out its bill was an open one, allowing outside experts and the public at large the opportunity to review and comment. With regard to legislation so directly connected to the constitutional rights of Americans, the results of this open process should be accorded great weight, especially in light of the Judiciary Commiittee's unique role and expertise in protecting those rights.

So what are the differences between the two bills?

First, the Judiciary bill gives the secret FISA court more authority to operate as an independent check on the executive branch.

One provision in the Judiciary bill fixes an enormous problem with the Intelligence Committee bill—the complete lack of incentives for the Government to do what the bill tells it to do, which is target people overseas rather than people here in America. The Judiciary bill solves this problem by limiting the use of information concerning Americans when that information is obtained through procedures the FISA Court ultimately finds are not reasonably designed to target persons overseas.

The Judiciary bill states that if the court determines that the Government has been using unlawful procedures, then its use of that information is limited—in exactly the same way that it is limited under FISA today if the Government starts surveillance in an emergency and is later turned down for a court order. But the new provision in the Judiciary bill is more flexible: It gives the court the option to allow the use of the information the Government collected the first time around, depending on the circumstances.

Another provision of the Judiciary bill ensures that the FISA Court has the authority to oversee compliance with minimization procedures.

Minimization procedures have been held up as the primary protection for the privacy of Americans whose communications get swept up in this new surveillance authority.

I don't think current minimization procedures are strong enough to do the job. But to the extent that minimization can help protect Americans' privacy, its implementation needs to be overseen by the court. That means giving the court the authority to review whether the Government is complying with minimization rules and to ask for the information it needs to make that assessment. Without this provision from the Judiciary bill, the Government's dissemination and use of information on innocent, law-abiding Americans will occur without any checks and balances whatsoever. Once again, ''trust us'' will have to do. I believe in this case, as in so many others, ''trust us'' is not enough.

The Judiciary bill furthers other types of oversight, as well. It requires relevant inspectors general to conduct an audit of the President's illegal wiretapping program, which is long overdue.

And it improves congressional access to FISA Court orders. The Intelligence Committee bill requires that Congress be provided with orders, decisions and opinions of the FISA Court that include significant interpretations of law within 45 days after they are issued. That is good as far as it goes, but the Judiciary bill adds that Congress should be provided with pleadings associated with opinions that contain significant interpretations of law. These pleadings may be critical to understanding the reasoning behind any particular interpretation as well as how the Government interprets and seeks to implement the law. It also requires that significant interpretations of law not previously provided to Congress over the past 5 years be provided.

The Judiciary bill also does a better job of protecting Americans from widespread warrantless wiretapping.

First, it protects against reverse targeting. It ensures that if the Government is wiretapping a foreigner overseas in order to collect the communications of the American with whom that foreign target is communicating, it has to get a court order on the American. This is very reasonable. Specifically, the Judiciary bill says that the Government needs an individualized court order when a significant purpose of its surveillance is listening to an American at home. The DNI himself said that reverse targeting violates the Fourth Amendment; this provision simply codifies that principle. The administration continues to oppose this provision, and I have a simple question for it: ''Why?'' Why is it opposed to a provision that prohibits a practice that its own Director of National Intelligence says is unconstitutional?

The Judiciary bill also prohibits bulk collection—that is, the sweeping up of all communications between the United States and overseas. The DNI said in public testimony that this type of massive bulk collection would be permitted by the Protect America Act. But he has also said that what the Government is seeking to do with these authorities is something very different. It is ''surgical. A telephone number is surgical. So, if you know that number, you can select it out.'' If the DNI has said it doesn't even need broader authorities, we should certainly should not be providing them.

All this modest provision does is hold the DNI to his word. It ensures that the Government has some foreign intelligence interest in individual targets, and is not just vacuuming up every last communication between Americans and their friends and business colleagues overseas. Targets do not need to be known or named individuals; they can be anonymous phone numbers, which is how the DNI has described how the Government collects. And the Government does not have to identify or explain its interest in the targets to the FISA Court; it merely has to make a general certification that individual targets exist. Again, why does the administration oppose this provision? I have yet to hear a convincing answer.

The Judiciary bill also has a sunset of 4 years rather than 6 years, ensuring that Congress will reevaluate this law before the end of the next Presidential administration. And, critically, it contains a strong statement that Congress intends for FISA to be the exclusive means by which foreign intelligence surveillance is conducted. It closes purported statutory loopholes that the Justice Department relied on to make its tortured arguments that the congressional authorization for use of force against al-Qaida somehow authorized the President's illegal wiretapping program. The Judiciary bill makes clear, once and for all, that the President must follow the law.

Madam President, the Judiciary bill also does not contain the provision in the Intelligence Committee bill granting automatic, retroactive immunity to companies that allegedly cooperated with the President's illegal NSA wiretapping program. I supported an amendment to strike the immunity provision in the Intelligence Committee when it was offered by the Senator from Florida, Mr. NELSON—I offered an amendment to strike the immunity provision in the Judiciary Committee—and I will cosponsor Senator DODD's amendment to strike the immunity provision on the Senate floor. The immunity provision does not belong in this bill.

Granting immunity, first of all, is unnecessary. Current law already specifically provides immunity from lawsuits for companies that cooperate with the Government's request for assistance, as long as they receive either a court order or a certification from the Attorney General that no court order is needed and the request meets all statutory requirements. This current FISA immunity provision, contained in 18 U.S.C. §2511, already protects companies that act at the request of the Government, while also protecting the privacy of Americans' communications by assuring that immunity is granted only if the law is followed.

Some supporters of immunity argue that companies should not be penalized for relying in good faith on the legality of a request from the executive branch. This argument ignores the history of FISA. Private companies have a long history of receiving requests for assistance from the Government, and they worked with Congress when FISA was first enacted to devise a law that tells them exactly which Government requests they should honor. They also have experienced, well-trained lawyers to examine the written requests they receive from the Government and determine whether those requests comply with the clear requirements of the law or not.

The idea that telephone companies could not have foreseen that the Government might overstep the law makes no sense. FISA's requirement of a court order or a valid certification was designed precisely to respond to Government abuses that took place in the 1960s and 1970s, and to prevent such abuses from occurring in the future.

The Judiciary Committee heard testimony from Mort Halperin, a former Nixon administration official who had himself been the subject of a warrantless wiretap, and was involved in drafting FISA in the 1970s. He testified that before FISA:

> Government communication with the telephone company . . . could not have been more casual. A designated official of the FBI called a designated official of [the company] and passed on a phone number. Within minutes all of the calls from that number were being routed to the local FBI field office and monitored.

Not surprisingly, this casual, ad hoc system failed to protect Americans' privacy; the abuses that took place are well documented and quite shocking. FISA was supposed to give everyone involved a level of certainty about what was permitted and what was not. And the provision specifying the circumstances under which a Government request could be honored, in particular, was supposed to play a significant role in ensuring that certainty. AT&T, which was the only telephone company in existence at the time, was at the table when this provision was drafted. As Halperin described it in his testimony, the company:

> received the clarity that it sought and deserved. The rule, spelled out clearly in several places in the legislation and well understood by all, was this: If [the phone company] received a copy of a warrant or a certification under the statute, it was required to cooperate. If it did not receive authorization by means outlined in the statute, it was to refuse to cooperate and was to be subjected to State and Federal civil and criminal penalties for unlawful acquisition of electronic communications.

This is the history. This is why we have the FISA statute. This is the whole point.

This history should give all of us pause as we consider the immunity provision in this bill. Granting companies that allegedly cooperated with an illegal program this new form of automatic, retroactive immunity undermines the law that has been on the books for decades—a law that was designed to prevent exactly the type of actions that allegedly occurred here. Perhaps more importantly, it will undermine any new laws that we pass to govern Government surveillance.

If we want companies to follow the law in the future, it sends a terrible message, and sets a terrible precedent, to grant a new form of retroactive, blanket immunity for alleged cooperation with an illegal program. We not only want companies to follow the law, we want the Government to follow the law. If we don't give the companies a solid basis for refusing to respond to a Government request that falls short of statutory requirements, we take away the incentive for the Government to follow the law. It would be irresponsible for Congress to allow this to happen.

It is time for Congress to state clearly and unequivocally: ''When we pass a law, we mean what we say and we expect the law to be followed.'' But if we grant immunity to companies that may have broken the law, the message we send will be quite the opposite. We will be effectively making compliance with the law optional. We will be saying: ''If a high Government official asks you to ignore the law, go ahead. Congress can always change the law retroactively so you won't pay any penalty for your lawbreaking.'' I ask my colleagues to think long and hard about this as they consider this amendment. Is that the message that we really want to send?

This retroactive immunity provision presents another serious problem.

It could very well prevent the courts from ruling on the administration's warrantless wiretapping program. That may explain why the administration is pushing so hard for this part of the bill. This program is one of the worst abuses of executive power in our Nation's history, and the courts should be able to rule on it once and for all. For Congress to step in and likely wipe out the pending court cases, when the administration has stonewalled congressional oversight efforts for so long, would be an unacceptable capitulation to an administration that thinks it is above the law.

Finally, I must emphasize that a vote to strike immunity is not a vote to hold telephone companies liable. Rather, it is a vote to let the courts decide whether the existing immunity provisions apply. If telephone companies received a directive from the Government and complied with well-established law, the courts will find that they are entitled to immunity and these cases will be dismissed. But if they failed to follow the law that applied specifically to them—a law they helped create and a law that their lawyers knew inside and out—we will have done American citizens a grave injustice by saying that sometimes it is just plain OK to break the law.

In other words, Congress should not prejudge the guilt or innocence of the companies, especially without knowing the facts. Unfortunately, most of the Members of this Chamber have not had access to those facts. The members of only two committees have had the opportunity to study what happened. I happen to sit on both committees, and after seeing all the evidence, my firm view is we should leave this to the courts to decide under existing law. But it is wrong for the administration to ask my colleagues who do not serve on these committees to vote for immunity. They are effectively being asked to grant immunity without being told for what they are granting immunity. This is fundamentally unfair.

The Senate can stand up for the rule of law and let the courts handle these cases as they see fit, or it can decide to change the rules in the middle of the game and block accountability for possible past law breaking. Voting to preserve retroactive immunity means they are blessing the behavior of the administration and the companies that allegedly cooperated with it. I urge my colleagues not to take that step.

Before I close, I wish to respond briefly to the comments made by the vice chair of the Intelligence Committee concerning the President's so-called inherent constitutional power to order surveillance. Relying on a nonbinding statement made in passing in a FISA Court of Review decision on another issue and a 1980 circuit court case that addresses surveillance before FISA was passed, the vice chairman asserts that the President has inherent constitutional authority to wiretap without a court order.

I am afraid to say that argument is an invitation to lawlessness. What he basically said is that because in his view the President has wiretapping authority that cannot be limited by statute, a company that complies with his request for assistance cannot be held accountable, no matter how unreasonable the request was. If that is the case, then Congress may as well pack up and go home because the laws we pass don't matter.

Congress has spoken very clearly in FISA and limited Presidential power to conduct surveillance. Congress had the authority to take this action, and the courts have never upheld an assertion of Presidential power over statutory restriction in a case where Congress has acted within its authority. In this case, the President must follow the law that Congress passes, and so should the telecommunications companies.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER (Ms. STABENOW). Forty-one minutes.

Mr. FEINGOLD. I ask unanimous consent to yield my remaining time to Senator DODD.

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

Mr. DODD. Madam President, before my colleague leaves, I thank my colleague Senator FEINGOLD for not only his statements today but for speaking eloquently about this issue, with which he has been deeply involved with for a long time. Drawing on his service on both the Intelligence and Judiciary Committees, he eloquently pointed out that these provisions are designed to guarantee exactly what FISA intended to provide the security of our country and the sanctity of our rights, simultaneously.

And the idea that these companies were acting out of patriotism and naive to the provisions of the law when the very same companies were involved in crafting that law 30 years ago says volumes. I thank Senator FEINGOLD immensely for his work.

Mr. FEINGOLD. Madam President, I thank the Senator from Connecticut for his kind words, and I thank him for his important leadership on this issue. What he is doing today is extremely helpful to the preservation of the rule of law in this country.

The PRESIDING OFFICER. The distinguished Senator from Virginia.

Mr. WARNER. Madam President, the time is such, I understand from the Senator, that I may deliver a few remarks to the Senate; is that correct?

The PRESIDING OFFICER. The Senator may proceed under cloture. The Senate is operating under cloture.

Mr. WARNER. Madam President, I rise today because of the timely and critical importance of the issue before us. It is absolutely vital that we reform FISA, and we must do so quickly because the Protect America Act passed in August to close a dangerous intelligence gap is set to expire shortly. We must keep this gap closed, and we must do it in a way that protects civil liberties, protects telecommunications companies from unnecessary and costly lawsuits, and ensures that our hard-working and dedicated intelligence professionals have the tools they need to protect the Nation.

I have been privileged these 29 years I have been in the Senate to represent the Commonwealth of Virginia in which largely the intelligence community and the professionals therein have their base of operations. I have had the privilege of knowing these people. Stop to think: They have children in the schools in which our children are in, they attend the churches, they live in the communities. It has been my privilege to get to know many of them throughout the course of my career in the Senate and some 5 years plus previous that I had in the Department of Defense where I worked with these professionals. They are among America's finest individuals. They are dedicated. They take risks, great risks, so often when they are abroad. Indeed, we have

lost them at home right at the gateway to the entrance of the Central Intelligence Agency.

I was somewhat discouraged recently to hear broad accusations against the intelligence community, a lack of confidence that certain individuals in the Congress profess publicly to have. I assure them, based on my rather lengthy career and the good fortune to have worked with these professionals for so many years, I rank them among America's finest and most dedicated. It has been my privilege to take this floor many times in the past quarter century to speak on their behalf and to advocate causes which I think were in the best interests of the United States and which could, in many ways, affect their careers.

So I do so again today because reforming FISA has not been an easy process. I thank Chairman ROCKEFELLER and Vice Chairman BOND for the work they have done to garner bipartisan support for the Senate Intelligence Committee bill, the FISA Amendments Act.

The committee members and staff have worked together for many months to produce this responsible bipartisan legislation that strikes the right balance between civil liberties and foreign surveillance. All of the parties involved had to make compromises, but the 13-to-2—I repeat, 13-to-2—vote in the committee on which I am privileged to serve in favor of this bill shows that the bill will protect America's private civil liberties without unnecessarily hindering the ability of our intelligence professionals to intercept terrorist communications.

In addition to bipartisan congressional support, the FISA Amendments Act has, after consultation, the support of Admiral McConnell, the Director of National Intelligence. I have known this fine public servant for many years. When I was privileged to serve as Secretary of the Navy, he was on the staff of the Navy at that time. As a junior officer, he would often brief me in my capacity as Secretary early in the morning. I have enjoyed our friendship through the years and had the privilege to introduce him to the Senate for purposes of confirmation on several occasions.

History has ranked and will continue to rank Admiral McConnell among the foremost of those who stepped forward in my time for public service.

As I say, I have deep admiration and respect for Admiral McConnell's continued public service to the Nation and for the work of thousands of dedicated intelligence community professionals that he leads. His efforts to work with the Congress to formulate this bipartisan and complicated set of solutions to this serious national security issue are to be commended.

The committee was uniquely positioned to weigh and assess the many highly classified aspects of our foreign intelligence surveillance operations and to discuss and debate those sensitive issues before we drafted this legislation. The result is a bill that has the support of those valued public servants trusted to follow the law and a bill that will protect national security and will protect America's privacy.

The bill allows the intelligence community, through a joint certification by the Attorney General of the United States and the Director of National Intelligence, to target the communications of foreign overseas targets without the necessity of the FISA Court approval. This provides the speed and the agility the intelligence community needs—I emphasize ''the speed and the agility''—and keeps the foreign intelligence targets outside the purview of the FISA Court, which was the original intention of Congress when it drafted the FISA bill in 1978.

The FISA amendments also ensure the protection of America's civil liberties by providing that acquisition may only be conducted in accordance with targeting and minimization procedures adopted by the Attorney General of the United States and reviewed by the Foreign Intelligence Surveillance Court. Targeting must be consistent with the fourth amendment, and reverse targeting is specifically prohibited. There is also enhanced oversight by Congress, the Attorney General, the Director of National Intelligence, and inspectors general.

One of the most important provisions in this bill is the retroactive carrier liability protection for those telecommunications carriers alleged to have assisted the Government with the terrorist surveillance program, known as TSP. While I believe that TSP was legal, essential, and contributed to preventing further terrorist attacks against our homeland, others may disagree.

There is no doubt, however, that the carriers that have participated in the program relied upon our Government's assurances that their actions were legal and in the best interests of the security of the United States of America.

These companies deserve and must be protected from costly and damaging lawsuits. The boards of directors have a fundamental obligation, as they do in all public corporations, to shareholders of these publicly owned institutions. Those who ask why the companies need such protection if they did not do anything illegal do not grasp the point that the Government's invocation of state secrets precludes companies from providing a court of law with any factual evidence confirming or denying their involvement in the program. That is to prevent sources and method. Sources and methods are the very heart of America's intelligence operations, as they are the world over. Some companies facing lawsuits, even if they never participated in the program, can likewise not defend themselves.

Some Senators have suggested Government substitution or indemnification of these companies, as the ones who did work in the program, as an alternate to the retroactive liability language in the bill. These are not suitable alternatives, in my judgment, for the companies or the intelligence community.

It is a recognized fact that lawsuits are most often extremely costly to a company in terms of damage to the business reputation and stock valuation could fluctuate. Even if a company ultimately prevails, they will suffer not only money damages possibly, costs possibly, in all probability even though there may be Government reimbursement, but damage which is incalculable in amount to their reputation and standing in their community. Again, if the Government pays the legal bill, that will not erase other injurious consequences that come about as a result of court proceedings. I myself engaged in the practice of law before I entered public service many years ago, and not much has changed. Further, the Government being substituted as the defendant in a trial opens evidentiary problems regarding, again, sources and methods, which is the vital ingredient of all our intelligence collecting processes. Individuals who believe the Government violated their civil liberties can pursue legal action against the Government—the United States Government—and the FISA Amendments Act does nothing to limit the legal recourse.

The bottom line, companies that participate in this program do so to help America protect its freedom and the safety, individually and collectively, of our citizens. Without this retroactive liability provision, I believe companies will no longer, and understandably, voluntarily participate in this program. The consequence of the loss of those companies stepping up—solely in the security interests of the United States, solely in the interests of protecting our citizens—to offer their services will result in irreparable damage to our collection of vital intelligence. It is as simple as that.

It is for these reasons I urge my colleagues to support the Intelligence-Committee-passed FISA Amendments Act and grant the men and women of the intelligence community the tools they need to protect the country and, indeed, the respect and admiration they deserve.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, first of all, I know others may want to speak as well, but let me take a few minutes, if I can, to share with my colleagues some of the background and information concerning my concern with Title II of this legislation.

I certainly agree with my friend and colleague from Virginia, the former chairman of the Armed Services Committee, that it is critically important we modernize FISA. The 30-year-old piece of legislation has served our country well, striking a balance between acquiring the intelligence we

need to protect our country and protecting us against the erosion of our rights. My main concern with the proposal, as many know, is Title II, the retroactive immunity provision. I am deeply concerned about the precedent it would set.

The telecoms' 5-year-old program only became public information because there was a whistleblower, Madam President, a gentleman by the name of Mark Klein, who was an employee of AT&T for more than 20 years. He was really responsible for us being aware of this program. Had it not been for Mark Klein stepping up, this story might have remained secret for years and years, causing further erosion of our rights. Mark Klein and others were principally responsible for coming forward and expressing their deep concerns.

I think it is important for my colleagues in this body to understand precisely what these telecom communities are doing at the behest of the Bush administration. Mark Klein was courageous enough to blow the whistle on one such program at AT&T's facility at 611 Folsom Street in San Francisco. When the government's warrantless surveillance program came to light in December of 2005, Mr. Klein realized he had unwittingly aided and abetted an extensive, untargeted spying program that may have violated the civil liberties of millions of Americans. In early 2006, Mr. Klein went public with evidence of this program, providing over 100 pages of authenticated schematic diagrams and tables detailing how AT&T diverted its customers' communications to a room controlled by the NSA, with sophisticated equipment inside capable of analyzing millions of customers' Internet activities and e-mails in real time. The following are Mr. Klein's own words as to what he saw.

For 5 years, the Bush administration's National Security Agency, with the help of the country's largest telecommunication companies, has been collecting your e-mail, accumulating information on your web browser, and gathering details on your Internet activity, all without warrants and in violation of the United States constitution and several Federal statutes and State laws. Even after the program was exposed by The New York Times in December of 2005, the President and other government officials consistently defended the NSA's activities, insisting that the NSA only collects communications into or from the United States where one party to the communication is someone they believe to be a member of al-Qaida or an associated terrorist organization. But these claims are not true. I know they are not true, because I have firsthand knowledge of the clandestine collaboration between one giant telecommunications company and the NSA to facilitate the most comprehensive spying program in history. I have seen the NSA's vacuum cleaner surveillance infrastructure with my own eyes. It is a vast government-sponsored warrantless spying program. For over 22 years, I worked as a technician for AT&T. While working in San Francisco in 2002, I learned that a management level technician, with AT&T's knowledge, had been cleared by the NSA to work on a special but secret project—the installation and maintenance of Internet equipment in a newly constructed secure room at AT&T's central office in San Francisco. Other than the NSA cleared technician, no employees were allowed in that room. In October of 2003, I was transferred to that office and was in particular assigned to oversee AT&T's operations. As part of my duties, I was required to connect circuits carrying data to optical splitters, which made a copy of the light signal. But the splitters weakened the light signal causing problems I had to troubleshoot. After examining engineering documents given to the technicians which showed the connections of the splitters, I discovered they were hard wired to a secret room. In short, an exact copy of all traffic that flowed through critical AT&T cables, e-mails documents, pictures, web browsers, voice-over-Internet phone conversations, everything, was being diverted to equipment inside the secret room. In addition, the documents revealed the technological gear used in their secret project, including a highly sophisticated search component capable of quickly sifting through huge amounts of digital data, including text, voice, and images in real time according to preprogrammed criteria. It is important to understand that the Internet links connected to the splitters contained not just foreign communications but vast amounts of domestic traffic, all mixed together. Furthermore, the splitter has no selectively abilities. It is just a dumb device which copies everything to the secret room, and the links going through the splitter are AT&T's physical connections to many other Internet providers—Sprint, Quest, Global Crossing, cable and wireless, and the critical West Coast exchange point known as Mae West. Since these networks are interconnected, the government surveillance affects not only AT&T customer matters but everyone else—millions of Americans. I also discovered in my conversations with other technicians that other secret rooms were established in Seattle, San Jose, Los Angeles, and San Diego. One of the documents I obtained also mentions Atlanta, and the clear inference and the logic of this setup and the language of the documents is that there are other such rooms across the country to complete the coverage, possibly 15 or 20 more. So when reports of the government's extensive wiretapping program surfaced in December 2005, after I had left AT&T, I realized two things: First, that I had been a witness to a massive spying effort that violated the rights of millions of Americans; and, second, that the government was not telling the public the truth about the extent of their unconstitutional invasion of privacy. In the spring of 2006, I became a witness for the Electronic Frontier Foundation's lawsuit against AT&T. The New York Times, on April 13, 2006, reported that four independent technical experts examined the AT&T documents. All said that the documents showed that AT&T had an agreement with the Federal Government to systematically gather information flowing on the Internet.

Now, Madam President, there is a further statement of telecommunication expert Brian Reid on AT&T whistleblower Mark Klein's revelations. Dr. Reid is currently the Director of Engineering and Technical Operations at Internet Systems Consortium, a nonprofit organization devoted to supporting a nonproprietary Internet.

Dr. Reid, who has taught at Stanford and Carnegie-Mellon Universities, was an early pioneer in the development of Internet and network technology and received numerous awards for his work in the field of information technology. I think Dr. Reid's expertise in telecommunications is vital to understanding the depth and breadth of the program found at AT&T's Folsom Street facility in San Francisco. Let me read from Dr. Reid's testimony.

I am a telecommunications and data networking expert who has been involved in the development of several critical Internet technologies. I was a professor of electrical engineering at Stanford University and in computer science at Carnegie-Mellon university west. I have carefully reviewed the AT&T authenticated documents and declaration provided by Mark Klein and the public redacted version of the expert declaration of J. Scott Marcus both filed in the Hepping vs. AT&T litigation. Provided the information contained in those declarations and documents, with my extensive knowledge of the international communications infrastructure and the technology regularly used for lawful surveillance pursuant to warrants and court orders, I believe Mr. Klein's evidence is strongly supported of widespread untargeted surveillance of ordinary people, both AT&T customers and others. The AT&T documents describe a technological setup at the AT&T facility in San Francisco. This setup is particularly well suited to wholesale dragnet surveillance of all communications passing through that facility, whether international or domestic. These documents describe how the fiber-optic cables were cut and splitters installed at the cut point. Fiber-optic cables work just like ordinary TV splitters. One cable feeds in and two cables feed out. Both cables carry a copy of absolutely everything that is sent, and if the second cable is connected to a monitoring station, that station sees all traffic going over the cable. Mr. Klein stated the second cable was routed into a room at the facility whose access was restricted to AT&T employees having clearances from the NSA. The documents indicate that similar facilities were being installed in Seattle, San Jose, Los Angeles, and San Diego, and also a reference to a somewhat similar facility in Atlanta. This infrastructure is capable of monitoring all traffic passing through the AT&T facility, some of it not even from AT&T customers, whether voice or data or fax or international or domestic. The most likely use of this infrastructure is wholesale untargeted surveillance of ordinary Americans at the behest of the NSA. NSA involvement undermines arguments the facility is intended for use by AT&T in protecting its own network operations. This infrastructure is not limited to, nor would it be, especially efficient for target surveillance or even untargeted surveillance aimed at communications where one of the ends is located outside of the United States. It is also not reasonably aimed at supporting AT&T operations in security procedures. There are three main reasons. The technological infrastructure is far more powerful and expensive than that needed to do targeted surveillance or surveillance aimed only at international or one-end foreign communications. For example, it includes a NARUS Norris 6400, a computer that can simultaneously analyze huge amounts of information based on rules provided by the machine operator, analyze the content of messages and other information—not just headers or routing information—conduct the analysis in real time, rather than after a delay, and correlate information for multiple sources, multiple formats, over many protocols and through different periods of time in that analysis. The document describes a secret private backbone network, separate

from the public network where normal AT&T customer traffic is carried and transmitted. A separate backbone network would not be required for transmission of the smaller amounts of data captured by a targeted surveillance. You don't need the magnitude of capacity doing targeted surveillance. The San Francisco facility is not located near an entry point for international communications that happen to be transmitted through the United States, either through undersea cable or via satellite. As a result, it would not be a sensible place to locate a facility aimed at simply monitoring traffic to or from northern countries.

I apologize for those rather elaborate statements from two rather technical people, but I thought it was important for our colleagues considering the matter before us that the information that broke this story did not just come from casual observers, but from highly skilled people who could comment on the rather broad use of this information. The idea that we are just focusing our attention on foreigners who might be engaged in activities threatening our existence of course is belied by the evidence provided by both of these very substantial witnesses.

I would like to maybe take another few minutes, if I can, to address some of the questions that have been raised by a number of people today in support of the retroactive immunity.

Let me state again, it is very important that we have the FISA legislation. It is very important that we have the modern means to maintain the technological advances to be able to trap and capture information that poses a risk to our country. No one here, I believe, is arguing against that. The question simply was, For 5 years, why didn't the telecommunications industry and why didn't the individuals in the Bush administration simply do what had been done more than 18,000 times before, and that is go and get a court order from the FISA Court?

Don't blame the NSA here. I have talked about them. The NSA is a Federal Government agency responsible for collecting the data. It was the administration officials here and the lawyers within these telecommunications companies who decided to avoid the law. The NSA officials whom I have dealt with over the years want to be able to operate within Federal statutes. Their job is not to draft the law but to gather intelligence.

The responsibility is on those in the administration responsible for granting this kind of legal authority without going to the FISA Court. And it is on the legal departments in these major communications companies for not understanding what they should know—and did know, I believe—and that is that they merely had to go to the FISA Court and get a court order, and the information sought by the NSA would be immune from any further legal proceedings. That is the issue. The law had been in place for three decades.

Those who are fighting immunity want an open debate on the balance of security and civil liberties. The President disagrees. He is saying: If you strike the immunity for these corporations, I will veto the bill. I find it remarkable that Members have worked hard over weeks to craft a bill to balance the needs of civil liberties and the ability to gather information, and the President is saying: I don't care if you have done all of that; if you don't protect these corporations from lawsuits, I am going to put the whole legislation at risk. It seems to me the immunity issue ought not dominate the decision the committees have made about what needs to be done to balance civil liberties and the need to gather information.

Mr. President, I see great danger in this immunity. It would replace the rule of law with the rule of secrecy.

Those who are fighting immunity offer open debate on the balance of security and civil liberties. But this President tells us that he knows best, that he has set the balance already and the rest of us do not need to worry our heads about it. I oppose immunity because I find that thinking to be dead wrong. The power at stake today—the power to spy, the power to invade privacy, the power to put one's friends outside the law—does not belong in the hands of any one individual, no matter how wise—and certainly not the hands of a President whose contempt for the law has been too obvious for too many years.

As we fight this immunity, that is what is at stake today. Not punishment. Not payback. Openness. Americans deserve to know what this President and these corporations have done to them, and we are never going to know that if this immunity is granted. We are never, ever going to know. It will be as if it never happened.

As a Member of this body for 26 years, a senior member of the Foreign Relations Committee, I don't have the right to even look at the relevant documents. Only a handful of people have the right to do it. So I am being asked, as a 26-year veteran of this Senate, serving on the Foreign Relations Committee, to grant blanket immunity to the President's favored corporations. I find that rather remarkable.

As you know, I have serious doubts about the legality of the corporations' actions, but I would never presume to come to this floor and render a verdict on them. I am not a judge. None of my colleagues are, either, nor is the President of the United States. Just as it would be absurd for me to declare the telecoms clearly guilty, it is equally wrong to declare them effectively innocent. That power belongs to the courts, to the coequal branch of government, the judiciary. To slam the courthouse door shut on American citizens seeking redress would be to forget the meaning of checks and balances in our system of governance altogether.

I believe in letting the courts do their job. It seems the President's allies only believe in the courts when the verdict goes their way. They offer any number of arguments for immunity, but one by one, they fail. They are false and often misleading. I would like to take a few minutes to look at those claims and their failures one by one.

First of all, immunity supporters argue that granting immunity is a Presidential prerogative. That was one of the arguments made by Alberto Gonzales. The answer to that is, of course, the fact is that this case belongs in the courts. The judiciary should be allowed to determine whether the President has exceeded his powers by obtaining wholesale access to the domestic communications of ordinary citizens without a court order. That is why the courts exist, to determine if the actions by the Chief Executive or the Congress are, in fact, appropriate and proper and legal.

Because the telecom corporations are intimately bound up with the President's warrantless wiretapping, immunity supporters are proposing that the President sit as a judge over himself. The administration's original immunity proposal protected not just telecommunications but everyone involved in the wiretapping program. In their original proposal, they wanted to immunize themselves.

Think about that. It speaks to their fear and perhaps their guilt, as well: their guilt that they had broken the law, and their fear that in the years to come, they would be found liable or convicted. They knew better than anyone else what they had done—they must have had good reason to be concerned!

Thankfully, executive immunity is not part of the bill before us, but the origin of immunity tells us a great deal about what is at stake here. That is, and always has been, a self-preservation bill.

Second, immunity supporters claim that only foreign communications were targeted, not Americans' domestic calls. For those who were listening, I just read two documents from an AT&T official of 22 years who was deeply involved in helping set up the very systems, and from Dr. Reid, who then analyzed all the materials that have been presented by Mark Klein to determine exactly how the system worked. The fact is clear: Firsthand evidence, authenticated by corporations in court, contradicts the claim. Splitters at the AT&T Internet hub in San Francisco diverted to a secret, NSA-controlled room every e-mail, every text message, every phone call, foreign and domestic, carried over the massive fiber-optic links of 16 separate companies.

Third, immunity supporters claim that the Intelligence Committee version of this bill actually does preserve a role for the judiciary. But, again, the fact is that the role would be empty. The Intelligence version of this bill would require the cases to be dismissed at a word from the Attorney General. The central legal questions raised by these cases would never be heard in court. The cases would never

be fully closed. We would never truly know what happened.

The fourth argument is that a lack of immunity will make the telecom industry less likely to cooperate with surveillance in the future.

However, in the 1970s, FISA compelled telecommunications companies to cooperate with surveillance. In fact, AT&T helped write this law some 30 years ago. But they could only get that cooperation from the telecommunications industry when it is warranted, literally where there is a court order. But if the court order is given, the cooperating telecom is immunized. No warrant, no immunity.

So cooperation in warranted wiretapping is not at stake today. Collusion in warrantless wiretapping is—and the warrant makes all the difference, because it is precisely the court's blessing that brings Presidential power under the rule of law.

The fifth argument immunity supporters offer is that the telecoms cannot defend themselves without exposing state secrets. But the fact is that Federal district court judge Vaughn Walker—I might point out, appointed by a Republican administration—has already ruled on this matter that the issue can go to trial without putting state secrets in jeopardy. Judge Walker reasonably pointed out that the existence of the President's surveillance program is all hardly a secret at all today. We are debating it here, and have been. It is has been in the discussion for weeks on end. You can't claim there is a secret about the surveillance program.

As Judge Walker said:

> The Government has already disclosed the general contours of the Terrorist Surveillance Program, which requires the assistance of a telecommunications provider.

The sixth argument offered by supporters of immunity claims that telecom companies are already protected by common law principles.

But again, the fact is that common law immunities do not trump specific legal duties imposed by statute, such as the specific duties to protect customer privacy that Congress has long imposed on these telecommunication companies, going back almost 30 years.

In the pending case against AT&T, the judge has already ruled unequivocally, and I quote:

> That AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

Even so, the communication company defendants can and should, I believe, have the opportunity to present these defenses to the courts. I am not suggesting by that quote that there ought to be a predetermined verdict. As I said a moment ago, I am not pretending I am a judge here. All I am asking is that these cases go forward and a determination made as to whether they were legal. The defendants can and should have the opportunity to present these defenses to the courts; and the courts, not the Congress preemptively, should decide whether they are sufficient.

The seventh argument offered by the supporters of the retroactive immunity says that leaks from the trial might damage national security. We heard this argument from my good friend from Virginia, Senator WARNER. But the fact is, our Federal court system has already dealt for decades with the most delicate national security matters, building up expertise in protecting classified information behind closed doors in what are called ex parte and in camera proceedings. We can expect, I think, no less in these cases as well.

If we are worried about national security being threatened as a result, we can simply get the principals a security clearance. No intelligence sources need be compromised; no state secrets need to be exposed. And we can say so with increasing confidence, because after the extensive litigation that has taken place at both the district court and circuit court levels on this matter already, no sensitive information has leaked out. I think it is a red herring to suggest somehow that you cannot go to court here when we have proved for decades the courts' ability to handle national security matters without leaking.

An eighth argument offered by immunity supporters claims that litigation will harm the telecoms by causing them ''reputational damage.'' The fact is there is no evidence that this legislation has reduced or would reduce the defendant companies' bottom lines or customer base. This morning I quoted from the Dow Jones Market Watch. The date is October 23, 2007, well after the reports were out about AT&T's involvement in the surveillance program.

> Third quarter earnings rose 41.5 percent. Boosted by the acquisition of BellSouth and the addition of 2 million net wireless customers, AT&T's net income was $3.06 billion, compared with $2.17 billion a year ago.

Hardly a company that is suffering reputational damage. AT&T has posted these record profits during a time of very public litigation. So the argument that reputational damage somehow prevents us from going forward has no basis in fact.

But moreover, to claim that ''reputational damage'' ought to trump our rights and liberties—I find it frightening that anyone in government would even make that argument. To say that a violation of millions of Americans' privacy over 5 years is outweighed by the potential for reputational damage is to show a rather extraordinary lack of balance when it comes to understanding the relative importance of these issues.

A ninth argument made by those in favor of retroactive immunity claims that these lawsuits could bankrupt the telecommunications industry. But the fact is that only the most exorbitant and unlikely judgment could completely wipe out such enormous corporations. To assume that the telecommunications industry would lose and that the judges would then hand down such back-breaking penalties is already to take several leaps from where we are today.

The point, after all, has never been to cripple our telecommunications industry; the point is to bring checks and balances back to domestic surveillance. Setting that precedent would hardly require a crippling judgment.

But on another level, immunity supporters are staking their claim on a dangerous principle: that a lawsuit can be stopped simply on the basis of how much a defendant stands to lose. The larger the corporation, in other words, the more lawless it could be. If we accept the immunity supporters' premises, we could conceive of a corporation so wealthy, so integral to our economy, that its riches place it outside the law altogether. And if the administration's thinking even admits that possibility, we know instinctively how flawed it is.

We see then none of those arguments for immunity stand up to the test. All nine of them fail.

I am not here again to render judgment on the telecom corporations. I have my doubts, but that's not why I'm here. All I am suggesting is that when you grant this kind of immunity once, what is to stop someone from making that argument again, in a later debate, when maybe someone will be asked to collect information about our medical histories or our financial records or some other personal matters? They would wave that vote back in our face: Democrats, Republicans found no difficulty in granting retroactive immunity for telecommunications surveillance; why would you object today when it comes to people's medical records, or their financial records, or other private information?

You start down that slippery slope, and nothing good can come of it. This ought not be a difficult debate.

So I am surprised and stunned to listen to some of my more conservative colleagues here. I used to associate conservative principles with standing up for privacy, a principle once held sacrosanct. It is rather stunning to me today to listen to some of the more conservative Members argue for retroactive immunity, that somehow it was all right for those companies to do what they did. I hear that they did not know any better, that somehow they got drawn into this by mistake. If that were true of every one of them, well, maybe that point would have a little more weight. But there were companies such as Qwest that said, ''No, give me a court order, and then I will comply.'' Why did the Qwest lawyers arrive at a different decision? Was it a great secret within the telecommunications industry that there were those who said no? Why did Qwest say no and others say yes? I believe they understood the law, and they realized that without a court order they could not legally comply with that request.

I might point out that no court order was ever forthcoming. Why did not the administration seek that court order for Qwest to get additional information? Why did they drop that kind of request? I might point out, as I did earlier today, that over the years, I am told by The Washington Post, there have been over 18,000 requests of the FISA Court for court orders, and of more than 18,000 requests, only 5 have been rejected. 99.9 percent of the requests by administrations for court orders over the years in the FISA Court have been granted.

Why would you not ask? Why did they not go forward and make that request? Why did Qwest say no? Why did the others say yes? Why are we granting immunity to these companies, without going through the courts of law to determine what is right?

Again, this ought not be a debate between Democrats and Republicans and conservatives and liberals. It ought to be a debate about defending these basic rights we have here in America. Companies that may have violated them deserve their day in a court of law. But immunizing them for a program that went on for not for a day or two or a week or 6 months or even a year, but for 5 years and only stopped when exposed by a whistleblower ought to cause all of us to pause. Clearly we want to keep our country safe, but if we are being asked to keep our country safe by giving up our rights, then we are granting these jihadists and terrorists victories far beyond anything they have yet achieved.

As tragic as the events of 9/11 were, if we begin to undo our own liberties and rights, we give them a success far beyond anything they could have ever imagined. I have been here today for the last 8 hours, and I will stay here for as long as it takes.

At the appropriate time, when we have exhausted the ability to talk about it generally, I will offer the language to strike it, and I hope my colleagues will join me in that effort. But I am determined not to let this go forward, because I think we have done that too often. I myself have been guilty of accepting far too much from this administration. Just one small thing is at issue today. But then I start to look back at all of the small things that have been done, so-called ''small things'' over the last 5 or 6 years—most recently, the destruction of interrogation tapes at the CIA. And the combined weight of these ''small things'' truly frightens me.

What was going on at the CIA? Why did that happen? Why Abu Ghraib? Why Guantanamo? Why get rid of habeas corpus? Why bring back waterboarding? Why do away with the Geneva Conventions? Why nominate someone to be the Attorney General who believes that Presidents have the right to violate Federal statutes here under the guise of protecting the Nation's security?

Why, after each one of those these things? Why the Military Commissions Act? In case after case after case, we see the slow erosion going on. And again, regardless of what your politics are, regardless of where you find yourself on the spectrum, when our basic rights are involved, we must stand up and say, ''Enough!''

A generation ago, Members of this body sat here, and had only one negative vote as they worked out the original FISA law, that balance between our needs to protect our security and to protect our rights. Here we are about to make a major step in the opposite direction. And those gentlemen faced tough times. They were wrestling with the threat of nuclear war in the 1970s. The Soviet Union still existed. They had been through World War II, many of them, Korea and Vietnam. They knew what hostility and difficulty were like. And yet Democrats and Republicans came together and wrote that legislation. On 30 separate occasions since then they modernized it to keep pace with the changes occurring throughout the world, where new risks and new dangers are posed every day. So yes, we should modernize FISA and bring it up to date. I applaud the committees' efforts to do so. But to add retroactive immunity, to grant blanket immunity to companies that listened in on millions of people in this country without a court order, is a step too far.

Listen to the remarks of our colleague from Massachusetts today in talking about the legal counsel of this administration. Their words: to blow through these laws. They did not like them? Blow through them! That was their attitude. Well, I am going to stop the blowing through. No more blowing through the laws. Not here, not tonight, not this Member, not on this bill. No more blowing through the law!

You do not get immunity, not as long as I can stand here and fight this. I intend to do just that.

Madam President, I withhold the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. It is not counted against the time.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, on numerous occasions in the FISA debate, we have seen dramatic fear mongering. Many individuals, particularly on partisan blogs, are spreading misleading and malicious information in order to incite fear of alleged governmental activities. This bill should not include text which panders to people who believe in imaginary Government conspiracies. There is such a thing as irrational fear of Government.

Let's not forget, our Government did not kill thousands of innocent Americans on September 11. Our Government did not kill hundreds of people in car bombings in U.S. embassies in Kenya and Tanzania. Our Government did not kill 191 people in the Madrid train bombings. Our Government did not kill 52 people in the London train bombings. Our Government did not kill 202 people in suicide bombings Bali, Indonesia. The indisputable fact is terrorists have committed heinous attacks on Americans and have pledged themselves to conduct more. It is not politics of fear to acknowledge this. If we bury our heads in the sand and pass legislation that ignores these risks, we make ourselves and all our people more vulnerable. I will not stand by and see Congress pass laws which could create vulnerabilities for our people, vulnerabilities which expose our families and our friends to danger.

Let me tell you what our Government does to protect us. It hires the finest men and women of this great country to utilize their skills to help prevent these types of attacks. Our job in Congress is to make sure these people who have sworn to defend us have the necessary tools to try and prevent terrorist attacks. What they don't need are laws with ambiguous language, as has been proposed, making their jobs more difficult.

One of my colleagues previously stated:

> The authority in this bill greatly expands the Government's ability to conduct surveillance of foreign targets.

How in the world he can make that statement, I don't understand. The only great expansion I see in this bill is judicial jurisdiction. In fact, I am amazed we don't rename the bill the unlimited expansion of judicial authority act. We have advocated so much new responsibility for the Foreign Intelligence Surveillance Court that I wonder whether people realize that court is composed of only 11 judges. Where is this great expansion in surveillance authority that has been argued on the floor?

Since FISA was passed in 1978, the Government has been able to target terrorists overseas. This bill amends FISA so we can continue to target foreign terrorists when they utilize communications over a wire, not just communications over radio or satellite. This does not sound to me like a great expansion. Maybe that is why the Government has continued to say FISA needed to be ''modernized,'' not that it needed to be greatly expanded. There is, however, a key expansion in the bill. It is a statutory warrant requirement when targeting U.S. persons, regardless of who they are, what they have done or where they are located. Notice I said U.S. persons, not U.S. citizens. This idea may sound great to everyone, but we should realize, with eyes wide open, what this means. We have heard some individuals claim the Government could use the power of the Protect America Act to spy on innocent Americans. We have heard the fear

mongering that the Government can spy on innocent Americans when they travel overseas. We have heard all about American families on vacation overseas in the Caribbean or in Europe. We have even heard our Government could spy on American military members who are overseas defending our country.

I find these scare tactics not only ridiculous but extremely offensive. They walk a fine line in seemingly questioning the integrity and the judgment of these fine men and women who work for us and who don't have a political agenda, who have dedicated their professional lives to prevent catastrophic attacks on Americans. Do we think our intelligence analysts are sitting around waiting for the Smith family to go on their family vacation to Italy so they can tap their cell phones? Give me a break. To imply that our country's intelligence analysts are more concerned with random innocent Americans than foreign terrorists overseas is a slap in the face to the people who protect our Nation. Our Government is focusing their attention on terrorists who wish us death, not on innocent Americans.

When some decry the lack of statutory protection for Americans overseas in the Protect America Act, I wonder if they realize the 1978 FISA law itself provides no statutory protections for Americans overseas. Yet we have called that the gold standard all these years. I would, however, tell my colleagues that Americans overseas are protected by the most important document in the history of our great Nation, and that is the U.S. Constitution. The fourth amendment to the Constitution provides protection from unreasonable search and seizure. That is the question. Is it always unreasonable for the Government to target an American overseas without a court order? Of course not. I would suggest the process that has worked for 26 years is the best approach. It is Executive Order 12333. Since 1981, the Government could only target Americans overseas if the Attorney General determined via probable cause that the American was an agent of a foreign power. Do we think an intelligence analyst is going to disregard an executive order and wiretap innocent Americans overseas? Of course not.

Now, with the policy change included in both the Intelligence and Judiciary bills, I want to give an example of how this provision will apply in real life.

Adam Gadahn is an American citizen from Orange County, CA. He is also one of the FBI's most wanted terrorists now believed to be living overseas. He has been indicted for treason and providing material support to al-Qaida. Here is what he said:

> The streets of America shall run red with blood . . . casualties will be too many to count and the next wave of attacks may come at any moment.

He has appeared on multiple al-Qaida propaganda tapes. Here is another quote:

> The magnitude and ferocity of what is coming your way will make you forget all about September 11.

Here is something that should make all Americans scratch their heads. Before September 11, the Government would not need a warrant to target this criminal. After September 11, the Government would not need a warrant to target Gadahn. But after this bill is signed, the Government will be required to get a warrant to target Gadahn. This bill does require that.

Let's explain that one to the American public.

Would a warrantless interception of Gadahn's communications be ''unreasonable'' under the fourth amendment? Of course not. But we are requiring something that even the Founding Fathers did not—a warrant for all electronic searches of U.S. persons.

Now I understand the administration is willing to accept a modified version of this amendment that does not include unintended consequences. It is yet another example of how far this proposal goes to satisfy determined detractors who never seem to be satisfied that we are doing enough to ''protect'' innocent Americans.

I am also amazed at the false descriptions floating around the Internet of the program which the President described on December 17, 2005, during a radio address. We have all heard the terms: ''warrantless wiretapping'' or ''domestic spying.'' But let's look at what the President actually said during his radio address on December 17, 2005. This is what he said:

> In the weeks following the terrorist attacks on our Nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations. Before we intercept these communications, the government must have information that establishes a clear link to these terrorist networks.

Now I do not see anything in this statement about domestic spying. I thought the definition of the word ''domestic'' was pretty clear. If the program intercepted communications in which at least one party was overseas, not to mention a member of al-Qaida, then it seems fairly obvious that the calls were not domestic.

Here, as shown on this chart, is a call from the United States of America to overseas; or a call from overseas to the United States of America. Is that a domestic call? I hardly think so. Is this such a hard concept to grasp? The last time I flew overseas, I did not fly on a domestic flight. I flew on an international flight. ''Domestic spying'' may sound catchy and mysterious, but it is a completely inaccurate way to describe the terrorist surveillance program. Why don't the partisan blogs describe it as ''international spying''? Isn't that a more accurate description? I guess accurate descriptions take a back seat to terms which incite fear and distrust in our Government.

Since so many are so interested in the opinion of the FISC, or the Foreign Intelligence Surveillance Court, on these matters, I wish to draw attention to a recent decision. On Tuesday, the Foreign Intelligence Surveillance Court denied a motion by the ACLU for release of court records related to alleged NSA surveillance programs. This FISC opinion was publicly released, which is only the third time in the entire history of the FISC in which this has occurred.

Given the rarity of this event—this issued public opinion that denied a motion by the ACLU for the release of court records related to alleged NSA surveillance programs—I want to highlight a few sentences from that ruling:

> [T]he identification of targets and methods of surveillance would permit adversaries to evade surveillance, conceal their activities, and possibly mislead investigators through false information. Public identification of targets, and those in communication with them, would also likely result in harassment of, or more grievous injury to, persons who might be exonerated after full investigation. Disclosures about confidential sources of information would chill current and potential sources from providing information, and might put some in personal jeopardy. Disclosure of some forms of intelligence gathering could harm national security in other ways, such as damaging relations with foreign governments. All these possible harms are real and significant, and, quite frankly, beyond debate.

Now, that is in re: Motion for release of court records of the U.S. Foreign Intelligence Surveillance Court, December 7 of this year.

I think we can all agree this is a vitally important public opinion from the FISA, and I commend it to my colleagues.

Regardless of how we came to this moment, it is time to do what is right for our country. The time has come for us to work together. We all know it is going to take bipartisan support to get this legislation passed. Let's represent our constituents with our heads held high, knowing we are doing our very best to balance the necessity for protections of civil liberties with the need to keep American families safe from deadly attacks. We owe our people this much.

I hope we can continue to work, as the Intelligence Committee did, in a bipartisan way to resolve these very difficult problems. I have to say that the 13-to-2 bipartisan approach is one of the highlights of this year. It is probably the best example of bipartisanship we have this year. I have to tell you, to try to change that with some of the language from the Judiciary Committee—where it was a pure partisan vote on both sides—to try to change that is not the way to do it.

So I hope our colleagues will realize that in the Intelligence Committee, in a bipartisan way, we have worked together to come up with the ways of solving these very technical and difficult problems, and to do so in the best traditions of the intelligence community, in the best traditions of gathering intelligence information, and in the best traditions of protecting our

country that this country has ever known.

Frankly, I compliment the distinguished chairman of the Intelligence Committee, the distinguished vice chairman of the Intelligence Committee, and my fellow Senators on the committee, Democrats and Republicans, who were willing to put partisanship aside and pass that bill 13 to 2 out of that committee.

Mr. President, I notice my dear friend from Florida is desirous to speak on the floor, so I will withhold my further remarks and turn the time over to him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I compliment the Senator from Utah, who has been a member of the Intelligence Committee for years and years, and who brings a lot of good common sense to the committee. I echo his comments about the bipartisan nature of Chairman ROCKEFELLER and Vice Chairman BOND working together. It was something that this member of the Intelligence Committee had seen earlier this year break down, and I must say this member of the Intelligence Committee absolutely reminded everybody on the committee that the committee ought to work of one accord, reaching consensus when we can reach that consensus, and, at the end of the day, that the product not only be a bipartisan product, it ought to be a nonpartisan product.

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. NELSON of Florida. I certainly do yield to my friend.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks. He was one of the Senators who helped to put this bill together, and a distinguished Senator at that.

Would the Senator agree with me that should this bill pass, it would be one of the best illustrations of bipartisanship in this whole Congress so far?

Mr. NELSON of Florida. Indeed, Mr. President, it would be. And we have to pass a FISA bill. For many of the reasons you have heard—the changing technology—we have to give the legal authorization to the U.S. Government. That is another reason for having a clear delineation in law of what the Government can do and what it cannot do. Because, unfortunately, what we have seen over the last several years is the intrusion into this murky area without the necessary legal binding, that it was clearly legal as to what was being done. That is what is so necessary about passing a piece of legislation such as we have before us in the form of which we are just on the motion to proceed.

Now, I voted for closing off debate on the motion to proceed because it is clearly important that we get a law and pass this legislation. It improves on the legislation we passed last August, where it is going to provide protections for Americans both in the United States and abroad. But naturally in something as complicated as this, I am not satisfied completely with what is in the bill. That is why we ought to get to the bill, so we can start amending or considering amendments.

For example, the Senator from Connecticut—when we ever get to the bill—is going to offer the amendment that I offered in the Intelligence Committee, which was the amendment to take away immunity from the telephone companies. It was specifically targeted to strip the provisions of the bill that provided immunity to the telecommunications companies for assistance provided to the administration for warrantless surveillance in a defined period of time—from September 11, 2001, until January 17, 2007.

The reason I offered that in the committee was, I felt it was hugely premature for our committee to grant that retroactive immunity to those telecommunications carriers when, in fact, the White House had only come forth with the documents that we could inspect only 48 hours prior to when we were going to vote on it.

I am still troubled by the idea of a blanket retroactive immunity. Whether they deserve a break for their cooperation with the Government's warrantless program in the aftermath of September 11, that is one thing. But this went on for 6 years.

I can certainly understand, in the aftermath of the horror of what we saw on September 11, 2001, that a President would need, for the protection of the country—and using his article II powers of the Constitution as Commander in Chief to protect the country—that he could say to telecommunications companies: We need this information. There is a law over here called the FISA law that says if you want to snoop on any American person, you have to do it by getting a court order by a special Federal court that is organized under law to handle these secret national security matters in secret.

I can see telecommunications companies going along, that in the urgency of the aftermath of September 11—we do not know when the next strike is coming; it may be the next day, it may be the next week—that the telecommunications companies cooperated when the President said and the communications come to them saying: This is under the legal authority of the President. I can understand that. But after a year? After 2 years? After 3 years? How about 4 years? How about 5 years, when clearly there is a law on the books that if it is going to touch Americans, you have to go to the special Federal court impaneled by Federal judges who are cleared for top-secret information? Now, that is what bothers me.

There is another part that bothers me, which is that in the separation of powers envisioned in our Constitution, the first article of the Constitution is setting up the legislative branch of Government. The second article sets up the executive branch of Government—the President. The Constitution envisioned that there is a check and a balance of each of those on the other. For example, something doesn't become law that the legislative branch—the Congress—passes. It can't become law without the signature of the President. But if Congress disagrees with the President, they can override the President's Veto with a two-thirds vote. So there is this tension built into the system of one branch overseeing the other. It is appropriate that the legislative branch oversees the activities of the executive branch.

But that is not what was going on with this matter of surveillance because the legislative branch was left in the dark. The President ignored the Congress. The President ignored the courts when he authorized the warrantless surveillance program and Congress's attempts to conduct the oversight of the program. All those attempts were constantly thwarted. So, therefore, I also have a problem with retroactive immunity—that it would make a mockery of our separation of powers.

Now, having said all that, as a member of the Intelligence Committee, I have still a check in my gut as to whether there would be some lack of cooperation among telecommunications companies with the executive branch of government on a going-forward basis if there is not some form of immunity that is given to these telecommunications companies. I know that on a going-forward basis there cannot be any question that we have the cooperation of those companies with the Government in order to protect this country and to provide for the national security.

So I am looking forward to the debate continuing as we flesh out all these ideas. I am particularly intrigued with an amendment that is going to be offered by Senator FEINSTEIN, of which I am a cosponsor, which would provide a forum handling classified material in the FISA court itself in order to consider the question of immunity and that there would be a determination in this special Federal court as to whether the immunity ought to be given. I think that is something we ought to debate. We ought to get it clear when we get to the bill. But in the meantime, I share with the Senate my reservations about this part of the bill and about the immunity.

Let me say at the end of the day—whether we have immunity in the bill or whether it is not in the bill or whether there is some hybrid version such as the Feinstein amendment, at the end of the day, we are going to need to make this FISA law permanent because it is going to run out in February. We have to clearly have this etched into law so on a going-forward basis we can provide for the security of this country.

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

Mr. NELSON of Florida. I certainly will yield to my friend from Connecticut.

Mr. DODD. I say to my colleague from Florida, I appreciate immensely his leadership on so many issues, but especially on the committee itself. I was stunned by the number of requests made of the FISA Court over the years for court orders to various entities. There have been over 18,000 granted court order requests and 5 rejections in 25 years. Some have argued a fear that we might not get an approval by the FISA Court, but in 99.9 percent of the times that Presidents of both parties over the years or administrations have sought the approval of the FISA Court for a court order to seek information, in only 5 cases over more than 25 years have those requests been rejected.

I thank the Senator from Florida for raising the point. This is not about denying our agencies the opportunity, the ability, the means by which they gather information to keep us secure; it is merely saying so that in the process of doing so, there is a way of doing this, which grants them the opportunity to do that while simultaneously protecting our basic liberties. So I thank the Senator from Florida.

Mr. NELSON of Florida. Mr. President, I would respond to the very distinguished Senator from Connecticut that those kinds of reports have been in the press for some time, and I think generally they are considered to be true. However, a lot of that operated under the old law, which had a 3-day limit, that in the case of a national emergency, the President wouldn't have to first go and get a court order.

Instead, he could go on under the emergency conditions and surveil the particular target, if it were an American person but, under the old law, would have to go back to the court within 3 days to get that order or else cease their surveillance. In the new law that was passed on a temporary basis for 6 months, that we passed last August, that 3 days has been extended to 7 days to give more leeway. Certainly, if someone in the Government feels that a person—an American person—should be surveilled in their communications but it was an emergency basis, that they don't have time to go to the court, the law as it stands now and under the new FISA bill we are considering on this floor would say that within 7 days, the executive branch would have to go and get that court order called a warrant or else cease the surveillance.

Now, that is very reasonable, and it is a lot of that kind of stuff that is in this bill that is so necessary to have this etched into a permanent law, not a law that is going to sunset in 6 months—next February. That is part of the gravity of the legislation before us. Now we have to get to this very sensitive issue of immunity and how to handle it. Although I have stated I am certainly sympathetic; indeed, the Senator's amendment he is going to offer is the one I offered and that was defeated. It only got three affirmative votes in the committee. So my amendment in the committee did not prevail. Nevertheless, there are other amendments coming after the Senator's amendment, if his is not—if the amendment of the Senator from Connecticut is not adopted—that do take a very practical approach. The Feinstein amendment which I have cosponsored is one where the issue of immunity would be determined in the FISA Court itself that is set up in order to handle these national security matters.

I yield the floor.

Mr. DODD. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BROWN. Mr. President, I join the senior Senator in Connecticut in rising in strong opposition to the retroactive immunity provisions contained in the bill before us today. I thank Senator DODD for his strong opposition and leadership and courage to make this fight.

Earlier today, I opposed the cloture vote because I don't believe we should consider providing immunity to corporations that broke the law, breached the Constitution, and trampled on Americans' civil liberties. It is pretty much as simple as that.

As Senators DODD, FEINGOLD, and others have made clear throughout this day, this is a matter of law, this is a matter of basic civil liberties, and this is a matter of accountability.

The decisions we make when we vote on this bill have bearing on every single American because the rights and protections the Constitution provides are precious to every single American. That is what we stand for as a nation.

No individual or corporation can breach the Constitution and break the law. No individual or corporation can breach the Constitution and break the law, even if the Federal Government tells them to do it.

Corporations cannot rely on a piece of paper handed to them by the administration that says that an act on the very face of it sounds illegal but it is, in fact, legal. They have, and they had, an independent obligation as corporations to assess the legality of wiretapping before engaging in it. That is why some telecommunications companies refused to comply when the administration asked them to wiretap. All of them should have taken that step.

The Constitution does not allow companies to rely on the executive branch to interpret the Constitution for them. When the fundamental constitutional rights of Americans are at issue, corporations have one—and only one—course of action: they must act in accordance with the law; they must act in accordance with the Constitution.

Some in this body have suggested that these companies were compelled to go along with the administration's illegal wiretapping program because of 9/11 and because of the very real danger of foreign terrorist attacks. Mr. President, while all of us—every 1 of the 100 Members of this body—wants to protect America at all costs, these companies went along with this program absent a legal warrant or court order for over 5 years after 9/11.

These multibillion-dollar corporations have teams of lawyers that assess the meaning and implication of Federal law as it relates to every move they make. But this time, now, we are asked to accept that highly trained lawyers working for these companies could not clearly understand and interpret the Constitution or interpret the requirements of FISA, a law that is more than 30 years old.

It would be a total and absolute assault on the Constitution to allow a small group of companies to ignore Federal law simply because they were asked to by the President—whoever the President is.

It is important for all those listening to take a good look at whom the administration is fighting for and whom it is representing.

President Bush has threatened to veto this bill unless it contains the retroactive immunity provisions but not because the protections for citizens are too weak. The President will veto this bill, he says, frankly, because he is concerned about the bank accounts of a handful of telecommunications companies.

Since when did money trump constitutional freedom? Since when did corporate connections matter more than the rule of law?

Congress has the responsibility to protect the freedoms and the rights of all citizens. Our Government should be open and transparent and, when rights are infringed, there should be an opportunity to seek legal redress in a court of law.

That is why our system of government contains a judicial branch: to litigate infringements of rights, to assess the constitutionality of laws and programs.

The retroactive immunity provisions in this bill will make it impossible to hold those who broke the law accountable for their illegal actions. That is wrong, Mr. President, and that is dangerous.

We must remember that by protecting our civil liberties we protect our Nation and our values.

I urge all my colleagues to vote for the Dodd-Feingold amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Ohio for his continuing efforts here. He is not a newcomer at

all to these issues. I thank him for his words, support, and knowledge of the issue, and his continuing efforts to see if we can get a good bill out of here and not add extraneous matters such as this.

As I heard Senator NELSON of Florida talk earlier, I thought—I think many of us thought that had this been a day or a week after 9/11, we might have found the telecoms' actions more understandable. In the heat of emergency, we might have accepted some excessive aggression. I can understand people drawing that conclusion.

But this program went on for 5 long years. The idea that we grant retroactive immunity for actions over 5 long years goes way beyond anything anybody ought to accept in this body.

Retroactive immunity, under these circumstance, would be a massive step backward in light of this administration's assault on the Constitution and the rule of law. Again, I thank my colleague from Ohio.

Mr. KERRY. Mr. President, today I voted against cloture on the motion to proceed to S. 2448 as reported by the Senate Intelligence Committee because I believe that we should instead be taking up on the Senate floor the far better bill reported out by the Judiciary Committee.

Congress has a duty to protect the American people—and to protect the Constitution. That is the oath we take. It is a solemn pledge, and in my judgment the Judiciary Committee bill better reflects the oath we each swear to uphold. Why? The Judiciary Committee's bill gives the President the added flexibility he needs to hunt and capture terrorists who would strike our homeland—but it strikes an appropriate balance between protecting the privacy rights of American citizens and providing the President adequate tools to fight international terrorism.

This is no small issue. It is the job of Congress to find the right balance between protecting privacy and safeguarding national security. The judiciary bill makes critical improvements to the Protect America Act to ensure independent judicial oversight by the Foreign Intelligence Surveillance Court, FISC. It allows the secret FISC greater authority to act as an independent check on unfettered Executive power. The judiciary bill provides the court the authority to assess the Government's ongoing compliance with its wiretapping procedures, places limits on the way the Government uses information acquired about Americans, and lets the court enforce its own orders.

The judiciary bill also safeguards Americans against widespread warrantless spying. It reaffirms that FISA is the exclusive statutory authority for conducting foreign intelligence surveillance, prohibits limitless ''fishing expeditions''—so-called ''bulk collection'' of all communications between the United States and overseas, and ensures that the Government cannot eavesdrop on Americans under the guise of targeting foreigners—what is known as ''reverse targeting.''

Most importantly, unlike the Intelligence bill, the judiciary bill does not provide retroactive amnesty to telecommunications providers that were complicit in the administration's warrantless spying program. I fear this administration is deliberately stonewalling to avoid an adverse court decision finding its surveillance program to be unconstitutional. It is seeking political security in the name of national security.

The heart of the matter is that allowing Americans their day in court—introducing some kind of accountability, affording some kind of objective authority, in lieu of the Bush administration, to adjudicate competing claims—will shed much-needed light on the administration's secret surveillance program. If the lawsuits are shielded by Congress, the courts may never rule on whether the administration's surveillance activities were lawful. We must hold the administration to account. And an impartial court of law insulated from political pressure is the most appropriate setting in which to receive a fair hearing.

If the telecoms were following the law, they should get immunity, as Congress explicitly provided under the original FISA law. But our courts should decide, not Congress—and that is a matter of principle protected in the judiciary bill, which is the bipartisan bill that should be under consideration.

Mr. LEAHY. Mr. President, the Foreign Intelligence Surveillance Act—FISA—is intended to protect both our national security and the privacy and civil liberties of Americans. We are considering amendments to that important act that will provide new flexibility to our intelligence community. I think we all support surveillance authority, and we have joined together to update FISA dozens of times since its historic passage after the intelligence abuses of earlier decades. I thank the majority leader for his efforts in bringing this matter before the Senate. He has consulted with me and with Chairman ROCKEFELLER and is proceeding by regular order to bring this legislation before the Senate in a manner that allows deliberation of the many protections of Americans' rights added to the bill during consideration by the Senate Judiciary Committee.

It is vitally important that we correct the excesses of the so-called Protect America Act that was rushed through the Senate in an atmosphere of fear and intimidation just before the August recess after the administration reneged on agreements reached with congressional leaders. That bill was hurriedly passed under intense, partisan pressure from the administration. It provided sweeping new powers to the Government to engage in surveillance, without a warrant, of international calls to and from the United States involving Americans, and it provided no meaningful protection for the privacy and civil liberties of the Americans who are on those calls.

Before that flawed bill passed, Senator ROCKEFELLER and I, and several others in the House and the Senate, worked hard and in good faith with the administration to craft legislation that solved an identified problem but also protected Americans' privacy and liberties. Just before the August recess the administration decided, instead, to ram through its version of the so-called Protect America Act with excessive grants of Government authority and without accountability or checks and balances. After almost 6 years of violating FISA through secret warrantless wiretapping programs, that was wrong. A number of us supported the better balanced alternative and voted against the Protect America Act as drafted by the administration.

Fortunately, because the Protect America Act has a 6-month sunset, we have a chance to revisit this matter and do it right. The Judiciary Committees and Intelligence Committees in the Senate and the House have spent the past months considering changes to FISA. In the Senate Judiciary Committee, we held open hearings and countless briefings and meetings to consider new surveillance legislation. We considered legislative language in a number of open business meetings of the committee and reported a good bill to the Senate before Thanksgiving.

The bill we are considering will permit the Government, while targeting overseas, to review more Americans' communications with less court supervision than ever before. I support this surveillance, but we must also take care to protect Americans' liberties. Attorney General Mukasey said at his nomination hearing that ''protecting civil liberties, and people's confidence that those liberties are protected, is a part of protecting national security.'' On that I agree with him. That is what the Senate Judiciary bill does.

I commend the House of Representatives for passing a bill, the RESTORE Act, that takes a balanced approach to these issues. It allows our intelligence community great flexibility to conduct surveillance on overseas targets, while providing oversight and protection for Americans' civil liberties. The Senate Select Committee on Intelligence has also worked hard. I know that Chairman ROCKEFELLER was as disappointed as I at the administration's partisan maneuvering just before the August recess. I commended his efforts this summer and do so, again, now. I believe that he and I both want surveillance with oversight and accountability.

I also want to praise our joint members, Senators FEINSTEIN, FEINGOLD, and WHITEHOUSE, who as members of both the Judiciary Committee and the Select Committee on Intelligence contributed so much to the work of the Judiciary Committee and who worked with me to author many of the additional protections that we adopted and

reported. These Senators and others on the Judiciary Committee worked hard to craft amendments that preserve the basic structure and authority proposed in the bill reported by the Select Committee on Intelligence, while adding crucial protections for Americans.

In my view, and I think the view of many Senators, we need to do more than the bill initially reported by the Senate Select Committee on Intelligence to protect the rights of Americans. Indeed, Senator ROCKEFELLER joins with me to support many of the Judiciary Committee's improvements.

The Judiciary bill, for example, makes clear that the Government cannot claim authority to operate outside the law—outside of FISA—by alluding to legislative measures that were never intended to provide such exceptional authority. This administration has come to argue that the Authorization for the Use of Military Force, AUMF, passed after September 11, justified conducting warrantless surveillance of Americans for more than 5 years. I introduced a resolution on this in the last Congress, when we first heard this canard. When we authorized going after Osama bin Laden, the Senate did not authorize—explicitly or implicitly—warrantless wiretapping of Americans. Yet this administration still clings to this phony legal argument. The Judiciary bill would prevent that dangerous contention with strong language reaffirming that FISA is the exclusive means for conducting electronic surveillance for foreign intelligence purposes.

The Judiciary bill would also provide a more meaningful role for the FISA Court in this new surveillance. The court is a critical independent check on Government excess in the very sensitive area of electronic surveillance. The fundamental purpose of many of the Judiciary Committee changes is to assure that this important, independent check remains meaningful.

On one important issue, I strongly oppose the bill reported by the Senate Select Committee on Intelligence. That bill includes one provision that goes beyond even the so-called Protect America Act. It would grant blanket retroactive immunity to telecommunications carriers for their warrantless surveillance activities from 2001 through earlier this year contrary to FISA and in violation of the privacy rights of Americans.

This administration violated FISA by conducting warrantless surveillance for more than 5 years. They got caught, and if they hadn't, they would probably still be doing it. When the public found out about the President's illegal surveillance of Americans, the administration and the telephone companies were sued by citizens who believe their privacy and their rights were violated. Now the administration is trying to get this Congress to terminate those lawsuits in order to insulate itself from accountability. We should not allow this to happen.

The rule of law is fundamentally important in our system, and so is protecting the rights of Americans from unlawful surveillance. I do not believe that Congress can or should seek to take those rights and those claims from those already harmed. Instead, I will continue to work with Senator SPECTER, as well as with Senators FEINSTEIN and WHITEHOUSE, to try to craft a more effective alternative to retroactive immunity. We are working with the legal concept of substitution to place the Government in the shoes of the private defendants that acted at its behest and to let it assume full responsibility for the illegal conduct.

I voted for cloture on the motion to proceed to the measure, just as I would have supported proceeding to the House-passed bill, because I believe it is important that we correct the excesses of the so-called Protect America Act. The Judiciary Committee has done good work in reporting protective measures to the Senate to add balance to the surveillance powers of the Government and to better ensure the rights of Americans. I strongly oppose retroactive immunity in favor of accountability.

As we debate these issues, let us keep in mind the reason we have FISA in the first place. Not so long ago, we painfully learned the hard lesson that powerful surveillance tools, without adequate oversight or the checks and balances of judicial review, lead to abuses of the rights of the American people. I hope this debate will provide us an opportunity to show the American people what we stand for, that we will do all we can to secure our future while protecting their cherished rights and freedoms.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, title II of the Intelligence Committee bill provides retroactive immunity to companies that are alleged to have cooperated with the Bush administration's warrantless wiretapping program. When we are on this bill, we are going to have an opportunity to vote on the amendment to strike title II so the actions of the telephone companies will be subject to legal proceedings. I will support this amendment, which insists on fair accounting for the actions of the telephone companies and proper accountability if they are found to have violated the law.

The Bush administration's warrantless wiretapping program was clearly an illegal circumvention of the provisions included in FISA designed to protect the privacy of law-abiding Americans. I, once again, wish to applaud Chairman ROCKEFELLER's tireless work over the course of the last several years to bring strong congressional oversight to the illegal Bush administration's spying programs. This type of lawlessness and misguided legal reasoning by the Bush administration will not be looked upon kindly in the history books.

The amendment now before us can begin to right the injustices the Bush administration has committed. I am pleased Chairman ROCKEFELLER's Senate Intelligence Committee rejected the administration's efforts to provide immunity for the Government officials who conceived and authorized this program. Democrats have made certain no one in the Bush administration who broke the law will be let off the hook.

I am also sympathetic to the phone companies' compliance with Government requests for assistance in the immediate aftermath of the terrible attacks of September 11. I can understand the argument that in a time of national emergency, they did their utmost to act in the best interests of our country. But this illegal program continued for 5 years after the rubble of 9/11 had been cleared—5 years—5 years during which the executive branch could have come to Congress and asked for the program to be put on solid legal footing—all they would have had to have done is come and tell us there were a few changes that needed to be made—and 5 years that the phone companies could have forced the administration to do a number of different things.

Public reports indicate that at least one phone company refused to follow the administration's request. This fact appears to undermine the argument for immunity of those who complied. When Congress drafted and enacted FISA in 1978, it was responding to widespread and egregious executive branch abuses of the power to spy on American citizens. Liability protections were included for phone companies responding in good faith to Government requests for assistance. But at the same time, Congress set out specific statutory requirements for the form such requests must take.

The intention was that the phone companies would have refused an illegal request not in compliance with FISA requirements. In other words, FISA's drafters intended for the phone companies to serve as an active check, not as a rubberstamp, on an executive branch acting outside the bounds of the law. It is not clear whether the telephone companies fulfilled that responsibility.

In light of that, I believe it is more than appropriate to ask the courts to examine the telephone companies' actions and to evaluate whether they acted properly. It would certainly be within the power of a judge to provide immunity if the telephone companies make a compelling case their actions were appropriate and legal. But providing immunity without ever undertaking such an evaluation would send a

dangerous signal that requirements we enact prospectively may be ignored with impunity.

I appreciate the need for an intelligence community to gather information that makes our country safer in a way that does not violate the privacy of law-abiding Americans. In many cases, the telephone companies played an important and responsible role in that process. It is not my desire to bankrupt the industry. That is an understatement. Should the courts determine their actions were illegal and impose a potential bankrupting judgment, I would be inclined to support congressional intervention, of course. But we must not attempt to answer these questions prematurely. This process must be allowed to work its way through the courts. It would be wrong to deny that process.

I would also like to say again I believe this process deserves the informed input of every Senator. To that end, last Friday, I sent a letter to the Director of National Intelligence, strongly urging him to make the documents previously provided to the Intelligence and Judiciary Committees regarding retroactive immunity available in a secure location to any Senator who wishes to review them during the floor debate. This would also help every Senator reach an informed decision on how to proceed. I am hopeful that decision will be to support this amendment and allow the legal process to move forward, which will give all Americans confidence that their safety and their privacy are both respected and protected.

I wish to again outline briefly how much I appreciate the work of Senator ROCKEFELLER. It is a very difficult piece of work. He has done it with integrity and with good judgment. I also wish to express my appreciation for the work done by the Judiciary Committee. It is not often we have sequential referral on the bills, but we have had in this instance. The Judiciary Committee will have, if they so choose, the first amendments offered in this matter. They have done a good job. The title I work they did was extremely good.

It is my understanding now that Senators ROCKEFELLER and LEAHY have agreed with certain parts of the Judiciary Committee title I; that they will offer amendments either en bloc or individual amendments jointly, and that is a significant improvement. So in short, this legislation has been handled very well by the Intelligence Committee and the Judiciary Committee, and I look forward to hearing the response from Admiral McConnell as to whether these documents that have been shown to the Judiciary Committee and the Intelligence Committee will be available to us, I assume, in room 407 in this building.

Mr. President, I ask unanimous consent that the letter I sent to Admiral McConnell be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE.
Washington, DC, December 16, 2007.

Admiral JOHN M. MCCONNELL,
Director of National Intelligence, Office of the Director of National Intelligence, Washington, DC.

DEAR ADMIRAL MCCONNELL: As you know, the Senate will begin debate on the FISA Amendments Act of 2007 this week. Among the issues the Senate will consider is whether to grant retroactive immunity to telecommunications companies that are alleged to have assisted the government in its warrantless wiretapping program. You recently wrote in the New York Times that immunity is one of the three most critical issues in this bill.

We appreciate that you have provided access to the documents necessary for evaluation of this issue to the Senate Intelligence and Judiciary Committees, as each has in turn considered it. As the debate now moves to the full Senate, I believe it is of critical importance that all Senators who will be called upon to vote on this important question have an opportunity to review these key documents themselves so that they may draw their own conclusions. In my view, each sitting Senator has a constitutional right of access to these documents before voting on this matter.

I strongly urge you to make the documents previously provided to the Intelligence and Judiciary Committee regarding retroactive immunity available in a secure location to any Senator who wishes to review them during the floor debate. I appreciate your cooperation in this matter.

Sincerely,

HARRY REID
Senate Majority Leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, we have tried to work through this process, and it appears quite clear at this stage, on this bill, we are not going to be able to do that. As everyone knows, we are in the last hours, days, certainly, of this first year of this session of Congress, and we have to take care of the domestic spending, we have the debate coming up on funding for the Afghanistan and Iraq wars, the supplemental, and I think it is very clear we are not going to be able to move into these amendments.

We have had a number of suggestions by a number of different people how we can move through this legislation, and it appears quite clear at this stage that we can't. I have spoken to a number of the Senators, and everyone feels it would be in the best interest of the Senate that we take a look at this when we come back after the first of the year and resume this. I have spoken to, for example, Senator DODD, a few minutes ago, and he and I have talked about ways to move forward—of course, Senator DODD can always speak for himself—but my feeling, after having visited with him, is we would be better off moving into this sometime after we come back after the holiday recess, after the adjournment sine die of this year of the Congress.

So unless something untoward appears, which I doubt extremely seriously, this is what we will do on FISA; that is, we will take it back up when we return in January.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Before he leaves the floor, I wish to thank the Democratic leader. He has a very difficult job under any circumstances. To people who ask: What is it like to be the leader in the Senate, I often describe it as trying to keep frogs in a wheelbarrow. It always gets a pretty good reaction when I mention that. He has a lot of frogs to deal with around here. Trying to keep us all moving in the same direction is not easy.

Mr. REID. If I could respond to my friend, at this stage, in Iowa, they are laughing at just about all the jokes, aren't they?

Mr. DODD. As Mo Udall once said: I walked into a barber shop in New Hampshire and said: I am Mo Udall, and I am running for President. And the barber said: We were just laughing about that.

But I wished to thank the leader. This is an awkward time, obviously, and I wanted to get the bill done. I think Senators ROCKEFELLER and BOND did a good part of this bill, and it is worthy of our support.

The leader knows my longstanding concerns over this retroactive immunity. There is significant debate about this, and I feel strongly about it. I will look forward to coming back in January, and hopefully between now and coming back, maybe there would be some suggestions on how we might ease some of the concerns people have and satisfy them, without necessarily granting retroactive immunity.

I know there are various ideas kicking around, some sort of a compromise idea that may be worked out. Certainly, there will be some time to think about this so we can avoid this when it comes back again. I appreciate the fact we are not going to proceed with it now. That gives us a chance to work on this some more. We have at least some time, I think the end of January or early February before the law will expire, so we have some time to come back and deal with this again. I appreciate the fact we are not going to have to go forward. I would have been put in a position to contest this in every possible way, utilizing all the tools available to us, and I am very grateful to the leader for moving on. I promise I certainly will be willing to listen to various ideas how we can resolve this, so when we come back here, this will be a matter we can deal with more expeditiously, but I am very grateful to him for giving me an opportunity to make my case.

Mr. REID. I appreciate the kind comments of my friend from Connecticut. He is one of our most articulate spokespersons we have in the Senate and always has been. I have enjoyed my work with him.

This is a very difficult issue. The American public is terribly concerned about this issue because it is easy to focus on. What has taken place in this country the last 7 years has really hurt the confidence of the American people in their Government.

We have the worst foreign policy blunder in the history of the country in the invasion of Iraq. We are spending now $12 billion a month there.

We have now a condition where much of the Government has been contracted out. The poster for that, of course, is Blackwater. I heard an account on the radio this morning that the Iraqis can't tell the difference between the American troops and these contractors, and all the contractors do is hurt them—not the troops but these contractors.

We have had this domestic surveillance situation, which is really frightening to people. In Nevada, we don't like wiretaps. We don't like lie detector tests. We are very private people. I think that is basically where America is. They don't like their privacy invaded.

We all want to get the bad guys. We know there are evil people out there trying to hurt us. The patriotism of the Senator from Connecticut and the Senator from Nevada will compare to that of anyone else in the Senate. Because we believe this retroactive immunity is something that needs to be studied very closely, that doesn't mean we are any less patriotic than anyone else.

This is an issue on which the American people are focused. I have gotten, in the last week or so, thousands of inquiries from around the country. This is an issue they understand and they do not like. Hopefully, when we come back after the first of the year, we can figure out a way to move through this. We know we have to do something, but we can't continue to make mistakes in this regard that continually take away the confidence of the American people in what we are doing back here.

Mr. DODD. Mr. President, I see the majority whip as well. I just want to take a couple of minutes and conclude my thoughts on this matter, since we will be moving on.

Americans have rightfully been concerned since before World War II about the dangers of hostile foreign agents likely to commit acts of espionage. Similarly, the violent acts of political terrorists can seriously endanger the rights of Americans. Carefully focused intelligence investigations can help prevent such acts.

But too often intelligence has lost this focus and domestic intelligence activities have invaded individual privacy and violated the rights of lawful assembly and political expression. Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.

A tension between order and liberty is inevitable in any society. A Government must protect its citizens from those bent on engaging in violence and criminal behavior, or in espionage and other hostile foreign intelligence activity . . . Intelligence work has, at times, successfully prevented dangerous and abhorrent acts, such as bombings and foreign spying, and aided in the prosecution of those responsible for such acts.

But, intelligence activity in the past decades has, all too often, exceeded the restraints on the exercise of governmental power which are imposed by our country's Constitution, laws, and traditions.

We have seen segments of our Government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes. We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as 'vacuum cleaners,'' sweeping in information about lawful activities of American citizens.

That these abuses have adversely affected the constitutional rights of particular Americans is beyond question. But we believe the harm extends far beyond the citizens directly affected.

Personal privacy is protected because it is essential to liberty and the pursuit of happiness. Our Constitution checks the power of Government for the purpose of protecting the rights of individuals, in order that all our citizens may live in a free and decent society. Unlike totalitarian states, we do not believe that any government has a monopoly on truth.

When Government infringes those rights instead of nurturing and protecting them, the injury spreads far beyond the particular citizens targeted to untold number of other Americans who may be intimidated.

Abuse thrives on secrecy. Obviously, public disclosure of matters such as the names of intelligence agents or the technological details of collection methods is inappropriate. But in the field of intelligence, secrecy has been extended to inhibit review of the basic programs and practices themselves.

Those within the Executive branch and the Congress who would exercise their responsibilities wisely must be fully informed. The American public, as well, should know enough about intelligence activities to be able to apply its good sense to the underlying issues of policy and morality.

Knowledge is the key to control. Secrecy should no longer be allowed to shield the existence of constitutional, legal and moral problems from the scrutiny of all three branches of government or from the American people themselves.

These words I wish I could claim them as my own. These are words that were written some 31 years ago by Frank Church, in a committee that initiated the idea of FISA. They talked about the problems they had worked on that gave birth to this legislation we are dealing with today—some 30 changes later after some 28 years. But they are words to live by. They would fit almost any time, to strike that balance between security and liberty.

As I quoted earlier today, some 220 years ago, Benjamin Franklin warned the country that those who would sacrifice liberty for security deserve neither. In many ways, today we are being asked to make a choice. It was a false choice 220 years ago. It is still a false choice today. It is a false dichotomy. In fact, we are more secure when we secure our liberties, when we defend them and protect them. That is the nature of our society. It is what has given us great strength through these past more than 20 decades here and I believe will keep us more secure in the years ahead.

It is true, technology is changing, and the means of causing us harm or injury are more sophisticated today; but these eternal transcendent rights we embrace as a nation, which each and every generation has been responsible for guarding, are no less important today than they were years ago.

So the words of Frank Church and the committee members, Republican and Democratic, who signed this document some 31 years ago, are as true today. They are what caused me to stand here today for 8 or 9 hours. They are what caused me to stand here a year ago to speak out strongly against the Military Commissions Act and other such actions by this administration over the past number of years.

I know it is not normal—certainly for this Member—to threaten to filibuster or to engage in extended debate, but I felt so strongly about this provision in this bill, this retroactive immunity, that I was determined to do everything I could to stop this legislation going forward with those provisions included. I am grateful we are going to move on to other legislation.

We will return to this, apparently, in January. My hope is that between now and then we can resolve this matter, and that retroactive immunity will no longer be a part of this. We will not allow it. I don't know if it is possible. I hope it is. If not, I will be back here engaging in the same effort to stop this legislation going forward with those provisions included.

I am grateful to my colleagues, to Senator KENNEDY, Senator FEINGOLD, Senator WYDEN, Senator BILL NELSON, Senator BOXER, who spoke earlier today, to Senator SHERROD BROWN, who spoke, as well, about this legislation, and others who came to the floor to express their concerns principally about this provision.

Again, I thank the majority leader, Senator REID, who certainly gave me the opportunity to continue this effort. He has at his disposal procedures he could engage in, and he did not utilize those. He allowed this Senator to make his case to extend this debate to 30 hours, which is what I was prepared to do, then offer amendments to engage in extended debate if necessary to stop this from going forward. That, apparently, will not be necessary now, to engage in those efforts. So I am grateful to my colleagues for giving me this opportunity to make my case and hopeful that when we pass FISA legislation, it will not include retroactive immunity. That would be the wrong thing to do, a dangerous precedent, and I hope my

colleagues on both sides will come to that conclusion.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

SPECIALIST JOHNATHAN ALAN LAHMANN

Mr. BAYH. Mr. President, today with a heavy heart and deep sense of gratitude I honor the life of a brave soldier from Richmond, IN. SPC Johnathan Lahmann, 21 years old, died December 10th in Tikrit, Iraq. Specialist Lahmann died of injuries he sustained in Bayhi, Iraq, when an improvised explosive device detonated near his vehicle. With an optimistic future before him, John risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

John was a 2004 graduate of Richmond High School where he avidly studied auto repair with plans to be a mechanic. According to his teacher, Roy Reisinger, John was so dedicated to studying auto repair that he would go to Mr. Reisinger's house on the weekends to work on cars. Mr. Reisinger described John to a local newspaper as ''a top-notch mechanic'' and ''an all-around good young man.'' In addition to his strong work ethic praised by his teachers, his fellow classmates recall John's pleasant demeanor and his friendship.

After graduation, John worked at Mosey Manufacturing. In September 2005, John joined the Army, where he was trained as a combat engineer. He was assigned to the 59th Engineer Company, 20th Engineer Battalion, 36th Engineer Brigade, Fort Hood, TX. In November 2007, John was deployed to Iraq. He is survived by his parents, Linda and Alan C. Lahmann.

Today, I join John's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of John. Today and always, John will be remembered by family members, friends, and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring John's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of John's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of SPC Johnathan Alan Lahmann in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like John's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Johnathan.

IRAQ FUNDING

Mr. KYL. Mr. President, there has been a great deal of debate in recent weeks about whether to fund the needs of our soldiers overseas. The time to act has come.

We are nearing the end of the first quarter of the fiscal year, and despite steady progress in Iraq, Congress still has not passed a funding bill for our soldiers. Members of this body have been aware of the consequences of delaying funding for a long time.

In a November 8 letter, Deputy Secretary of Defense Gordon England explained that failure to fund military operations will ''result in having to shut down significant portions of the Defense Department by early next year.'' The specific consequences, in Secretary England's words, include ''closure of military facilities, furloughing of civilian workers and deferral of contract activity.'' In case there is any confusion about what this means to the military, Secretary England is quite clear: ''this situation will result in a profoundly negative impact on the defense civilian workforce, depot maintenance, base operations, and training activities.''

He also acknowledged that this delay in funding doesn't only harm our military but also sets back the training and equipping of Iraqi and Afghan security forces, whose expeditious development is critical to lasting peace in those nations.

This delay in funding shows a lack of support for our troops in harm's way, disregard for the measurable progress they have achieved in recent months, and indifference to the future of Iraq and Afghanistan. That is not the kind of leadership the American people expect of Congress.

It is time to heed the clear warnings from the Department of Defense, come together in support of the progress our soldiers are making, and provide them with the necessary resources so that they can continue their important work on behalf of the American people.

A December 8 article in the Washington Post by LT Pete Hegseth and GEN John Batista, a prominent critic of the Administration's policy in Iraq, encouraged Americans ''to stand together, in and out of uniform,'' and commit to defeating our enemies. That means supporting the progress our soldiers are achieving and providing them the funds necessary to complete their mission and, thus, make Americans safer.

I ask unanimous consent to have the attached article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, 8, 2007]

Congress has been entangled in a war-funding debate that pits war ''supporters'' against antiwar ''defeatists.'' With all sides seemingly entrenched, a stalemate looms. The Pentagon, meanwhile, will soon begin stripping money from its training budget to fund the wars in Iraq and Afghanistan.

Our military men and women deserve better than partisan politics; they deserve honest assessments of our nation's performance in fighting the Long War.

We are veterans of the Iraq war with vastly different experiences. Both of us commanded troops in Iraq. We, too, held seemingly entrenched, and incompatible, views upon our return. One of us spoke out against mismanagement of the war—failed leadership, lack of strategy and misdirection. The other championed the cause of successfully completing our mission.

Our perspectives were different, yet not as stark as the ''outspoken general'' and ''stay-the-course supporter'' labels we received. Such labels are oversimplified and inaccurate, and we are united behind a greater purpose.

It's time to discuss the way forward rather than prosecute the past. Congress must do the same, for our nation and the troops.

Overall, this will require learning from our strategic blunders, acknowledging successes achieved by our courageous military and forging a bold path. We believe America can and must rally around five fundamental tenets:

First, the United States must be successful in the fight against worldwide Islamic extremism.

We have seen this ruthless enemy firsthand, and its global ambitions are undeniable. This struggle, the Long War, will probably take decades to prosecute. Failure is not an option.

Second, whether or not we like it, Iraq is central to that fight. We cannot walk away from our strategic interests in the region. Iraq cannot become a staging ground for Islamic extremism or be dominated by other powers in the region, such as Iran and Syria. A premature or precipitous withdrawal from

Iraq, without the requisite stability and security, is likely to cause the violence there—which has decreased substantially but is still present—to cascade into an even larger humanitarian crisis.

Third, the counterinsurgency campaign led by Gen. David Petraeus is the correct approach in Iraq. It is showing promise of success and, if continued, will provide the Iraqi government the opportunities it desperately needs to stabilize its country. Ultimately, however, these military gains must be cemented with regional and global diplomacy, political reconciliation, and economic recovery—tools yet sufficiently utilized. Today's tactical gains in Iraq—while a necessary precondition for political reconciliation—will crumble without a deliberate and comprehensive strategy.

Fourth, our strategy in fighting the Long War must address Iran. Much has been made this week of the intelligence judgments that Iran has stopped its weapons program. No matter what, Iran must not be permitted to become a nuclear power. All options should be exhausted before we use military force, but force, nonetheless, should never be off the table. Diplomatic efforts—from a position of strength, both regionally and globally—must be used to engage our friends and coerce our enemies to apply pressure on the Iranian regime.

Fifth, our military capabilities need to match our national strategy. Our military is stretched thin and will be hard-pressed to maintain its current cycle of deployments. At this critical juncture, we cannot afford to be weak. Numbers and capacity matter.

After the Sept. 11, 2001, attacks, America was not mobilized for the Long War. This was an opportunity lost, but it is not too late. Many Americans are frustrated by the war effort, the burden of which has been shouldered by less than one percent of our citizenry. Our country is accustomed to winning. We deserve a comprehensive strategy that is focused on victory and guided by decisive leadership. America must succeed in Iraq and Afghanistan, but we also cannot focus too narrowly on those conflicts. We need a regional and global strategy to defeat worldwide Islamic extremism to ensure a safer world today and for future generations.

The day after his famous Pearl Harbor speech, President Franklin D. Roosevelt again addressed the nation. ''I was about to add that ahead there lies sacrifice for all of us,'' he said. ''But it is not correct to use that word. The United States does not consider it a sacrifice to do all one can, to give one's best to our nation, when the nation is fighting for its existence and its future life.'' His words inspired the ''Greatest Generation,'' and they should inspire us again today.

Americans must mobilize for the Long War—bolster our strained military, galvanize industry to supply troops with what they need right now and fund the strategy with long-term solutions. We have no doubt that Americans will rally behind a call to arms.

America's veterans—young and old—are resolved to support and defend the Constitution from all enemies, foreign and domestic. This commitment, and nothing less, should compel us to stand together, in and out of uniform. Would that Congress finds the courage to bury its pride and do the same.

FHA MODERNIZATION ACT

Mr. FEINGOLD. Mr. President, I am pleased to support the FHA Modernization Act of 2007, and I hope the House and Senate can quickly work together to get this legislation to the President. This bill is a good first step to helping address both housing affordability issues and problems in the subprime lending industry. I look forward to monitoring the legislation's implementation to ensure that the FHA reforms truly benefit low-income and middle-income homeowners.

The rising rate of foreclosures and its broader impact on the nation's economy is a serious issue that requires the involvement of all levels of government as well as both private and nonprofit organizations. Subprime lending and rising foreclosure rates are complicated issues to unravel and any response, whether legislative or regulatory, will bring with it a set of consequences, some intended and some unintended. We need to examine a variety of responses to the rising foreclosure rates and their consequences, including providing more housing counseling for borrowers and more effectively regulating lending practices to prevent some of the unscrupulous practices that have occurred. Some of the more egregious lending practices include high rates of predatory lending in minority communities, steering borrowers into subprime mortgage products even if the borrowers qualified for more conventional loans, and not ensuring that borrowers fully understood the terms of subprime loans.

I was disappointed that the Senate FHA Modernization Act did not contain a provision directing some of the revenue realized by the FHA bill into an affordable housing fund as the House FHA reform bill did. I hope that conferees will work hard to find a fiscally responsible way to direct some of the increased revenue from the FHA bill into a national affordable housing trust fund. I also hope that Congress can pass stand-alone legislation creating a national affordable housing trust fund in the coming year.

The creation of more affordable housing through a national affordable housing trust fund will also help to alleviate the affordable housing crisis we are facing throughout the country. Local communities around the country are creating such trust funds, including in my state of Wisconsin. Congress needs to act promptly so that a national affordable housing trust fund can complement the good work going on in states and local communities throughout the country.

Earlier this year, I introduced legislation, the Affordable Housing Expansion and Public Safety Act, which contained provisions designed to assist low-income Americans in affording safe and adequate housing, including authorizing 100,000 new Section 8 vouchers, authorizing new targeted funding for the HOME program, reauthorizing the Public and Assisted Housing Crime and Drug Elimination Program, and calling on Congress to create a national affordable housing trust fund. I hope that Congress can take a step toward the creation of such a fund by including a provision in the FHA reform bill conference report to dedicate a fiscally responsible revenue stream toward such a national affordable housing trust fund.

This Nation faces a severe shortage of affordable housing for our most vulnerable citizens. Shelter is one of our most basic needs, and, unfortunately, too many Wisconsinites and people around the country are struggling to afford a place to live for themselves and their families. As Congress continues to take steps to deal with affordability issues, rising foreclosure rates, and reform of lending practices by banks and mortgage brokers, we need to ensure that any such reforms benefit those Americans most in need.

THE MATTHEW SHEPARD ACT OF 2007

Mr. SMITH. Mr. President, I wish to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Early in the morning of December 8, 2007, 25-year-old Nathaniel Salerno was attacked by five to seven men on a Washington, DC, Metro subway train. Salerno, a gay man, had been at several clubs prior to returning home. Shortly after boarding the train, the men approached him and allegedly demanded that Salerno give them his wallet and BlackBerry. When he stood up, the attackers snatched the items and began to punch and kick him, screaming antigay slurs. Salerno received stitches for the lacerations he received to his face during the attack. Washington's Metro police are investigating the assault as a bias-related violent crime.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Matthew Shepard Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ENERGY

Mr. KYL. Mr. President, I rise today to discuss the energy legislation Congress is on the brink of passing in these last days of the first session of the 110th Congress. I voted against this legislation in the Senate because it contains numerous provisions that will distort competitive markets for energy through subsidies, Government mandates, special projects, and irresponsible increases in Federal spending. This bill will not promote the goal of energy security but will likely increase fuel and food prices and reduce consumer choice for everything from cars to light bulbs.

First, I want to talk about ethanol. It is difficult to understand why Congress continues to believe that ethanol is a desirable substitute for gasoline. It is widely reported that even if all of the 300 million acres—500,000 square miles—of currently harvested U.S. cropland produced ethanol, they wouldn't supply all of the gasoline and diesel fuel we now burn for transport, and they would supply only about half of the demand for the year 2025. We are not going to grow our way to energy security. We are also starting to see the devastating effects our current ethanol production is having on our scarce water supply, the environment, and human health.

Despite these facts, one of the bill's most prominent features is a five-fold increase in the ethanol mandate from the currently required 7.5 billon gallons by 2012 to 36 billion gallons by 2022. Meeting this mandate will require even more corn-based ethanol and the production of other so-called advanced biofuels, largely made from cellulosic ethanol. Although cellulosic ethanol production is in its infancy and does not exist commercially today, the bill specifies that 21 billion gallons of the 36 billion gallons mandated be cellulosic ethanol. This is nothing more than a congressional gamble with American taxpayer dollars.

If Congress is serious about moving away from oil to alternative fuels it cannot, as it has done here, subsidize political favorites and engage in statutory prescription. This will actually slow energy innovation and may even retard the gains we have made. An excellent example of this point is the exclusion of woody biomass material from our Nation's overgrown forests from the production of advanced biofuels. Companies throughout the West, including many small businesses, are working in partnership with the Federal Government to help restore our national forests by removing this woody biomass material and using it to produce energy. This oversight in the bill complicates these efforts and could seriously slow the gains my home State of Arizona and other Western States dominated by Federal lands have made to combat catastrophic wildfire.

Now, let's turn to the other major feature of this bill—federally mandated increases in corporate average fuel economy, CAFE, standards. This bill requires each manufacturer's fleet to average 35 miles per gallon by 2020, a roughly 40 percent increase over current standards for cars and trucks. What this proposal seems to overlook is that more fuel efficient cars and trucks already exist on the market for those who want them. And as gas prices rise, my guess is increasing numbers of consumers will buy smaller, more fuel efficient cars without being told to do so by Congress. The point is that this is a consumer choice issue. By federally mandating these increases there will be less choice, increases in car sticker prices, and the very real possibility of more unnecessary highway deaths due to the increases in lighter vehicles, which generally are less safe in collisions on the road. A National Academy of Sciences study concluded that vehicle downsizing costs 1,300 to 2,600 lives per year.

Another major problem with the CAFE provisions in the bill is the failure to clarify the regulatory responsibilities of the National Highway Transportation Safety Board and the Environmental Protection Agency over the regulation of tailpipe emissions and fuel economy requirements. The administration in its Statement of Administration Policy makes this point. Failing to address this issue will likely leave industry to sort through layers of contradictory regulation.

Beyond the biofuels and CAFE provisions, the bill includes a full assortment of new efficiency mandates for appliances and buildings and even takes measures to phase out incandescent lightbulbs. Industry in the private sector has already brought to market alternative lighting technologies to the traditional lightbulb, and as prices drop consumers are switching over to them. Provisions like these are nothing more than Congress's attempt to take credit for something the market is already doing and accomplishing far more quickly and efficiently than the government can, I might add.

In sum, instead of enacting poor energy policy, Congress should focus on what it must do before we leave here this year—fund the Government by enacting fiscally responsible appropriations bills and ensuring our troops have what they need.

PASSAGE OF FARM BILL

Mr. CASEY. Mr. President, with the passage of the farm bill, I want to commend the work of my legislative staff led by Kasey Gillette our senior legislative assistant. Kasey did an excellent job on both substance and strategy always focusing on how the bill would impact farm families and the agricultural economy of Pennsylvania. Kasey had two great teammates: Caryn Long and Alex Davis, who labored for months on very complex matters in the bill. Without the work of Kasey, Caryn, and Alex, I wouldn't have been able to have four amendments adopted during the floor debate and five others adopted during the committee markup.

ADDITIONAL STATEMENTS

TRIBUTE TO GEORGE HALE

• Ms. COLLINS. Mr. President, this morning WABI–AM radio in my home State of Maine dedicated the George Hale Studio in Bangor. I commend Clear Channel Communications for recognizing the many contributions George Hale has made to our State during his 54-year career in broadcasting, and I am honored to offer a few words in tribute to him.

George Hale is a true broadcasting legend. For more a half century, he has kept the people of Maine informed, he has entertained us, and he has brought us together as a community of friends and neighbors. He has brought the best of Maine into our homes, and he has always been a welcome guest.

Still going strong today, George Hale will forever be associated with the Bangor Auditorium and the great high school basketball tournaments held there, but that is just a start. University of Maine football, baseball, and basketball have all benefited from his great work, and he is beloved by generations of fans, coaches, and players. Whether describing victory or defeat, he always treats the athletes with respect and appreciation for their efforts.

Generations of Mainers have begun their day with George. Many used to begin their day by tuning in at 5:45 a.m. to hear his thoughts and comments on everything ranging from Red Sox to world affairs.

And the tradition continues today. Along with his friend and cohost Ric Tyler, George's show provides news and insight about the issues facing Maine and the Nation. As one who has appeared on his show many times, I can say that George always treats his guests with fairness and respect.

George was blessed with a great voice, and he has used it well as a powerful spokesman for great causes. His support for the March of Dimes, and especially his advocacy for the folic acid campaign, has greatly helped this outstanding organization carry out is vital mission of improving the health of babies by preventing birth defects and infant mortality. The March of Dimes and George Hale truly are a championship team.

WABI–AM radio is known as the Voice of Maine. It is a fitting name because George Hale truly is the Voice of Maine. He is a great friend to me and to all the people of my State. I know we all look forward to many more years of hearing that great voice from the George Hale Studio.•

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4357. A communication from the Director, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs'' (RIN0560–AF60) received on December 7, 2007; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4358. A communication from the Administrator, Risk Management Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Common Crop Insurance Regulations; Potato Provisions'' (RIN0563–AC05) received on

December 7, 2007; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4359. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting, a report on the approved retirement of Lieutenant General Russel L. Honore, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–4360. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, a report relative to the cost effectiveness of the Defense Commissary Agency; to the Committee on Armed Services.

EC–4361. A communication from the Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Shareholder Proposals Relating to the Election of Directors'' (RIN3235–AJ95) received on December 6, 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–4362. A communication from the Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Rules 144 and 145'' (RIN3235–AH13) received on December 6, 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–4363. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003'' (RIN3064–AD00) received on December 7, 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–4364. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving the sale of one Boeing 777–200ER aircraft to Angola; to the Committee on Banking, Housing, and Urban Affairs.

EC–4365. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Annual Specifications for the 2007 Pacific Sardine Fishing Season'' (RIN0648–AV11) received on December 7, 2007; to the Committee on Commerce, Science, and Transportation.

EC–4366. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Observer Health and Safety'' (RIN0648–AU46) received on December 7, 2007; to the Committee on Commerce, Science, and Transportation.

EC–4367. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish for Vessels Participating in the Rockfish Entry Level Fishery in the Central Regulatory Area of the Gulf of Alaska'' (RIN0648–XD83) received on December 7, 2007; to the Committee on Commerce, Science, and Transportation.

EC–4368. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to the storage of plutonium at the Savannah River Site; to the Committee on Energy and Natural Resources.

EC–4369. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the integration of the hurricane storm damage reduction system; to the Committee on Environment and Public Works.

EC–4370. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Voluntary Disclosures'' (22 CFR part 127) received on December 6, 2007; to the Committee on Foreign Relations.

EC–4371. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the International Arms Traffic in Arms Regulations: UN Embargoed Countries'' (22 CFR part 126) received on December 6, 2007; to the Committee on Foreign Relations.

EC–4372. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the International Traffic in Arms Regulations: Regarding Dual and Third Country Nationals'' (22 CFR part 124) received on December 6, 2007; to the Committee on Foreign Relations.

EC–4373. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed agreement for the export of defense services to the United Kingdom in support of the sale of one C–17 Globemaster III aircraft; to the Committee on Foreign Relations.

EC–4374. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed agreement for the export of defense services to the Kingdom of Saudi Arabia to support the sale of 16 S–92A helicopters; to the Committee on Foreign Relations.

EC–4375. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to loan guarantees to Israel; to the Committee on Foreign Relations.

EC–4376. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense services to Canada related to the acquisition of SNIPER Targeting Pods; to the Committee on Foreign Relations.

EC–4377. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Revision of the Requirements for Live Vaccine Processing'' (Docket No. 2007N–0284) received on December 7, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–4378. A communication from the Special Assistant to the President and Director, Office of Administration, Executive Office of the President, transmitting, pursuant to law, a report relative to personnel employed in the White House Office; to the Committee on Homeland Security and Governmental Affairs.

EC–4379. A communication from the Inspector General, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Performance Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4380. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Performance and Accountability Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4381. A communication from the President and Chief Executive Officer, Overseas Private Investment Corporation, transmitting, pursuant to law, the Corporation's Management Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4382. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Semiannual Report of the Department's Inspector General for the 6-month period of April 1, 2007, through September 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4383. A communication from the Director, Office of Government Ethics, transmitting, pursuant to law, the Office's Performance and Accountability Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4384. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the Semiannual Report of the Administration's Inspector General for the period ending September 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4385. A communication from the Chairman, Farm Credit System Insurance Corporation, transmitting, pursuant to law, its consolidated report relative to its operations; to the Committee on Homeland Security and Governmental Affairs.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–271. A resolution adopted by the Senate of the Associated Students of the University of Nevada urging Congress to pass the DREAM Act; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PRYOR (for himself, Mr. CHAMBLISS, and Mrs. LINCOLN):

S. 2492. A bill to provide for improved oversight of and accountability for military housing privatization initiative projects; to the Committee on Armed Services.

By Mr. LAUTENBERG (for himself and Mr. MENENDEZ):

S. 2493. A bill to prohibit the limitation of certain air traffic in the New York and New Jersey region; to the Committee on Commerce, Science, and Transportation.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 2494. A bill to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID:

S. Res. 407. A resolution relative to the death of Representative Julia Carson, of Indiana; considered and agreed to.

By Mr. CHAMBLISS (for himself and Mr. ISAKSON):

S. Res. 408. A resolution congratulating the Valdosta State University football team on winning the 2007 Division II National Championship; considered and agreed to.

ADDITIONAL COSPONSORS

S. 821

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 821, a bill to amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide for an extension of eligibility for supplemental security income through fiscal year 2010 for refugees, asylees, and certain other humanitarian immigrants.

S. 1183

At the request of Mr. HARKIN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1183, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes.

S. 1780

At the request of Mr. ROCKEFELLER, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1780, a bill to require the FCC, in enforcing its regulations concerning the broadcast of indecent programming, to maintain a policy that a single word or image may be considered indecent.

S. 1963

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1963, a bill to amend the Internal Revenue Code of 1986 to allow bonds guaranteed by the Federal home loan banks to be treated as tax exempt bonds.

S. 2020

At the request of Mr. LUGAR, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2020, a bill to reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2010, to rename the Tropical Forest Conservation Act of 1998 as the ''Tropical Forest and Coral Conservation Act of 2007'', and for other purposes.

S. 2051

At the request of Mr. CONRAD, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 2051, a bill to amend the small rural school achievement program and the rural and low-income school program under part B of title VI of the Elementary and Secondary Education Act of 1965.

S. 2119

At the request of Mr. JOHNSON, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2119, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 2136

At the request of Mr. DURBIN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 2136, a bill to address the treatment of primary mortgages in bankruptcy, and for other purposes.

S. 2166

At the request of Mr. CASEY, the names of the Senator from Vermont (Mr. LEAHY), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 2166, a bill to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries, and for other purposes.

S. 2191

At the request of Mr. LIEBERMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2191, a bill to direct the Administrator of the Environmental Protection Agency to establish a program to decrease emissions of greenhouse gases, and for other purposes.

S. 2255

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2255, a bill to amend the National Trails System Act to provide for studies of the Chisholm Trail and Great Western Trail to determine whether to add the trails to the National Trails System, and for other purposes.

S. 2257

At the request of Mr. KERRY, his name was added as a cosponsor of S. 2257, a bill to impose sanctions on officials of the State Peace and Development Council in Burma, to amend the Burmese Freedom and Democracy Act of 2003 to prohibit the importation of gemstones and hardwoods from Burma, to promote a coordinated international effort to restore civilian democratic rule to Burma, and for other purposes.

S. 2277

At the request of Mr. SMITH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2277, a bill to amend the Internal Revenue Code of 1986 to increase the limitation on the issuance of qualified veterans' mortgage bonds for Alaska, Oregon, and Wisconsin and to modify the definition of qualified veteran.

S. 2278

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2278, a bill to improve the prevention, detection, and treatment of community and healthcare-associated infections (CHAI), with a focus on antibiotic-resistant bacteria.

S. 2279

At the request of Mr. CASEY, his name was added as a cosponsor of S. 2279, a bill to combat international violence against women and girls.

S. 2332

At the request of Mr. DORGAN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 2332, a bill to promote transparency in the adoption of new media ownership rules by the Federal Communications Commission, and to establish an independent panel to make recommendations on how to increase the representation of women and minorities in broadcast media ownership.

S. 2352

At the request of Mr. JOHNSON, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2352, a bill to amend title XVIII of the Social Security Act to provide Medicare beneficiaries greater choice with regard to accessing hearing health services and benefits.

S. 2428

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 2428, a bill to direct the Secretary of Education to establish and maintain a public website through which individuals may find a complete database of available scholarships, fellowships, and other programs of financial assistance in the study of science, technology, engineering, and mathematics.

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of S. 2428, supra.

S. 2450

At the request of Mr. SPECTER, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2450, a bill to amend the Federal Rules of Evidence to address the waiver of the attorney-client privilege and the work product doctrine.

S. CON. RES. 53

At the request of Mr. NELSON of Florida, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Con. Res. 53, a concurrent resolution condemning the kidnapping and hostage-taking of 3 United States citizens for over 4 years by the Revolutionary Armed Forces of Colombia (FARC), and demanding their immediate and unconditional release.

At the request of Mr. ISAKSON, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Con. Res. 53, supra.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 407—RELATIVE TO THE DEATH OF REPRESENTATIVE JULIA CARSON, OF INDIANA

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 407

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable JULIA CARSON, late a Representative from the State of Indiana.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

SENATE RESOLUTION 408—CONGRATULATING THE VALDOSTA STATE UNIVERSITY FOOTBALL TEAM ON WINNING THE 2007 DIVISION II NATIONAL CHAMPIONSHIP

Mr. CHAMBLISS (for himself and Mr. ISAKSON) submitted the following resolution; which was considered and agreed to:

S. RES. 408

Whereas, on December 15, 2007, the Valdosta State University Blazers football team defeated Northwest Missouri State University by a score of 25-20 in Florence, Alabama, to win the 2007 National Collegiate Athletic Association (NCAA) Division II National Championship;

Whereas this victory gave Valdosta State University its 2nd football national championship title in 4 years;

Whereas Coach David Dean became only the 2nd 1st-year head coach in NCAA history to lead a team to the Division II title;

Whereas the Blazers finished the season with an impressive 13-1 record, including victories over Catawba College, the University of North Alabama, and California University of Pennsylvania in the playoffs to advance to the championship game against Northwest Missouri State University; and

Whereas 7 Valdosta State University players were named to the All-Gulf Conference team, including wide receiver Cedric Jones and safety Sherard Reynolds, who were also named to the All-American team: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates and honors the Valdosta State University Blazers football team on winning the 2007 National Collegiate Athletic Association Division II National Championship;

(2) recognizes and commends the courage, hard work, and dedication displayed by the Valdosta State University football team and staff throughout the season in order to obtain this great honor; and

(3) commends Valdosta State University, the city of Valdosta, and all of the fans of the Blazers football team throughout the State of Georgia for their endless support of this special team throughout the 2007 championship season.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3857. Mrs. FEINSTEIN (for herself, Mr. ROCKEFELLER, Mr. LEAHY, and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by her to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table.

SA 3858. Mrs. FEINSTEIN (for herself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by her to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3859. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3860. Mr. COBURN (for himself, Mr. DEMINT, Mr. MCCAIN, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table.

SA 3861. Mr. COBURN (for himself, Mr. BURR, Mr. MCCAIN, Mr. DEMINT, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 2764, supra; which was ordered to lie on the table.

SA 3862. Mr. LEAHY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table.

SA 3863. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3864. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table.

SA 3865. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 2764, supra; which was ordered to lie on the table.

SA 3866. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table .

SA 3867. Mr. DODD (for Mr. DORGAN) proposed an amendment to the bill S. 2096, to amend the Do-Not-Call Implementation Act to eliminate the automatic removal of telephone numbers registered on the Federal ''do-not-call'' registry.

SA 3868. Mr. DODD (for Mr. LEAHY (for himself, Mr. CORNYN, and Mr. KYL)) proposed an amendment to the bill H.R. 660, to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes.

SA 3869. Mr. DODD (for Mrs. FEINSTEIN) proposed an amendment to the bill H.R. 3690, to provide for the transfer of the Library of Congress police to the United States Capitol Police, and for other purposes.

TEXT OF AMENDMENTS

SA 3857. Mrs. FEINSTEIN (for herself, Mr. ROCKEFELLER, Mr. LEAHY, and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 102, and insert the following:

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

''STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

''SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121 and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.

''(b) Only an express statutory authorization for electronic surveillance or the interception of domestic, wire, oral, or electronic communications, other than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive means for the purpose of subsection (a).''.

(b) OFFENSE.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended—

(1) in subsection (a), by striking ''authorized by statute'' each place it appears in such section and inserting ''authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112.''; and

(2) by adding at the end the following:

''(e) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2) of title 18, United States Code, is amended—

(A) in paragraph (a), by adding at the end the following:

''(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.''; and

(B) in paragraph (f), by striking '', as defined in section 101 of such Act,'' and inserting ''(as defined in section 101(f) of such Act regardless of the limitation of section 701 of such Act)''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

''Sec. 112. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.''.

SA 3858. Mrs. FEINSTEIN (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, strike line 5 and all that follows through page 47, line 16, and insert the following:

(6) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term ''Foreign Intelligence Surveillance Court'' means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, and subject to paragraph (2), a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

(i) in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) DETERMINATION.—

(A) IN GENERAL.—The dismissal of a covered civil action under paragraph (1) shall proceed only if, after review, the Foreign Intelligence Surveillance Court determines that—

(i) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii)(B) of title 18, United States Code;

(ii) the assistance alleged to have been provided was undertaken in good faith by the electronic communication service provider pursuant to a demonstrable reason to believe that compliance with the written request or directive under paragraph (1)(A)(ii) was permitted by law; or

(iii) the electronic communication service provider did not provide the alleged assistance.

(B) PROCEDURES.—In reviewing certifications and making determinations under subparagraph (A), the Foreign Intelligence Surveillance Court shall—

(i) review and make any such determination en banc; and

(ii) permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court—

(I) pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803); and

(II) as necessary to serve justice.

(C) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(i) immediately transfer the matter to the Foreign Intelligence Surveillance Court for a determination regarding the questions described in subparagraph (A); and

(ii) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

SA 3859. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, line 4, strike ''2013.'' and insert the following: ''2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.''.

SA 3860. Mr. COBURN (for himself, Mr. DEMINT, Mr. MCCAIN, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. (a) This section may be cited as the ''Safe Roads and Bridges Act of 2007''.

(b) Notwithstanding any other provision of this Act, the Secretary of Transportation may reprogram any funds appropriated or otherwise made available under this Act for the Department of Transportation that are intended to be used for any congressionally directed spending item, as defined in section 521 of Honest Leadership and Open Government Act of 2007 (Public Law 110-81), for the purpose of improving roads or bridges that have been classified as ''structurally deficient'' or ''functionally obsolete''.

(c) Not later than September 30, 2008, the Secretary of Transportation shall submit to Congress a report that contains a summary of the any reprogramming of congressionally directed spending items under subsection (b) and a description of how such reprogrammed funds were utilized to improve structurally deficient or functionally obsolete roads and bridges. Such report shall be made publicly available on the Internet website of the Department of Transportation.

SA 3861. Mr. COBURN (for himself, Mr. BURR, Mr. MCCAIN, Mr. DEMINT, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. (a) This section may be cited as the ''Women and Children's Health Care First Act of 2007''.

(b) Notwithstanding any other provision of this Act, the Secretary of Health and Human Services may reprogram any funds appropriated or otherwise made available under this Act for the Department of Health and Human Services that are intended to be used for any congressionally directed spending item, as defined in section 521 of Honest Leadership and Open Government Act of 2007 (Public Law 110-81), for the Maternal and Child Health Block Grant.

(c) Not later than September 30, 2008, the Secretary of Health and Human Services shall submit to Congress a report that contains a summary of the any reprogramming of congressionally directed spending items under subsection (b) and a description of how such reprogrammed funds were utilized to improve the health of all mothers and children. Such report shall be made publicly available on the Internet website of the Department of Health and Human Services.

SA 3862. Mr. LEAHY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, after line 21, add the following:

SEC. 111. REVIEW OF PREVIOUS ACTIONS.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) TERRORIST SURVEILLANCE PROGRAM AND PROGRAM.—The terms ''Terrorist Surveillance Program'' and ''Program'' mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007.

(b) REVIEWS.—

(1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Office of the Director of National Intelligence, the Department of Justice, the National Security Agency, and any other element of the intelligence community that participated in the Terrorist Surveillance Program shall work in conjunction to complete a comprehensive review of, with respect to the oversight authority and responsibility of each such Inspector General—

(A) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;

(B) the procedures and substance of, and access to, the legal reviews of the Program;

(C) communications with, and participation of, individuals and entities in the private sector related to the Program;

(D) interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and

(E) any other matters identified by any such Inspector General that would enable that Inspector General to report a complete description of the Program, with respect to such element.

(2) COOPERATION.—Each Inspector General required to conduct a review under paragraph (1) shall—

(A) work in conjunction, to the extent possible, with any other Inspector General required to conduct such a review; and

(B) utilize to the extent practicable, and not unnecessarily duplicate or delay, such reviews or audits that have been completed or are being undertaken by any such Inspector General or by any other office of the Executive Branch related to the Program.

(c) REPORTS.—

(1) PRELIMINARY REPORTS.—Not later than 60 days after the date of the enactment of this Act, the Inspectors General of the Office of the Director of National Intelligence, the Department of Justice, and the National Security Agency, in conjunction with any other Inspector General required to conduct a review under subsection (b)(1), shall submit to the appropriate committees of Congress an interim report that describes the planned scope of such review.

(2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspectors General required to conduct such a review shall submit to the appropriate committees of Congress, to the extent practicable, a comprehensive report on such reviews that includes any recommendations of any such Inspectors General within the oversight authority and responsibility of any such Inspector General with respect to the reviews.

(3) FORM.—A report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex. The unclassified report shall not disclose the name or identity of any individual or entity of the private sector that participated in the Program or with whom there was communication about the Program.

(d) RESOURCES.—

(1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by an Inspector General or any appropriate staff of an Inspector General for a security clearance necessary for the conduct of the review under subsection (b)(1) is carried out as expeditiously as possible.

(2) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR THE INSPECTORS GENERAL.—An Inspector General required to conduct a review under subsection (b)(1) and submit a report under subsection (c) is authorized to hire such additional legal or other personnel as may be necessary to carry out such review and prepare such report in a prompt and timely manner. Personnel authorized to be hired under this paragraph—

(A) shall perform such duties relating to such a review as the relevant Inspector General shall direct; and

(B) are in addition to any other personnel authorized by law.

SA 3863. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, line 20, strike ''and'' and all that follows through page 19, line 16, and insert the following:

''(3) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States; and

''(4) shall not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(c) UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.—

''(1) ACQUISITION INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition authorized by subsection (a) that occurs inside the United States may not target a United States person except in accordance with the provisions of title I.

''(2) ACQUISITION OUTSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition by an electronic, mechanical, or other surveillance device outside the United States may not intentionally target a United States person reasonably believed to be outside the United States to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States unless—

''(A) the Attorney General or the Attorney General's designee submits an application to the Foreign Intelligence Surveillance Court that includes a statement of the facts and circumstances relied upon by the applicant to justify the Attorney General's belief that the target of the acquisition is a foreign power or an agent of a foreign power; and

''(B) the Foreign Intelligence Surveillance Court—

''(i) finds on the basis of the facts submitted by the applicant there is probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

''(ii) issues an ex parte order as requested or as modified approving the targeting of that United States person.

''(3) PROCEDURES.—

''(A) SUBMITTAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Not later than 30 days after the date of the enactment of this title, the Attorney General shall submit to the Foreign Intelligence Surveillance Court the procedures to be utilized in determining whether a target reasonably believed to be outside the United States is a United States person.

''(B) APPROVAL BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The procedures submitted under subparagraph (A) shall be utilized as described in that subparagraph only upon the approval of the Foreign Intelligence Surveillance Court.

''(C) UTILIZATION IN TARGETING.—Any targeting of persons authorized by subsection (a) shall utilize the procedures submitted under subparagraph (A) as approved by the Foreign Intelligence Surveillance Court under subparagraph (B).

''(d) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

''(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g); and

''(2) the targeting and minimization procedures required pursuant to subsections (e) and (f).

''(e) TARGETING PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (i).

''(f) MINIMIZATION PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt, consistent with the requirements of section 101(h), minimization procedures for acquisitions authorized under subsection (a).

''(2) PERSONS IN THE UNITED STATES.—The minimization procedures required by this subsection shall require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, anda warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person.

''(3) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (i).

''(g) CERTIFICATION.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

''(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 168 hours after such determination is made.

''(2) REQUIREMENTS.—A certification made under this subsection shall—

''(A) attest that—

''(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States, and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and that such procedures have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (i);

''(ii) the procedures referred to in clause (i) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States, or result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

''(iii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iv) the minimization procedures to be used with respect to such acquisition—

''(I) meet the definition of minimization procedures under section 101(h);

''(II) require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, and a warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person; and

''(III) have been approved by, or will promptly be submitted for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (i);

''(v) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

''(vi) the acquisition does not constitute electronic surveillance, as limited by section 701; and

''(B) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

''(i) appointed by the President, by and with the consent of the Senate; or

''(ii) the head of any element of the intelligence community.

''(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

''(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

''(5) REVIEW.—The certification required by this subsection shall be subject to judicial review pursuant to subsection (i).

''(h) DIRECTIVES.—

''(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

''(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

''(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

''(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

''(4) CHALLENGING OF DIRECTIVES.—

''(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with the directive. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

''(D) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

''(5) ENFORCEMENT OF DIRECTIVES.—

''(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an order requiring the electronic communication service provider to comply with the directive if the judge finds that the directive was issued in accordance with paragraph (1), meets the requirements of this section, and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

''(D) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(E) PROCESS.—Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5) not later than 7 days after the issuance of such decision. The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(i) JUDICIAL REVIEW.—

''(1) IN GENERAL.—

''(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (d) or targeting and minimization procedures adopted pursuant to subsections (e) and (f).

''(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court any such certification or procedure, or amendment thereto, not later than 5 days after making or amending the certification or adopting or amending the procedures.

''(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (g) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (e) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (f) to assess whether such procedures—

''(A) meet the definition of minimization procedures under section 101(h); and

''(B) require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, and a warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person.

SA 3864. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

In Division G, on page 71, line 10, strike ''$666,087,000'' and insert ''$751,087,000''.

In Division G, on page 71, line 14, strike ''$103,921,000'' and insert ''$188,921,000''.

In Division G, on page 88, between lines 13 and 14, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, amounts appropriated in this Act for the administration and related expenses for the departmental management of the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced by a pro rata percentage required to reduce the total amount appropriated in this Act by $85,000,000.

SA 3865. Mr. BURR submitted an amendment intended to be proposed by him to the bill H.R. 2764, making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

In Division G, on page 71, line 10, strike ''$666,087,000'' and insert ''$751,087,000''.

In Division G, on page 71, line 14, strike ''$103,921,000'' and insert ''$188,921,000''.

In Division G, on page 88, between lines 13 and 14, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, amounts appropriated in this Act for the administration and related expenses for the departmental management of the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced by a pro rata percentage required to reduce the total amount appropriated in this Act by $85,000,000.

SA 3866. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, after line 21, add the following:

SEC. 111. STANDING AND CAUSE OF ACTION FOR PERSONS WHO REFRAIN FROM COMMUNICATIONS BY REASON OF FEAR OF ELECTRONIC SURVEILLANCE.

(a) STANDING AND CAUSE OF ACTION.—A United States citizen shall have standing to bring a cause of action for damages (as specified in subsection (d)) or declaratory or injunctive relief against the United States if that individual has refrained or is refraining

from communications because of a reasonable fear that such communications would be the subject of electronic surveillance conducted without an order issued in accordance with title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or a joint authorization by the Attorney General and the Director of National Intelligence issued in accordance with title VII of the Foreign Intelligence Surveillance Act of 1978, as added by this Act, under a claim of Presidential authority under either the Constitution of the United States or the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224; 50 U.S.C. 1541 note).

(b) RULES APPLICABLE TO ACTIONS.—In any civil action filed under subsection (a), the following shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Attorney General, the Clerk of the House of Representatives, and the Secretary of the Senate.

(3) A reasonable fear that communications will be the subject of electronic surveillance may be established by evidence that the person bringing the action—

(A) has had and intends to continue to have regular communications from the United States to one or more persons in Afghanistan, Iraq, Pakistan, or any country designated as a state sponsor of terrorism in the course of that person's paid employment doing journalistic, academic, or other research pertaining to terrorism or terrorist groups; or

(B) has engaged and intends to continue to engage in one or more commercial transactions with a bank or other financial institution in a country described in subparagraph (A).

(4) The procedures and standards of the Classified Information Procedures Act (18 U.S.C. App.) shall apply to the action.

(5) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(6) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(c) MOOTNESS.—In any civil action filed under subsection (a) for declaratory or injunctive relief, a defendant's claim that the surveillance activity has been terminated may not be grounds for dismissing the case, unless the Attorney General files a declaration under section 1746 of title 28, United States Code, affirming that—

(1) the surveillance described in subsection (a) has ceased; and

(2) the executive branch of the Federal Government does not have legal authority to renew the surveillance described in subsection (a).

(d) LIMITATION OF DAMAGES.—In any civil action filed under subsection (a), a prevailing plaintiff shall recover—

(1) damages for injuries arising from a reasonable fear caused by the electronic surveillance described in subsection (a) of not less than $50 and not more than $1000; and

(2) reasonable attorney's fees and other investigation and litigation costs reasonably incurred relating to that civil action.

(e) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

(f) RULES OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) affect a cause of action filed before the date of enactment of this Act;

(2) limit any cause of action available to a person under any other provision of law, including the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); or

(3) limit the relief that may be awarded under any other provision of law, including the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(g) DEFINITION.—In this section, the term ''electronic surveillance'' has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

SA 3867. Mr. DODD (for Mr. DORGAN) proposed an amendment to the bill S. 2096, to amend the Do-Not-Call Implementation Act to eliminate the automatic removal of telephone numbers registered on the Federal ''do-not-call'' registry; as follows:

At the end of the bill, add the following:

SEC. 3. REPORT ON ACCURACY.

Not later than 9 months after the enactment of this Act, the Federal Trade Commission shall report to the Congress on efforts taken by the Commission, after the date of enactment of this Act, to improve the accuracy of the ''do-not-call'' Registry.

SA 3868. Mr. DODD (for Mr. LEAHY (for himself, Mr. CORNYN, and Mr. KYL)) proposed an amendment to the bill H.R. 660, to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Court Security Improvement Act of 2007''.

TITLE I—JUDICIAL SECURITY IMPROVEMENTS AND FUNDING

SEC. 101. JUDICIAL BRANCH SECURITY REQUIREMENTS.

(a) ENSURING CONSULTATION WITH THE JUDICIARY.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

''(i) The Director of the United States Marshals Service shall consult with the Judicial Conference of the United States on a continuing basis regarding the security requirements for the judicial branch of the United States Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term 'judicial security' includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.''.

(b) CONFORMING AMENDMENT.—Section 331 of title 28, United States Code, is amended by adding at the end the following:

''The Judicial Conference shall consult with the Director of United States Marshals Service on a continuing basis regarding the security requirements for the judicial branch of the United States Government, to ensure that the views of the Judicial Conference regarding the security requirements for the judicial branch of the Federal Government are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. In this paragraph, the term 'judicial security' includes the security of buildings housing the judiciary, the personal security of judicial officers, the assessment of threats made to judicial officers, and the protection of all other judicial personnel. The United States Marshals Service retains final authority regarding security requirements for the judicial branch of the Federal Government.''.

SEC. 102. PROTECTION OF UNITED STATES TAX COURT.

(a) IN GENERAL.—Section 566(a) of title 28, United States Code, is amended by striking ''and the Court of International Trade'' and inserting '', the Court of International Trade, and the United States Tax Court, as provided by law''.

(b) INTERNAL REVENUE CODE.—Section 7456(c) of the Internal Revenue Code of 1986 (relating to incidental powers of the Tax Court) is amended in the matter following paragraph (3), by striking the period at the end, and inserting ''and may otherwise provide, when requested by the chief judge of the Tax Court, for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Tax Court.''.

(c) REIMBURSEMENT.—The United States Tax Court shall reimburse the United States Marshals Service for protection provided under the amendments made by this section.

SEC. 103. ADDITIONAL AMOUNTS FOR UNITED STATES MARSHALS SERVICE TO PROTECT THE JUDICIARY.

In addition to any other amounts authorized to be appropriated for the United States Marshals Service, there are authorized to be appropriated for the United States Marshals Service $20,000,000 for each of fiscal years 2007 through 2011 for—

(1) hiring entry-level deputy marshals for providing judicial security;

(2) hiring senior-level deputy marshals for investigating threats to the judiciary and providing protective details to members of the judiciary, assistant United States attorneys, and other attorneys employed by the Federal Government; and

(3) for the Office of Protective Intelligence, for hiring senior-level deputy marshals, hiring program analysts, and providing secure computer systems.

SEC. 104. FINANCIAL DISCLOSURE REPORTS.

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by striking ''2009'' each place it appears and inserting ''2011''.

TITLE II—CRIMINAL LAW ENHANCEMENTS TO PROTECT JUDGES, FAMILY MEMBERS, AND WITNESSES

SEC. 201. PROTECTIONS AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES AND FEDERAL LAW ENFORCEMENT OFFICERS.

(a) OFFENSE.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"§ 1521. Retaliating against a Federal judge or Federal law enforcement officer by false claim or slander of title

''Whoever files, attempts to file, or conspires to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of an individual described in section 1114, on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

''1521. Retaliating against a Federal judge or Federal law enforcement officer by false claim or slander of title.''.

SEC. 202. PROTECTION OF INDIVIDUALS PERFORMING CERTAIN OFFICIAL DUTIES.

(a) OFFENSE.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

"§ 119. Protection of individuals performing certain official duties

''(a) IN GENERAL.—Whoever knowingly makes restricted personal information about a covered person, or a member of the immediate family of that covered person, publicly available—

''(1) with the intent to threaten, intimidate, or incite the commission of a crime of violence against that covered person, or a member of the immediate family of that covered person; or

''(2) with the intent and knowledge that the restricted personal information will be used to threaten, intimidate, or facilitate the commission of a crime of violence against that covered person, or a member of the immediate family of that covered person,

shall be fined under this title, imprisoned not more than 5 years, or both.

''(b) DEFINITIONS.—In this section—

''(1) the term 'restricted personal information' means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual;

''(2) the term 'covered person' means—

''(A) an individual designated in section 1114;

''(B) a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be, or was, serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate;

''(C) an informant or witness in a Federal criminal investigation or prosecution; or

''(D) a State or local officer or employee whose restricted personal information is made publicly available because of the participation in, or assistance provided to, a Federal criminal investigation by that officer or employee;

''(3) the term 'crime of violence' has the meaning given the term in section 16; and

''(4) the term 'immediate family' has the meaning given the term in section 115(c)(2).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

''119. Protection of individuals performing certain official duties.''.

SEC. 203. PROHIBITION OF POSSESSION OF DANGEROUS WEAPONS IN FEDERAL COURT FACILITIES.

Section 930(e)(1) of title 18, United States Code, is amended by inserting ''or other dangerous weapon'' after ''firearm''.

SEC. 204. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.

Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.''.

SEC. 205. MODIFICATION OR TAMPERING WITH A WITNESS, VICTIM, OR AN INFORMANT OFFENSE.

Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)(3)—

(A) by amending subparagraph (A) to reads as follows:

''(A) in the case of a killing, the punishment provided in sections 1111 and 1112;'';

(B) in the matter following clause (ii) of subparagraph (B) by striking ''20 years'' and inserting ''30 years''; and

(C) in subparagraph (C), by striking ''10 years'' and inserting ''20 years'';

(2) in subsection (b), by striking ''ten years'' and inserting ''20 years''; and

(3) in subsection (d), by striking ''one year'' and inserting ''3 years''.

SEC. 206. MODIFICATION OF RETALIATION OFFENSE.

Section 1513 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B)—

(A) by inserting a comma after ''probation''; and

(B) by striking the comma which immediately follows another comma;

(2) in subsection (a)(2)(B), by striking ''20 years'' and inserting ''30 years'';

(3) in subsection (b)—

(A) in paragraph (2)—

(i) by inserting a comma after ''probation''; and

(ii) by striking the comma which immediately follows another comma; and

(B) in the matter following paragraph (2), by striking ''ten years'' and inserting ''20 years''; and

(4) by redesignating the second subsection (e) as subsection (f).

SEC. 207. GENERAL MODIFICATIONS OF FEDERAL MURDER CRIME AND RELATED CRIMES.

Section 1112(b) of title 18, United States Code, is amended—

(1) by striking ''ten years'' and inserting ''15 years''; and

(2) by striking ''six years'' and inserting ''8 years''.

SEC. 208. ASSAULT PENALTIES.

(a) IN GENERAL.—Section 115(b) of title 18, United States Code, is amended by striking ''(1)'' and all that follows through the end of paragraph (1) and inserting the following: ''(1) The punishment for an assault in violation of this section is—

''(A) a fine under this title; and

''(B)(i) if the assault consists of a simple assault, a term of imprisonment for not more than 1 year;

''(ii) if the assault involved physical contact with the victim of that assault or the intent to commit another felony, a term of imprisonment for not more than 10 years;

''(iii) if the assault resulted in bodily injury, a term of imprisonment for not more than 20 years; or

''(iv) if the assault resulted in serious bodily injury (as that term is defined in section 1365 of this title, and including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) or a dangerous weapon was used during and in relation to the offense, a term of imprisonment for not more than 30 years.''.

(b) CONFORMING AMENDMENT.—Section 111(a) of title 18, United States Code, is amended by striking ''in all other cases'' and inserting ''where such acts involve physical contact with the victim of that assault or the intent to commit another felony''.

SEC. 209. DIRECTION TO THE SENTENCING COMMISSION.

The United States Sentencing Commission is directed to review the Sentencing Guidelines as they apply to threats punishable under section 115 of title 18, United States Code, that occur over the Internet, and determine whether and by how much that circumstance should aggravate the punishment pursuant to section 994 of title 28, United States Code. In conducting the study, the Commission shall take into consideration the number of such threats made, the intended number of recipients of such threats, and whether the initial senders of such threats were acting in an individual capacity or as part of a larger group.

TITLE III—PROTECTING STATE AND LOCAL JUDGES AND RELATED GRANT PROGRAMS

SEC. 301. GRANTS TO STATES TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(5) by a State, unit of local government, or Indian tribe to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

"SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated $20,000,000 for each of the fiscal years 2008 through 2012 to carry out this subtitle.''.

SEC. 302. ELIGIBILITY OF STATE COURTS FOR CERTAIN FEDERAL GRANTS.

(a) CORRECTIONAL OPTIONS GRANTS.—Section 515 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(4) grants to State courts to improve security for State and local court systems.''; and

(2) in subsection (b), by adding at the end the following:

''Priority shall be given to State court applicants under subsection (a)(4) that have the greatest demonstrated need to provide security in order to administer justice.''.

(b) ALLOCATIONS.—Section 516(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762b) is amended—

(1) by striking ''80'' and inserting ''70'';

(2) by striking ''and 10'' and inserting ''10''; and

(3) by inserting before the period the following: '', and 10 percent for section 515(a)(4)''.

(c) STATE AND LOCAL GOVERNMENTS TO CONSIDER COURTS.—The Attorney General may require, as appropriate, that whenever a State or unit of local government or Indian tribe applies for a grant from the Department of Justice, the State, unit, or tribe demonstrate that, in developing the application and distributing funds, the State, unit, or tribe—

(1) considered the needs of the judicial branch of the State, unit, or tribe, as the case may be;

(2) consulted with the chief judicial officer of the highest court of the State, unit, or tribe, as the case may be; and

(3) consulted with the chief law enforcement officer of the law enforcement agency responsible for the security needs of the judicial branch of the State, unit, or tribe, as the case may be.

(d) ARMOR VESTS.—Section 2501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ll) is amended—

(1) in subsection (a), by inserting ''and State and local court officers'' after ''tribal law enforcement officers''; and

(2) in subsection (b)(1), by inserting ''State or local court,'' after ''government,''.

SEC. 303. GRANTS TO STATES FOR THREAT ASSESSMENT DATABASES.

(a) IN GENERAL.—The Attorney General, through the Office of Justice Programs, shall make grants under this section to the highest State courts in States participating in the program, for the purpose of enabling such courts to establish and maintain a threat assessment database described in subsection (b).

(b) DATABASE.—For purposes of subsection (a), a threat assessment database is a database through which a State can—

(1) analyze trends and patterns in domestic terrorism and crime;

(2) project the probabilities that specific acts of domestic terrorism or crime will occur; and

(3) develop measures and procedures that can effectively reduce the probabilities that those acts will occur.

(c) CORE ELEMENTS.—The Attorney General shall define a core set of data elements to be used by each database funded by this section so that the information in the database can be effectively shared with other States and with the Department of Justice.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2008 through 2011.

TITLE IV—LAW ENFORCEMENT OFFICERS

SEC. 401. REPORT ON SECURITY OF FEDERAL PROSECUTORS.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the security of assistant United States attorneys and other Federal attorneys arising from the prosecution of terrorists, violent criminal gangs, drug traffickers, gun traffickers, white supremacists, those who commit fraud and other white-collar offenses, and other criminal cases.

(b) CONTENTS.—The report submitted under subsection (a) shall describe each of the following:

(1) The number and nature of threats and assaults against attorneys handling prosecutions described in subsection (a) and the reporting requirements and methods.

(2) The security measures that are in place to protect the attorneys who are handling prosecutions described in subsection (a), including threat assessments, response procedures, availability of security systems and other devices, firearms licensing (deputations), and other measures designed to protect the attorneys and their families.

(3) The firearms deputation policies of the Department of Justice, including the number of attorneys deputized and the time between receipt of threat and completion of the deputation and training process.

(4) For each requirement, measure, or policy described in paragraphs (1) through (3), when the requirement, measure, or policy was developed and who was responsible for developing and implementing the requirement, measure, or policy.

(5) The programs that are made available to the attorneys for personal security training, including training relating to limitations on public information disclosure, basic home security, firearms handling and safety, family safety, mail handling, counter-surveillance, and self-defense tactics.

(6) The measures that are taken to provide attorneys handling prosecutions described in subsection (a) with secure parking facilities, and how priorities for such facilities are established—

(A) among Federal employees within the facility;

(B) among Department of Justice employees within the facility; and

(C) among attorneys within the facility.

(7) The frequency attorneys handling prosecutions described in subsection (a) are called upon to work beyond standard work hours and the security measures provided to protect attorneys at such times during travel between office and available parking facilities.

(8) With respect to attorneys who are licensed under State laws to carry firearms, the policy of the Department of Justice as to—

(A) carrying the firearm between available parking and office buildings;

(B) securing the weapon at the office buildings; and

(C) equipment and training provided to facilitate safe storage at Department of Justice facilities.

(9) The offices in the Department of Justice that are responsible for ensuring the security of attorneys handling prosecutions described in subsection (a), the organization and staffing of the offices, and the manner in which the offices coordinate with offices in specific districts.

(10) The role, if any, that the United States Marshals Service or any other Department of Justice component plays in protecting, or providing security services or training for, attorneys handling prosecutions described in subsection (a).

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. EXPANDED PROCUREMENT AUTHORITY FOR THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Section 995 of title 28, United States Code, is amended by adding at the end the following:

''(f) The Commission may—

''(1) use available funds to enter into contracts for the acquisition of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year, to the same extent as executive agencies may enter into such contracts under the authority of section 303L of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l);

''(2) enter into multi-year contracts for the acquisition of property or services to the same extent as executive agencies may enter into such contracts under the authority of section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c); and

''(3) make advance, partial, progress, or other payments under contracts for property or services to the same extent as executive agencies may make such payments under the authority of section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255).''.

(b) SUNSET.—The amendment made by subsection (a) shall cease to have force and effect on September 30, 2010.

SEC. 502. BANKRUPTCY, MAGISTRATE, AND TERRITORIAL JUDGES LIFE INSURANCE.

(a) IN GENERAL.—Section 604(a)(5) of title 28, United States Code, is amended by inserting after ''hold office during good behavior,'' the following: ''magistrate judges appointed under section 631 of this title, and territorial district court judges appointed under section 24 of the Organic Act of Guam (48 U.S.C. 1424b), section 1(b) of the Act of November 8, 1977 (48 U.S.C. 1821), or section 24(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614(a)),''.

(b) BANKRUPTCY JUDGES.—

(1) IN GENERAL.—The Director of the Administrative Office of the United States Courts, upon authorization by the Judicial Conference of the United States and subject to the availability of appropriations, shall pay on behalf of bankruptcy judges appointed under section 152 of title 28, United States Code, aged 65 or over, any increases in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments.

(2) IMPLEMENTATION.—Any payment authorized by the Judicial Conference of the United States under paragraph (1) shall apply with respect to any payment made on or after the first day of the first applicable pay period beginning on or after the date of that authorization.

(c) CONSTRUCTION.—For purposes of construing and applying chapter 87 of title 5, United States Code, including any adjustment of insurance rates by regulation or otherwise, the following categories of judicial officers shall be deemed to be judges of the United States as described under section 8701 of title 5, United States Code:

(1) Bankruptcy judges appointed under section 152 of title 28, United States Code.

(2) Magistrate judges appointed under section 631 of title 28, United States Code.

(3) Territorial district court judges appointed under section 24 of the Organic Act of Guam (48 U.S.C. 1424b), section 1(b) of the Act of November 8, 1977 (48 U.S.C. 1821), or section 24(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1614(a)).

(4) Judges retired under section 377 of title 28, United States Code.

(5) Judges retired under section 373 of title 28, United States Code.

(d) EFFECTIVE DATE.—Subsection (c) and the amendment made by subsection (a) shall apply with respect to any payment made on or after the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

SEC. 503. ASSIGNMENT OF JUDGES.

Section 296 of title 28, United States Code, is amended by inserting at the end of the second undesignated paragraph the following new sentence: ''However, a district judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall

have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.''.

SEC. 504. SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATE JUDGES.

Section 631(a) of title 28, United States Code, is amended by striking ''Northern Mariana Islands'' the first place it appears and inserting ''Northern Mariana Islands (including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title, when designated and assigned to the court to which such judge was appointed)''.

SEC. 505. GUARANTEEING COMPLIANCE WITH PRISONER PAYMENT COMMITMENTS.

Section 3624(e) of title 18, United States Code, is amended by striking the last sentence and inserting the following: ''Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.''.

SEC. 506. STUDY AND REPORT.

The Attorney General shall study whether the generally open public access to State and local records imperils the safety of the Federal judiciary. Not later than 18 months after the enactment of this Act, the Attorney General shall report to Congress the results of that study together with any recommendations the Attorney General deems necessary.

SEC. 507. REAUTHORIZATION OF FUGITIVE APPREHENSION TASK FORCES.

Section 6(b) of the Presidential Threat Protection Act of 2000 (28 U.S.C. 566 note; Public Law 106–544) is amended—

(1) by striking ''and'' after ''fiscal year 2002,''; and

(2) by inserting '', and $10,000,000 for each of fiscal years 2008 through 2012'' before the period.

SEC. 508. INCREASED PROTECTION OF FEDERAL JUDGES.

(a) MINIMUM DOCUMENT REQUIREMENTS.—

(1) MINIMUM REQUIREMENTS.—For purposes of section 202(b)(6) of the REAL ID Act of 2005(49 U.S.C. 30301 note), a State may, in the case of an individual described in subparagraph (A) or (B) of paragraph (2), include in a driver's license or other identification card issued to that individual by the State, the address specified in that subparagraph in lieu of the individual's address of principle residence.

(2) INDIVIDUALS AND INFORMATION.—The individuals and addresses referred to in paragraph (1) are the following:

(A) In the case of a Justice of the United States, the address of the United States Supreme Court.

(B) In the case of a judge of a Federal court, the address of the courthouse.

(b) VERIFICATION OF INFORMATION.—For purposes of section 202(c)(1)(D) of the REAL ID Act of 2005 (49 U.S.C. 30301 note), in the case of an individual described in subparagraph (A) or (B) of subsection (a)(2), a State need only require documentation of the address appearing on the individual's driver's license or other identification card issued by that State to the individual.

SEC. 509. FEDERAL JUDGES FOR COURTS OF APPEALS.

(a) IN GENERAL.—Section 44(a) of title 28, United States Code, is amended in the table—

(1) in the item relating to the District of Columbia Circuit, by striking ''12'' and inserting ''11''; and

(2) in the item relating to the Ninth Circuit, by striking ''28'' and inserting ''29''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a)(2) shall take effect on January 21, 2009.

SEC. 510. NATIONAL INSTITUTE OF JUSTICE STUDY AND REPORT.

(a) STUDY REQUIRED.—The Director of the National Institute of Justice (referred to in this section as the ''Director'') shall conduct a study to determine and compile the collateral consequences of convictions for criminal offenses in the United States, each of the 50 States, each territory of the United States, and the District of Columbia.

(b) ACTIVITIES UNDER STUDY.—In conducting the study under subsection (a), the Director shall identify any provision in the Constitution, statutes, or administrative rules of each jurisdiction described in that subsection that imposes collateral sanctions or authorizes the imposition of disqualifications, and any provision that may afford relief from such collateral sanctions and disqualifications.

(c) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director shall submit to Congress a report on the activities carried out under this section.

(2) CONTENTS.—The report submitted under paragraph (1) shall include a compilation of citations, text, and short descriptions of any provision identified under subsection (b).

(3) DISTRIBUTION.—The report submitted under paragraph (1) shall be distributed to the legislature and chief executive of each of the 50 States, each territory of the United States, and the District of Columbia.

(d) DEFINITIONS.—In this section:

(1) COLLATERAL CONSEQUENCE.—The term ''collateral consequence'' means a collateral sanction or a disqualification.

(2) COLLATERAL SANCTION.—The term ''collateral sanction''—

(A) means a penalty, disability, or disadvantage, however denominated, that is imposed by law as a result of an individual's conviction for a felony, misdemeanor, or other offense, but not as part of the judgment of the court; and

(B) does not include a term of imprisonment, probation, parole, supervised release, fine, assessment, forfeiture, restitution, or the costs of prosecution.

(3) DISQUALIFICATION.—The term ''disqualification'' means a penalty, disability, or disadvantage, however denominated, that an administrative agency, official, or a court in a civil proceeding is authorized, but not required, to impose on an individual convicted of a felony, misdemeanor, or other offense on grounds relating to the conviction.

SEC. 511. TECHNICAL AMENDMENT.

Section 2255 of title 28, United States Code, is amended by designating the 8 undesignated paragraphs as subsections (a) through (h), respectively.

SA 3869. Mr. DODD (for Mrs. FEINSTEIN) proposed an amendment to the bill H.R. 3690, to provide for the transfer of the Library of Congress police to the United States Capitol Police, and for other purpose: as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007''.

SEC. 2. TRANSFER OF PERSONNEL.

(a) TRANSFERS.—

(1) LIBRARY OF CONGRESS POLICE EMPLOYEES.—Effective on the employee's transfer date, each Library of Congress Police employee shall be transferred to the United States Capitol Police and shall become either a member or civilian employee of the Capitol Police, as determined by the Chief of the Capitol Police under subsection (b).

(2) LIBRARY OF CONGRESS POLICE CIVILIAN EMPLOYEES.—Effective on the employee's transfer date, each Library of Congress Police civilian employee shall be transferred to the United States Capitol Police and shall become a civilian employee of the Capitol Police.

(b) TREATMENT OF LIBRARY OF CONGRESS POLICE EMPLOYEES.—

(1) DETERMINATION OF STATUS WITHIN CAPITOL POLICE.—

(A) ELIGIBILITY TO SERVE AS MEMBERS OF THE CAPITOL POLICE.—A Library of Congress Police employee shall become a member of the Capitol Police on the employee's transfer date if the Chief of the Capitol Police determines and issues a written certification that the employee meets each of the following requirements:

(i) Based on the assumption that such employee would perform a period of continuous Federal service after the transfer date, the employee would be entitled to an annuity for immediate retirement under section 8336(b) or 8412(b) of title 5, United States Code (as determined by taking into account paragraph (3)(A)), on the date such employee becomes 60 years of age.

(ii) During the transition period, the employee successfully completes training, as determined by the Chief of the Capitol Police.

(iii) The employee meets the qualifications required to be a member of the Capitol Police, as determined by the Chief of the Capitol Police.

(B) SERVICE AS CIVILIAN EMPLOYEE OF CAPITOL POLICE.—If the Chief of the Capitol Police determines that a Library of Congress Police employee does not meet the eligibility requirements, the employee shall become a civilian employee of the Capitol Police on the employee's transfer date.

(C) FINALITY OF DETERMINATIONS.—Any determination of the Chief of the Capitol Police under this paragraph shall not be appealable or reviewable in any manner.

(D) DEADLINE FOR DETERMINATIONS.—The Chief of the Capitol Police shall complete the determinations required under this paragraph for all Library of Congress Police employees not later than September 30, 2009.

(2) EXEMPTION FROM MANDATORY SEPARATION.—Section 8335(c) or 8425(c) of title 5, United States Code, shall not apply to any Library of Congress Police employee who becomes a member of the Capitol Police under this subsection, until the earlier of—

(A) the date on which the individual is entitled to an annuity for immediate retirement under section 8336(b) or 8412(b) of title 5, United States Code; or

(B) the date on which the individual—

(i) is 57 years of age or older; and

(ii) is entitled to an annuity for immediate retirement under section 8336(m) or 8412(d) of title 5, United States Code, (as determined by taking into account paragraph (3)(A)).

(3) TREATMENT OF PRIOR CREDITABLE SERVICE FOR RETIREMENT PURPOSES.—

(A) PRIOR SERVICE FOR PURPOSES OF ELIGIBILITY FOR IMMEDIATE RETIREMENT AS MEMBER OF CAPITOL POLICE.—Any Library of Congress Police employee who becomes a member of the Capitol Police under this subsection shall be entitled to have any creditable service under section 8332 or 8411 of title 5, United States Code, that was accrued prior to becoming a member of the Capitol

Police included in calculating the employee's service as a member of the Capitol Police for purposes of section 8336(m) or 8412(d) of title 5, United States Code.

(B) PRIOR SERVICE FOR PURPOSES OF COMPUTATION OF ANNUITY.—Any creditable service under section 8332 or 8411 of title 5, United States Code, of an individual who becomes a member of the Capitol Police under this subsection that was accrued prior to becoming a member of the Capitol Police—

(i) shall be treated and computed as employee service under section 8339 or section 8415 of such title; but

(ii) shall not be treated as service as a member of the Capitol Police or service as a congressional employee for purposes of applying any formula under section 8339(b), 8339(q), 8415(c), or 8415(d) of such title under which a percentage of the individual's average pay is multiplied by the years (or other period) of such service.

(c) DUTIES OF EMPLOYEES TRANSFERRED TO CIVILIAN POSITIONS.—

(1) DUTIES.—The duties of any individual who becomes a civilian employee of the Capitol Police under this section, including a Library of Congress Police civilian employee under subsection (a)(2) and a Library of Congress Police employee who becomes a civilian employee of the Capitol Police under subsection (b)(1)(B), shall be determined solely by the Chief of the Capitol Police, except that a Library of Congress Police civilian employee under subsection (a)(2) shall continue to support Library of Congress police operations until all Library of Congress Police employees are transferred to the United States Capitol Police under this section.

(2) FINALITY OF DETERMINATIONS.—Any determination of the Chief of the Capitol Police under this subsection shall not be appealable or reviewable in any manner.

(d) PROTECTING STATUS OF TRANSFERRED EMPLOYEES.—

(1) NONREDUCTION IN PAY, RANK, OR GRADE.—The transfer of any individual under this section shall not cause that individual to be separated or reduced in basic pay, rank or grade.

(2) LEAVE AND COMPENSATORY TIME.—Any annual leave, sick leave, or other leave, or compensatory time, to the credit of an individual transferred under this section shall be transferred to the credit of that individual as a member or an employee of the Capitol Police (as the case may be). The treatment of leave or compensatory time transferred under this section shall be governed by regulations of the Capitol Police Board.

(3) PROHIBITING IMPOSITION OF PROBATIONARY PERIOD.—The Chief of the Capitol Police may not impose a period of probation with respect to the transfer of any individual who is transferred under this section.

(e) RULES OF CONSTRUCTION RELATING TO EMPLOYEE REPRESENTATION.—

(1) EMPLOYEE REPRESENTATION.—Nothing in this Act shall be construed to authorize any labor organization that represented an individual who was a Library of Congress police employee or a Library of Congress police civilian employee before the individual's transfer date to represent that individual as a member of the Capitol Police or an employee of the Capitol Police after the individual's transfer date.

(2) AGREEMENTS NOT APPLICABLE.—Nothing in this Act shall be construed to authorize any collective bargaining agreement (or any related court order, stipulated agreement, or agreement to the terms or conditions of employment) applicable to Library of Congress police employees or to Library of Congress police civilian employees to apply to members of the Capitol Police or to civilian employees of the Capitol Police.

(f) RULE OF CONSTRUCTION RELATING TO PERSONNEL AUTHORITY OF THE CHIEF OF THE CAPITOL POLICE.—Nothing in this Act shall be construed to affect the authority of the Chief of the Capitol Police to—

(1) terminate the employment of a member of the Capitol Police or a civilian employee of the Capitol Police; or

(2) transfer any individual serving as a member of the Capitol Police or a civilian employee of the Capitol Police to another position with the Capitol Police.

(g) TRANSFER DATE DEFINED.—In this Act, the term ''transfer date'' means, with respect to an employee—

(1) in the case of a Library of Congress Police employee who becomes a member of the Capitol Police, the first day of the first pay period applicable to members of the United States Capitol Police which begins after the date on which the Chief of the Capitol Police issues the written certification for the employee under subsection (b)(1);

(2) in the case of a Library of Congress Police employee who becomes a civilian employee of the Capitol Police, the first day of the first pay period applicable to employees of the United States Capitol Police which begins after September 30, 2009; or

(3) in the case of a Library of Congress Police civilian employee, the first day of the first pay period applicable to employees of the United States Capitol Police which begins after September 30, 2008.

(h) CANCELLATION IN PORTION OF UNOBLIGATED BALANCE OF FEDLINK REVOLVING FUND.—Amounts available for obligation by the Librarian of Congress as of the date of the enactment of this Act from the unobligated balance in the revolving fund established under section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (2 U.S.C. 182c) for the Federal Library and Information Network program of the Library of Congress and the Federal Research program of the Library of Congress are reduced by a total of $560,000, and the amount so reduced is hereby cancelled.

SEC. 3. TRANSITION PROVISIONS.

(a) TRANSFER AND ALLOCATIONS OF PROPERTY AND APPROPRIATIONS.—

(1) IN GENERAL.—Effective on the transfer date of any Library of Congress Police employee and Library of Congress Police civilian employee who is transferred under this Act—

(A) the assets, liabilities, contracts, property, and records associated with the employee shall be transferred to the Capitol Police; and

(B) the unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the employee shall be transferred to and made available under the appropriations accounts for the Capitol Police for ''Salaries'' and ''General Expenses'', as applicable.

(2) JOINT REVIEW.—During the transition period, the Chief of the Capitol Police and the Librarian of Congress shall conduct a joint review of the assets, liabilities, contracts, property records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the transfer under this Act.

(b) TREATMENT OF ALLEGED VIOLATIONS OF CERTAIN EMPLOYMENT LAWS WITH RESPECT TO TRANSFERRED INDIVIDUALS.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as provided in paragraph (3), in the case of an alleged violation of any covered law (as defined in paragraph (4)) which is alleged to have occurred prior to the transfer date with respect to an individual who is transferred under this Act, and for which the individual has not exhausted all of the remedies available for the consideration of the alleged violation which are provided for employees of the Library of Congress under the covered law prior to the transfer date, the following shall apply:

(A) The individual may not initiate any procedure which is available for the consideration of the alleged violation of the covered law which is provided for employees of the Library of Congress under the covered law.

(B) To the extent that the individual has initiated any such procedure prior to the transfer date, the procedure shall terminate and have no legal effect.

(C) Subject to paragraph (2), the individual may initiate and participate in any procedure which is available for the resolution of grievances of officers and employees of the Capitol Police under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to provide for consideration of the alleged violation. The previous sentence does not apply in the case of an alleged violation for which the individual exhausted all of the available remedies which are provided for employees of the Library of Congress under the covered law prior to the transfer date.

(2) SPECIAL RULES FOR APPLYING CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—In applying paragraph (1)(C) with respect to an individual to whom this subsection applies, for purposes of the consideration of the alleged violation under the Congressional Accountability Act of 1995—

(A) the date of the alleged violation shall be the individual's transfer date;

(B) notwithstanding the third sentence of section 402(a) of such Act (2 U.S.C. 1402(a)), the individual's request for counseling under such section shall be made not later than 60 days after the date of the alleged violation; and

(C) the employing office of the individual at the time of the alleged violation shall be the Capitol Police Board.

(3) EXCEPTION FOR ALLEGED VIOLATIONS SUBJECT TO HEARING PRIOR TO TRANSFER.—Paragraph (1) does not apply with respect to an alleged violation for which a hearing has commenced in accordance with the covered law on or before the transfer date.

(4) COVERED LAW DEFINED.—In this subsection, a ''covered law'' is any law for which the remedy for an alleged violation is provided for officers and employees of the Capitol Police under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(c) AVAILABILITY OF DETAILEES DURING TRANSITION PERIOD.—During the transition period, the Chief of the Capitol Police may detail additional members of the Capitol Police to the Library of Congress, without reimbursement.

(d) EFFECT ON EXISTING MEMORANDUM OF UNDERSTANDING.—The Memorandum of Understanding between the Library of Congress and the Capitol Police entered into on December 12, 2004, shall remain in effect during the transition period, subject to—

(1) the provisions of this Act; and

(2) such modifications as may be made in accordance with the modification and dispute resolution provisions of the Memorandum of Understanding, consistent with the provisions of this Act.

(e) RULE OF CONSTRUCTION RELATING TO PERSONNEL AUTHORITY OF THE LIBRARIAN OF CONGRESS.—Nothing in this Act shall be construed to affect the authority of the Librarian of Congress to—

(1) terminate the employment of a Library of Congress Police employee or Library of Congress Police civilian employee; or

(2) transfer any individual serving in a Library of Congress Police employee position or Library of Congress Police civilian employee position to another position at the Library of Congress.

SEC. 4. POLICE JURISDICTION, UNLAWFUL ACTIVITIES, AND PENALTIES.

(a) JURISDICTION.—

(1) EXTENSION OF CAPITOL POLICE JURISDICTION.—Section 9 of the Act entitled ''An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes'', approved July 31, 1946 (2 U.S.C. 1961) is amended by adding at the end the following:

''(d) For purposes of this section, 'United States Capitol Buildings and Grounds' shall include the Library of Congress buildings and grounds described under section 11 of the Act entitled 'An Act relating to the policing of the buildings of the Library of Congress', approved August 4, 1950 (2 U.S.C. 167j), except that in a case of buildings or grounds not located in the District of Columbia, the authority granted to the Metropolitan Police Force of the District of Columbia shall be granted to any police force within whose jurisdiction the buildings or grounds are located.''.

(2) REPEAL OF LIBRARY OF CONGRESS POLICE JURISDICTION.—The first section and sections 7 and 9 of the Act of August 4, 1950 (2 U.S.C. 167, 167f, 167h) are repealed on October 1, 2009.

(b) UNLAWFUL ACTIVITIES AND PENALTIES.—

(1) EXTENSION OF UNITED STATES CAPITOL BUILDINGS AND GROUNDS PROVISIONS TO THE LIBRARY OF CONGRESS BUILDINGS AND GROUNDS.—

(A) CAPITOL BUILDINGS.—Section 5101 of title 40, United States Code, is amended by inserting ''all buildings on the real property described under section 5102(d)'' after ''(including the Administrative Building of the United States Botanic Garden)''.

(B) CAPITOL GROUNDS.—Section 5102 of title 40, United States Code, is amended by adding at the end the following:

''(d) LIBRARY OF CONGRESS BUILDINGS AND GROUNDS.—

''(1) IN GENERAL.—Except as provided under paragraph (2), the United States Capitol Grounds shall include the Library of Congress grounds described under section 11 of the Act entitled 'An Act relating to the policing of the buildings of the Library of Congress', approved August 4, 1950 (2 U.S.C. 167j).

''(2) AUTHORITY OF LIBRARIAN OF CONGRESS.—Notwithstanding subsections (a) and (b), the Librarian of Congress shall retain authority over the Library of Congress buildings and grounds in accordance with section 1 of the Act of June 29, 1922 (2 U.S.C. 141; 42 Stat. 715).''.

(C) CONFORMING AMENDMENT RELATING TO DISORDERLY CONDUCT.—Section 5104(e)(2) of title 40, United States Code, is amended by striking subparagraph (C) and inserting the following:

''(C) with the intent to disrupt the orderly conduct of official business, enter or remain in a room in any of the Capitol Buildings set aside or designated for the use of—

''(i) either House of Congress or a Member, committee, officer, or employee of Congress, or either House of Congress; or

''(ii) the Library of Congress;''.

(2) REPEAL OF OFFENSES AND PENALTIES SPECIFIC TO THE LIBRARY OF CONGRESS.—Sections 2, 3, 4, 5, 6, and 8 of the Act of August 4, 1950 (2 U.S.C. 167a, 167b, 167c, 167d, 167e, and 167g) are repealed.

(3) SUSPENSION OF PROHIBITIONS AGAINST USE OF LIBRARY OF CONGRESS BUILDINGS AND GROUNDS.—Section 10 of the Act of August 4, 1950 (2 U.S.C. 167i) is amended by striking ''2 to 6, inclusive, of this Act'' and inserting ''5103 and 5104 of title 40, United States Code''.

(4) CONFORMING AMENDMENT TO DESCRIPTION OF LIBRARY OF CONGRESS GROUNDS.—Section 11 of the Act of August 4, 1950 (2 U.S.C. 167j) is amended—

(A) in subsection (a), by striking ''For the purposes of this Act the'' and inserting ''The'';

(B) in subsection (b), by striking ''For the purposes of this Act, the'' and inserting ''The'';

(C) in subsection (c), by striking ''For the purposes of this Act, the'' and inserting ''The''; and

(D) in subsection (d), by striking ''For the purposes of this Act, the'' and inserting ''The''.

(c) CONFORMING AMENDMENT RELATING TO JURISDICTION OF INSPECTOR GENERAL OF LIBRARY OF CONGRESS.—Section 1307(b)(1) of the Legislative Branch Appropriations Act, 2006 (2 U.S.C. 185(b)), is amended by striking the semicolon at the end and inserting the following: '', except that nothing in this paragraph may be construed to authorize the Inspector General to audit or investigate any operations or activities of the United States Capitol Police;''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect October 1, 2009.

SEC. 5. COLLECTIONS, PHYSICAL SECURITY, CONTROL, AND PRESERVATION OF ORDER AND DECORUM WITHIN THE LIBRARY.

(a) ESTABLISHMENT OF REGULATIONS.—The Librarian of Congress shall establish standards and regulations for the physical security, control, and preservation of the Library of Congress collections and property, and for the maintenance of suitable order and decorum within Library of Congress.

(b) TREATMENT OF SECURITY SYSTEMS.—

(1) RESPONSIBILITY FOR SECURITY SYSTEMS.—In accordance with the authority of the Capitol Police and the Librarian of Congress established under this Act, the amendments made by this Act, and the provisions of law referred to in paragraph (3), the Chief of the Capitol Police and the Librarian of Congress shall be responsible for the operation of security systems at the Library of Congress buildings and grounds described under section 11 of the Act of August 4, 1950, in consultation and coordination with each other, subject to the following:

(A) The Librarian of Congress shall be responsible for the design of security systems for the control and preservation of Library collections and property, subject to the review and approval of the Chief of the Capitol Police.

(B) The Librarian of Congress shall be responsible for the operation of security systems at any building or facility of the Library of Congress which is located outside of the District of Columbia, subject to the review and approval of the Chief of the Capitol Police.

(2) INITIAL PROPOSAL FOR OPERATION OF SYSTEMS.—Not later than October 1, 2008, the Chief of the Capitol Police, in coordination with the Librarian of Congress, shall prepare and submit to the Committee on House Administration of the House of Representatives, the Committee on Rules and Administration of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate an initial proposal for carrying out this subsection.

(3) PROVISIONS OF LAW.—The provisions of law referred to in this paragraph are as follows:

(A) Section 1 of the Act of June 29, 1922 (2 U.S.C. 141).

(B) The undesignated provision under the heading ''General Provision, This Chapter'' in chapter 5 of title II of division B of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (2 U.S.C. 141a).

(C) Section 308 of the Legislative Branch Appropriations Act, 1996 (2 U.S.C. 1964).

(D) Section 308 of the Legislative Branch Appropriations Act, 1997 (2 U.S.C. 1965).

SEC. 6. PAYMENT OF CAPITOL POLICE SERVICES PROVIDED IN CONNECTION WITH RELATING TO LIBRARY OF CONGRESS SPECIAL EVENTS.

(a) PAYMENTS OF AMOUNTS DEPOSITED IN REVOLVING FUND.—Section 102(e) of the Library of Congress Fiscal Operations Improvement Act of 2000 (2 U.S.C. 182b(e)) is amended to read as follows:

''(e) USE OF AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the accounts of the revolving fund under this section shall be available to the Librarian, in amounts specified in appropriations Acts and without fiscal year limitation, to carry out the programs and activities covered by such accounts.

''(2) SPECIAL RULE FOR PAYMENTS FOR CERTAIN CAPITOL POLICE SERVICES.—In the case of any amount in the revolving fund consisting of a payment received for services of the United States Capitol Police in connection with a special event or program described in subsection (a)(4), the Librarian shall transfer such amount upon receipt to the Capitol Police for deposit into the applicable appropriations accounts of the Capitol Police.''.

(b) USE OF OTHER LIBRARY FUNDS TO MAKE PAYMENTS.—In addition to amounts transferred pursuant to section 102(e)(2) of the Library of Congress Fiscal Operations Improvement Act of 2000 (as added by subsection (a)), the Librarian of Congress may transfer amounts made available for salaries and expenses of the Library of Congress during a fiscal year to the applicable appropriations accounts of the United States Capitol Police in order to reimburse the Capitol Police for services provided in connection with a special event or program described in section 102(a)(4) of such Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services provided by the United States Capitol Police on or after the date of the enactment of this Act.

SEC. 7. OTHER CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 1015 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1901 note) and section 1006 of the Legislative Branch Appropriations Act, 2004 (2 U.S.C. 1901 note; Public Law 108–83; 117 Stat. 1023) are repealed.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 2009.

SEC. 8. DEFINITIONS.

In this Act—

(1) the term ''Act of August 4, 1950'' means the Act entitled ''An Act relating to the policing of the buildings and grounds of the Library of Congress,'' (2 U.S.C. 167 et seq.);

(2) the term ''Library of Congress Police employee'' means an employee of the Library of Congress designated as police under the first section of the Act of August 4, 1950 (2 U.S.C. 167);

(3) the term ''Library of Congress Police civilian employee'' means an employee of the Library of Congress Office of Security and Emergency Preparedness who provides direct administrative support to, and is supervised by, the Library of Congress Police, but shall not include an employee of the Library of Congress who performs emergency preparedness or collections control and preservation functions; and

(4) the term ''transition period'' means the period the first day of which is the date of the enactment of this Act and the final day of which is September 30, 2009.

PRIVILEGES OF THE FLOOR

Mr. DODD. I ask unanimous consent that Ben Weingrod and Ryan Kehmma of my staff be granted the privilege of the floor for the duration of the debate on the FISA legislation.

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

Mr. WYDEN. Mr. President, before my remarks, I ask unanimous consent that Matthew Solomon be granted floor privileges during consideration of the FISA bill. I make this request on behalf of Chairman LEAHY.

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

FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

Ms. MIKULSKI. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 513, S. 274.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 274) to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Homeland Security and Government Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Protection of Disclosures Act''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of'';

(B) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(C) by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of'';

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''; and

(C) in clause (ii), by adding ''or'' at the end; and

(3) by adding at the end the following:

''(C) any disclosure that—

''(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

''(I) any violation of any law, rule, or regulation;

''(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

''(III) a false statement to Congress on an issue of material fact; and

''(ii) is made to—

''(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

''(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

''(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.''.

(c) COVERED DISCLOSURES.—Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

''This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that they have disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

(e) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

''(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

''(xiii) an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and''

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling'; or

''(14) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section.''.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated;

''(2) may not order the President or the designee of the President to restore a security clearance or otherwise reverse a determination of clearance status or reverse an access determination; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regard to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary),

detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regard to the security clearance or access determination.

''(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

''(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

''(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(h) DISCIPLINARY ACTION.—Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under paragraph (8) or (9) of section 2302(b) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

(i) SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with section 2302(b) (8) or (9), or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b) (8) or (9) or subchapter III of chapter 73 and the impact court decisions would have on the enforcement of such provisions of law.

''(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described in subsection (a).''.

(j) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b)(1) of title 5, United States Code, is amended to read as follows:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2), a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board in a case alleging a violation of paragraph (8) or (9) of section 2302(b) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2).''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review relating to paragraph (8) or (9) of section 2302(b) obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting paragraph (8) or (9) of section 2302(b). If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(k) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''.

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(l) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (6 U.S.C. 133(c)) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(m) ADVISING EMPLOYEES OF RIGHTS.—Section 2302(c) of title 5, United States Code, is amended by inserting '', including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures'' after ''chapter 12 of this title''.

(n) SCOPE OF DUE PROCESS.—

(1) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(2) INDIVIDUAL ACTION.—Section 1221(e)(2) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(o) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

Ms. MIKULSKI. I further ask that the amendment at the desk be agreed to; the committee-reported substitute amendment as amended be agreed to, the bill, as amended, be read for the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to this measure be printed in the RECORD.

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

The amendment (No. 3801) was agreed to, as follows:

(Purpose: To provide for reports by the Government Accountability Office and the Merit Systems Protection Board on cases making allegations of violations of section 2302(b)(8) or (9) of title 5, United States Code, relating to whistleblowers)

After subsection (n), insert the following:

(o) REPORTING REQUIREMENTS.—

(1) GOVERNMENT ACCOUNTABILITY OFFICE.—

(A) IN GENERAL.—Not later than 40 months after the date of enactment of this Act, the Government Accountability Office shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the implementation of this Act.

(B) CONTENTS.—The report under this paragraph shall include—

(i) an analysis of any changes in the number of cases filed with the United States Merit Systems Protection Board alleging violations of section 2302(b)(8) or (9) of title 5, United States Code, since the effective date of the Act;

(ii) the outcome of the cases described under clause (i), including whether or not the United States Merit Systems Protection Board, the Federal Circuit Court of Appeals, or any other court determined the allegations to be frivolous or malicious; and

(iii) any other matter as determined by the Government Accountability Office.

(2) MERIT SYSTEMS PROTECTION BOARD.—

(A) IN GENERAL.—Each report submitted annually by the Merit Systems Protection Board under section 1116 of title 31, United States Code, shall, with respect to the period covered by such report, include as an addendum the following:

(i) Information relating to the outcome of cases decided during the applicable year of the report in which violations of section 2302(b)(8) or (9) of title 5, United States Code, were alleged.

(ii) The number of such cases filed in the regional and field offices, the number of petitions for review filed in such cases, and the outcomes of such cases.

(B) FIRST REPORT.—The first report described under subparagraph (A) submitted after the date of enactment of this Act shall include an addendum required under that subparagraph that covers the period beginning on January 1, 2008 through the end of the fiscal year 2008.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 274), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 274

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Protection of Disclosures Act''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of'';

(B) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(C) by striking ''or'' at the end;

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of'';

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''; and

(C) in clause (ii), by adding ''or'' at the end; and

(3) by adding at the end the following:

''(C) any disclosure that—

''(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

''(I) any violation of any law, rule, or regulation;

''(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

''(III) a false statement to Congress on an issue of material fact; and

''(ii) is made to—

''(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

''(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

''(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.''.

(c) COVERED DISCLOSURES.—Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

''This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that they have disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

(e) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

''(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

''(xiii) an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and''

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950

(50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling'; or

''(14) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section.''.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated;

''(2) may not order the President or the designee of the President to restore a security clearance or otherwise reverse a determination of clearance status or reverse an access determination; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regard to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regard to the security clearance or access determination.

''(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

''(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

''(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(h) DISCIPLINARY ACTION.—Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under paragraph (8) or (9) of section 2302(b) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

(i) SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with section 2302(b) (8) or (9), or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b) (8) or (9) or subchapter III of chapter 73 and the impact court decisions would have on the enforcement of such provisions of law.

''(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described in subsection (a).''.

(j) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b)(1) of title 5, United States Code, is amended to read as follows:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2), a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board in a case alleging a violation of paragraph (8) or (9) of section 2302(b) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2).''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review relating to paragraph (8) or (9) of section 2302(b) obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting paragraph (8) or (9) of section 2302(b). If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(k) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that

may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''.

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(l) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (6 U.S.C. 133(c)) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(m) ADVISING EMPLOYEES OF RIGHTS.—Section 2302(c) of title 5, United States Code, is amended by inserting '', including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures'' after ''chapter 12 of this title''.

(n) SCOPE OF DUE PROCESS.—

(1) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(2) INDIVIDUAL ACTION.—Section 1221(e)(2) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(o) REPORTING REQUIREMENTS.—

(1) GOVERNMENT ACCOUNTABILITY OFFICE.—

(A) IN GENERAL.—Not later than 40 months after the date of enactment of this Act, the Government Accountability Office shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the implementation of this Act.

(B) CONTENTS.—The report under this paragraph shall include—

(i) an analysis of any changes in the number of cases filed with the United States Merit Systems Protection Board alleging violations of section 2302(b)(8) or (9) of title 5, United States Code, since the effective date of the Act;

(ii) the outcome of the cases described under clause (i), including whether or not the United States Merit Systems Protection Board, the Federal Circuit Court of Appeals, or any other court determined the allegations to be frivolous or malicious; and

(iii) any other matter as determined by the Government Accountability Office.

(2) MERIT SYSTEMS PROTECTION BOARD.—

(A) IN GENERAL.—Each report submitted annually by the Merit Systems Protection Board under section 1116 of title 31, United States Code, shall, with respect to the period covered by such report, include as an addendum the following:

(i) Information relating to the outcome of cases decided during the applicable year of the report in which violations of section 2302(b)(8) or (9) of title 5, United States Code, were alleged.

(ii) The number of such cases filed in the regional and field offices, the number of petitions for review filed in such cases, and the outcomes of such cases.

(B) FIRST REPORT.—The first report described under subparagraph (A) submitted after the date of enactment of this Act shall include an addendum required under that subparagraph that covers the period beginning on January 1, 2008 through the end of the fiscal year 2008.

(p) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

DR. JAMES ALLEN VETERAN VISION EQUITY ACT OF 2007

Mr. DODD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House with respect to H.R. 797, the Veterans Vision Impairment.

The Presiding Officer (Mr. SANDERS) laid before the Senate the following message:

H.R. 797

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 797) entitled ''An Act to amend title 38, United States Code, to improve compensation benefits for veterans in certain cases of impairment of vision involving both eyes, to provide for the use of the National Directory of New Hires for income verification purposes, to extend the authority of the Secretary of Veterans Affairs to provide an educational assistance allowance for qualifying work study activities, and to authorize the provision of bronze representations of the letter 'V' for the graves of eligible individuals buried in private cemeteries in lieu of Government-provided headstones or markers'', with the following amendments:

In lieu of the matter proposed to be inserted by the amendment of the Senate, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Dr. James Allen Veteran Vision Equity Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—LOW-VISION BENEFITS MATTERS

Sec. 101. Modification of rate of visual impairment for payment of disability compensation.

Sec. 102. Improvement in compensation for veterans in certain cases of impairment of vision involving both eyes.

TITLE II—MATTERS RELATING TO BURIAL AND MEMORIAL AFFAIRS

Sec. 201. Provision of medallion or other device for privately-purchased grave markers.

Sec. 202. Improvement in provision of assistance to States relating to the interment of veterans in cemeteries other than national cemeteries.

Sec. 203. Modification of authorities on provision of Government headstones and markers for burials of veterans at private cemeteries.

TITLE III—OTHER MATTERS

Sec. 301. Use of national directory of new hires for income verification purposes for certain veterans benefits.

Sec. 302. Extension of authority of Secretary of Veterans Affairs to provide an educational assistance allowance to persons performing qualifying work-study activities.

TITLE I—LOW-VISION BENEFITS MATTERS

SEC. 101. MODIFICATION OF RATE OF VISUAL IMPAIRMENT FOR PAYMENT OF DISABILITY COMPENSATION.

Section 1114(o) of title 38, United States Code, is amended by striking ''5/200'' and inserting ''20/200''.

SEC. 102. IMPROVEMENT IN COMPENSATION FOR VETERANS IN CERTAIN CASES OF IMPAIRMENT OF VISION INVOLVING BOTH EYES.

Section 1160(a)(1) of title 38, United States Code, is amended—

(1) by striking ''blindness'' both places it appears and inserting ''impairment of vision'';

(2) by striking ''misconduct;'' and inserting ''misconduct and—''; and

(3) by adding at the end the following new subparagraphs:

''(A) the impairment of vision in each eye is rated at a visual acuity of 20/200 or less; or

''(B) the peripheral field of vision for each eye is 20 degrees or less;''.

TITLE II—MATTERS RELATING TO BURIAL AND MEMORIAL AFFAIRS

SEC. 201. PROVISION OF MEDALLION OR OTHER DEVICE FOR PRIVATELY-PURCHASED GRAVE MARKERS.

Section 2306(d) of title 38, United States Code, is amended by adding at the end the following new paragraph:

''(5) In lieu of furnishing a headstone or marker under this subsection, the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased's status as a veteran, to be attached to a headstone or marker furnished at private expense.''.

SEC. 202. IMPROVEMENT IN PROVISION OF ASSISTANCE TO STATES RELATING TO THE INTERMENT OF VETERANS IN CEMETERIES OTHER THAN NATIONAL CEMETERIES.

(a) REPEAL OF TIME LIMITATION FOR STATE FILING FOR REIMBURSEMENT FOR INTERMENT COSTS.—

(1) IN GENERAL.—The second sentence of section 3.1604(d)(2) of title 38, Code of Federal Regulations, shall have no further force or effect as it pertains to unclaimed remains of a deceased veteran.

(2) RETROACTIVE APPLICATION.—Paragraph (1) shall take effect as of October 1, 2006 and apply with respect to interments and inurnments occurring on or after that date.

(b) GRANTS FOR OPERATION AND MAINTENANCE OF STATE VETERANS' CEMETERIES.—

(1) IN GENERAL.—Subsection (a) of section 2408 of title 38, United States Code, is amended to read as follows:

''(a)(1) Subject to subsection (b), the Secretary may make a grant to any State for the following purposes:

''(A) Establishing, expanding, or improving a veterans' cemetery owned by the State.

''(B) Operating and maintaining such a cemetery.

''(2) A grant under paragraph (1) may be made only upon submission of an application to the Secretary in such form and manner, and containing such information, as the Secretary may require.''.

(2) LIMITATION ON AMOUNTS AWARDED.—Subsection (e) of such section is amended—

(A) by inserting ''(1)'' before ''Amounts''; and

(B) by adding at the end the following new paragraph:

''(2) In any fiscal year, the aggregate amount of grants awarded under this section for the purposes specified in subsection (a)(1)(B) may not exceed $5,000,000.''.

(3) CONFORMING AMENDMENTS.—Such section is further amended—

(A) in subsection (b)—

(i) by striking ''Grants under this section'' and inserting ''A grant under this section for a purpose described in subsection (a)(1)(A)''; and

(ii) by striking ''a grant under this section'' each place it appears and inserting ''such a grant'';

(B) in subsection (d), by striking ''to assist such State in establishing, expanding, or improving a veterans' cemetery''; and

(C) in subsection (f)(1), by inserting '', or in operating and maintaining such cemeteries,'' after ''veterans' cemeteries''.

(4) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe regulations to carry out the amendments made by this subsection.

SEC. 203. MODIFICATION OF AUTHORITIES ON PROVISION OF GOVERNMENT HEADSTONES AND MARKERS FOR BURIALS OF VETERANS AT PRIVATE CEMETERIES.

(a) REPEAL OF EXPIRATION OF AUTHORITY.—Subsection (d) of section 2306 of title 38, United States Code, as amended by section 201, is further amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) and (5), as added by that section, as paragraphs (3) and (4), respectively.

(b) RETROACTIVE EFFECTIVE DATE.—Notwithstanding subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 995; 38 U.S.C. 2306 note) or any other provision of law, the amendments made by that section and by subsections (a), (b), (c), (d), and (f) of section 402 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109–461; 120 Stat. 3429) shall take effect as of November 1, 1990, and shall apply with respect to headstones and markers for the graves of individuals dying on or after that date.

TITLE III—OTHER MATTERS

SEC. 301. USE OF NATIONAL DIRECTORY OF NEW HIRES FOR INCOME VERIFICATION PURPOSES FOR CERTAIN VETERANS BENEFITS.

(a) AUTHORITY FOR INFORMATION COMPARISONS AND DISCLOSURES OF INFORMATION TO ASSIST IN ADMINISTRATION OF CERTAIN VETERANS BENEFITS.—Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following new paragraph:

''(11) INFORMATION COMPARISONS AND DISCLOSURES TO ASSIST IN ADMINISTRATION OF CERTAIN VETERANS BENEFITS.—

''(A) FURNISHING OF INFORMATION BY SECRETARY OF VETERANS AFFAIRS.—Subject to the provisions of this paragraph, the Secretary of Veterans Affairs shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Veterans Affairs in consultation with the Secretary, information in the custody of the Secretary of Veterans Affairs for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are applying for or receiving—

''(i) needs-based pension benefits provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

''(ii) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

''(iii) health care services furnished under subsections (a)(2)(G), (a)(3), or (b) of section 1710 of title 38, United States Code; or

''(iv) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

''(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of Veterans Affairs shall seek information pursuant to this paragraph only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

''(C) DUTIES OF THE SECRETARY.—

''(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of Veterans Affairs, shall compare information in the National Directory of New Hires with information provided by the Secretary of Veterans Affairs with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Veterans Affairs, in accordance with this paragraph, for the purposes specified in this paragraph.

''(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

''(D) USE OF INFORMATION BY SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs may use information resulting from a data match pursuant to this paragraph only—

''(i) for the purposes specified in subparagraph (B); and

''(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

''(E) REIMBURSEMENT OF HHS COSTS.—The Secretary of Veterans Affairs shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

''(F) CONSENT.—The Secretary of Veterans Affairs shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).

''(G) EXPIRATION OF AUTHORITY.—The authority under this paragraph shall expire on September 30, 2011.''.

(b) AMENDMENTS TO VETERANS AFFAIRS AUTHORITY.—

(1) IN GENERAL.—Chapter 53 of title 38, United States Code, is amended by inserting after section 5317 the following new section:

''§ 5317A. Use of income information from other agencies: independent verification required before termination or reduction of certain benefits and services

''(a) INDEPENDENT VERIFICATION REQUIRED.—The Secretary may terminate, deny, suspend, or reduce any benefit or service specified in section 5317(c), with respect to an individual under age 65 who is an applicant for or recipient of such a benefit or service, by reason of information obtained from the Secretary of Health and Human Services under section 453(j)(11) of the Social Security Act, only if the Secretary takes appropriate steps to verify independently information relating to the individual's employment and income from employment.

''(b) OPPORTUNITY TO CONTEST FINDINGS.—The Secretary shall inform each individual for whom the Secretary terminates, denies, suspends, or reduces any benefit or service under subsection (a) of the findings made by the Secretary under such subsection on the basis of verified information and shall provide to the individual an opportunity to contest such findings in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

''(c) SOURCE OF FUNDS FOR REIMBURSEMENT TO SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall pay the expense of reimbursing the Secretary of Health and Human Services in accordance with section 453(j)(11)(E) of the Social Security Act, for the cost incurred by the Secretary of Health and Human Services in furnishing information requested by the Secretary under section 453(j)(11) of such Act, from amounts available to the Department for the payment of compensation and pensions.

''(d) EXPIRATION OF AUTHORITY.—The authority under this section shall expire on September 30, 2011.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5317 the following new item:

''5317A. Use of income information from other agencies: independent verification required before termination or reduction of certain benefits and services.''.

SEC. 302. EXTENSION OF AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO PROVIDE AN EDUCATIONAL ASSISTANCE ALLOWANCE TO PERSONS PERFORMING QUALIFYING WORK-STUDY ACTIVITIES.

Section 3485(a)(4) of title 38, United States Code, is amended by striking ''June 30, 2007'' each place it appears and inserting ''June 30, 2010''.

Amend the title so as to read: ''An Act to amend title 38, United States Code, to improve low-vision benefits matters, matters relating to burial and memorial affairs, and other matters under the laws administered by the Secretary of Veterans Affairs, and for other purposes.''.

Mr. DODD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments to the Senate amendment, and the motion to reconsider be laid upon the table.

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

EXCEPTION FOR THE $1 COIN DISPENSING CAPABILITY REQUIREMENT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 515, H.R. 3703.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3703) to amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the $1 coin dispensing capability requirement for certain vending machines.

There being no objection, the Senate proceeded to consider the bill.

Mr. DODD. Mr. President, I ask unanimous consent that the bill be read the third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3703) was ordered to a third reading, was read the third time, and passed.

DO-NOT-CALL REGISTRY FEE EXTENSION ACT OF 2007

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 537, S. 781.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 781) to extend the authority of the Federal Trade Commission to collect Do-Not-Call Registry fees to fiscal years after fiscal year 2007.

There being no objection, the Senate proceeded to consider the bill, which had been reported by the Committee on Commerce, Science, and Transportation, with an amendment

To strike all after the enacting clause and insert in lieu thereof the following:

S. 781

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Do-Not-Call Registry Fee Extension Act of 2007''.

SEC. 2. FEES FOR ACCESS TO REGISTRY.

Section 2, of the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) is amended to read as follows:

''SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

''(a) IN GENERAL.—The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the 'do-not-call' registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

''(b) ANNUAL FEES.—

''(1) IN GENERAL.—The Commission shall charge each person who accesses the 'do-not-call' registry an annual fee that is equal to the lesser of—

''(A) $54 for each area code of data accessed from the registry; or

''(B) $14,850 for access to every area code of data contained in the registry.

''(2) EXCEPTION.—The Commission shall not charge a fee to any person—

''(A) for accessing the first 5 area codes of data; or

''(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the 'do-not-call' registry under section 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

''(3) DURATION OF ACCESS.—

''(A) IN GENERAL.—The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the 'do-not-call' registry for which the person has paid during that person's annual period.

''(B) ANNUAL PERIOD.—In this paragraph, the term 'annual period' means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

''(c) ADDITIONAL FEES.—

''(1) IN GENERAL.—The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person's annual period.

''(2) RATES.—For each additional area code of data to be accessed during the person's annual period, the Commission shall charge—

''(A) $54 for access to such data if access to the area code of data is first requested during the first 6 months of the person's annual period; or

''(B) $27 for access to such data if access to the area code of data is first requested after the first 6 months of the person's annual period.

''(d) ADJUSTMENT OF FEES.—

''(1) IN GENERAL.—

''(A) FISCAL YEAR 2009.—The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

''(B) FISCAL YEARS AFTER 2009.—For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

''(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

''(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

''(2) ROUNDING.—Any increase under subparagraph (B) shall be rounded to the nearest dollar.

''(3) CHANGES LESS THAN 1 PERCENT.—The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

''(4) PUBLICATION.—Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

''(5) DEFINITIONS.—In this subsection:

''(A) CPI.—The term 'CPI' means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

''(B) BASELINE CPI.—The term 'baseline CPI' means the CPI for the 12-month period ending June 30, 2008.

''(e) PROHIBITION AGAINST FEE SHARING.—No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission's regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

''(f) HANDLING OF FEES.—

''(1) IN GENERAL.—The commission shall deposit and credit as offsetting collections any fee collected under this section in the account 'Federal Trade Commission—Salaries and Expenses', and such sums shall remain available until expended.

''(2) LIMITATION.—No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.''.

SEC. 3. REPORT.

Section 4 of the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) is amended to read as follows:

''SEC. 4. REPORTING REQUIREMENTS.

''(a) BIENNIAL REPORTS.—Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

''(1) the number of consumers who have placed their telephone numbers on the registry;

''(2) the number of persons paying fees for access to the registry and the amount of such fees;

''(3) the impact on the 'do-not-call' registry of—

''(A) the 5-year reregistration requirement;

''(B) new telecommunications technology; and

''(C) number portability and abandoned telephone numbers; and

''(4) the impact of the established business relationship exception on businesses and consumers.

''(b) ADDITIONAL REPORT.—Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

''(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

''(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry's effectiveness; and

''(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcment.''.

SEC. 4. RULEMAKING.

The Federal Trade Commission may issue rules, in accordance with section 553 of title 5, United States Code, as necessary and appropriate to carry out the amendments to the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) made by this Act.

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported amendment be considered and agreed to, the bill as amended be read a third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 781), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

DO-NOT-CALL IMPROVEMENT ACT OF 2007

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 539, S. 2096.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2096) to amend the Do-Not-Call Implementation Act to eliminate the automatic removal of telephone numbers registered on the Federal ''do-not-call'' registry.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 2096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Do-Not-Call Improvement Act of 2007''.

SEC. 2. PROHIBITION OF EXPIRATION DATE FOR REGISTERED TELEPHONE NUMBERS.

(a) IN GENERAL.—The registration of a telephone number on the do-not-call registry of the

Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)) shall not expire at the end of any specified time period.

(b) REINSTATEMENT.—The Federal Trade Commission shall reinstate the registration of any telephone number that has been removed from the registry before the date of enactment of this Act under a Federal Trade Commission rule or practice requiring the removal of a telephone number from the registry 5 years after its registration.

(c) REGISTRY MAINTENANCE.—The Federal Trade Commission may check telephone numbers listed on the do-not-call registry against national databases periodically and purge those numbers that have been disconnected and reassigned.

Mr. DODD. I ask unanimous consent that the amendment at the desk be considered and agreed to; the committee-reported amendment, as amended, be agreed to; the bill, as amended, be read a third time, passed, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD.

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

The amendment (No. 3867) was agreed to, as follows:

(Purpose: To require the FTC to report to the Congress on its efforts to improve the accuracy of the Do-Not-Call Registry)

At the end of the bill, add the following:

SEC. 3. REPORT ON ACCURACY.

Not later than 9 months after the enactment of this Act, the Federal Trade Commission shall report to the Congress on efforts taken by the Commission, after the date of enactment of this Act, to improve the accuracy of the ''do-not-call'' Registry.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill, as amended, was ordered to be engrossed for a third reading, read the third time and passed, as follows:

S. 2096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Do-Not-Call Improvement Act of 2007''.

SEC. 2. PROHIBITION OF EXPIRATION DATE FOR REGISTERED TELEPHONE NUMBERS.

(a) IN GENERAL.—The registration of a telephone number on the do-not-call registry of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)) shall not expire at the end of any specified time period.

(b) REINSTATEMENT.—The Federal Trade Commission shall reinstate the registration of any telephone number that has been removed from the registry before the date of enactment of this Act under a Federal Trade Commission rule or practice requiring the removal of a telephone number from the registry 5 years after its registration.

(c) REGISTRY MAINTENANCE.—The Federal Trade Commission may check telephone numbers listed on the do-not-call registry against national databases periodically and purge those numbers that have been disconnected and reassigned.

SEC. 3. REPORT ON ACCURACY.

Not later than 9 months after the enactment of this Act, the Federal Trade Commission shall report to the Congress on efforts taken by the Commission, after the date of enactment of this Act, to improve the accuracy of the ''do-not-call'' Registry.

COURT SECURITY IMPROVEMENT ACT OF 2007

Mr. DODD. I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 660, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 660) to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, at the very beginning of this Congress, one of the very first actions I took was to reintroduce the Court Security Improvement Act of 2007, along with Senators REID, SPECTER, DURBIN, CORNYN, KENNEDY, HATCH, SCHUMER and COLLINS. The Judiciary Committee considered this important legislation, and recommended it to the full Senate. When Majority Leader REID wanted to move to consider it, he could not get a time agreement. We were forced to dedicate almost a week of precious floor time to overcome a Republican objection, just to proceed to debate on the bill. Eventually, the measure passed by a 97 to 0 vote. Not a single Senator voted against it. A short time later, a nearly identical bill passed the House by a voice vote. Despite the broad bipartisan support for both bills, however, we were blocked from going to conference to resolve the minor differences between them by an anonymous hold placed by a Republican Senator. For months, we negotiated the minor differences between the House and Senate versions of this legislation.

When we are responding to attacks and threats on our Federal judges, witnesses and officers, time is of the essence. Just last month in Nevada, a man admitted to shooting and injuring the family court judge who was presiding over his divorce. This type of violence against our judiciary can and must be prevented. For our justice system to function effectively, our judges and other court personnel must be safe and secure. They and their families must be free from the fear of retaliation and harassment. Witnesses who come forward must be protected, and the courthouses where our laws are enforced must be secure. Today, almost eleven months after introducing this legislation, we may actually reach consent to pass a compromise version that will pass the House and be sent to the President.

We must act now to get these protections in place and stop delaying such protective measures by anonymous holds. I urge Senators to take up and pass this compromise version of the Court Security Improvement Act so that we can provide the necessary protections that our Federal courts so desperately need. The security of our Federal judges and our courthouses around the Nation is at stake.

Mr. KYL. Mr. President, I rise today to comment on H.R. 660, the Court Security Improvement Act of 2007. Section 509 of the final substitute transfers one seat from the U.S. Court of Appeals for the District of Columbia Circuit to the U.S. Court of Appeals for the Ninth Circuit. The reasons for this change are explained in Senator FEINSTEIN's and my additional views in S. Rept. 110–42.

Section 102 of the bill authorizes the U.S. Marshals Service to provide protection to the U.S. Tax Court, and stipulates that the Marshals Service retains final authority regarding the Tax Court's security needs. The Tax Court has expressed concern to me and to other Members that the Marshals Service should consult with the Tax Court about the costs that it expects to incur for providing security—costs that will be charged to the Tax Court. The Marshals Service has assured Congress that it will consult with the Tax Court on these matters and that it will not surprise the Tax Court with charges that the court may have difficulty paying. Rather than include heavy-handed consultation requirements in the text of the legislation, we have agreed to adopt the bill in its current form on the strength of these assurances.

Section 202 of the bill makes it an offense to disseminate sensitive personal information about Federal police officers and criminal informants and witnesses. The final version extends this offense to also protect State law enforcement officers, but only to the extent that their participation in Federal activities creates a Federal interest sufficient to maintain this provision's consistency with principles of federalism.

Section 207 increases statutory maximum penalties for manslaughter under section 1112 of title 18. I expect the U.S. Sentencing Commission to revise its guidelines for these offenses in light of these new higher statutory maxima. I commented on the need for these changes when the Senate version of this bill passed the Senate earlier this year and would refer interested parties to those remarks and especially to Paul Charlton's testimony, at 153 CONG. REC. S4739–4741, daily ed. April 19, 2007.

Section 208 increases the penalties for retaliatory assaults against Federal judges' family members. This provision also clarifies an assault offense that was created by Congress in 1994. The offense establishes penalties for simple assault, assault with bodily injury, and for assault in ''all other cases.'' As one might imagine, the meaning of assault in ''all other cases'' has been the subject of confusion and judicial debate. The offense has also been the subject of constant vagueness challenges, and although those legal challenges have been rejected, the offense is rather vague. Section 208 takes the opportunity to correct this legislative sin, codifying what I believe is the most thoughtful explanation of what this

language means, the 10th Circuit's decision in *United States* v. *Hathaway*, 318 F.3d 1001, 1008–09, 10th Cir. 2003. A conforming change has also been made to section Ill of title 18, so that sections 111 and 115 will match each other and, again, so that people can easily figure out what this offense actually proscribes.

Section 503 of the bill guarantees that senior district judges may elect to participate in court rulemaking, appointment of magistrates and court officers, and other administrative matters, so long as such judges carry at least half of the caseload of an active district judge. I believe that this provision is a bad idea, though its negative consequences have been greatly mitigated in this final substitute as a result of the intervention of Senator SESSIONS. Many senior judges are often not present at the courthouse and are disengaged from the work of the court and the life of the court. Moreover, Congress has no business telling the courts how to manage these types of internal organizational matters. Those jurists who share my objection to this provision should be grateful to Senator SESSIONS, who insisted that the provision be limited to district judges as opposed to circuit judges, that a senior judge be required to elect to exercise these functions, and that a senior judge carry at least half of a full caseload in order to be entitled to assume these powers.

Finally, section 511 adds nomenclature to section 2255 of title 28, a change recommended to me by Kent Scheidegger of the Criminal Justice Legal Foundation. This change has no substantive effect but should make this code section easier for litigants to cite.

Mr. DODD. I ask unanimous consent that a Leahy substitute amendment at the desk be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

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

The amendment (No. 3868) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The amendment was ordered to be engrossed and the bill read a third time.

The bill (H.R. 660), as amended, was read the third time and passed.

U.S. CAPITOL POLICE AND LIBRARY OF CONGRESS POLICE MERGER IMPLEMENTATION ACT OF 2007

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3690, just received from the House and at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3690) to provide for the transfer of the Library of Congress police to the United States Capitol Police, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

RIGHTS AND PROTECTIONS

Mr. LIEBERMAN. Mr. President, I appreciate the work by my colleague, Senator FEINSTEIN, who chairs the Committee on Rules and Administration, and by other Senators over many years to accomplish this merger of the U.S. Capitol Police and the Library of Congress Police.

The U.S. Capitol Police and Library of Congress Police Merger and Implementation Act of 2007 provides that employees of the Library of Congress Police shall be transferred to the United States Capitol Police. I would like to ask my colleague Senator FEINSTEIN about provisions under which the Chief of the U.S. Capitol Police will make certain final determinations regarding the incoming Library of Congress Police employees that shall not be appealable or reviewable in any manner. It is my understanding that these provisions would generally prevent individuals from appealing or seeking review of the determinations of the Chief of the U.S. Capitol Police, but would not limit the right of any individual to seek any appropriate relief under the Congressional Accountability Act if these determinations by the Chief allegedly violated that act.

The Congressional Accountability Act was enacted in 1995 to provide to congressional employees the same rights and protections that are available to other employees in our Nation, including protection against discrimination on the basis of race, sex, national origin, religion, or age. My understanding is that the merger legislation would in no way limit the right of any employee covered under the Congressional Accountability Act to initiate an action regarding any alleged violation of rights protected under that Act. I have also been told that this interpretation of the legislation is shared by the Chief of the U.S. Capitol Police, and that Library of Congress employees transferring to the U.S. Capitol Police will be informed and educated about their rights and protections under the Congressional Accountability Act.

Mrs. FEINSTEIN. The understanding of my colleague from Connecticut, Senator LIEBERMAN, is correct. The finality provisions in this legislation were intended to give the Chief of the U.S. Capitol Police authority to transfer employees and assign duties as necessary to meet the mission of the U.S. Capitol Police in maintaining the security of the Capitol complex. However, the provisions in this legislation in no way limit the protections and rights of an employee to seek relief under the Congressional Accountability Act.

Mr. LIEBERMAN. I thank the Senator for her assistance and courtesy.

Mr. DODD. I ask unanimous consent that the amendment at the desk be considered and agreed to; the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relating to the bill be printed in the RECORD without further intervening action or debate.

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

The amendment (No. 3869) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 3690)was read the third time and passed.

NATIONAL TEEN DATING VIOLENCE AWARENESS AND PREVENTION WEEK

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 541, S. Res. 388.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 388) designating the week of February 4 through February 8, 2008, as ''National Teen Dating Violence Awareness and Prevention Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 388) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 388

Whereas 1 in 3 female teenagers in a dating relationship has feared for her physical safety;

Whereas 1 in 2 teenagers in a serious relationship has compromised personal beliefs to please a partner;

Whereas 1 in 5 teenagers in a serious relationship reports having been hit, slapped, or pushed by a partner;

Whereas 27 percent of teenagers have been in dating relationships in which their partners called them names or put them down;

Whereas 29 percent of girls who have been in a relationship said that they have been pressured to have sex or to engage in sexual activities that they did not want;

Whereas technologies such as cell phones and the Internet have made dating abuse both more pervasive and more hidden;

Whereas 30 percent of teenagers who have been in a dating relationship say that they have been text-messaged between 10 and 30 times per hour by a partner seeking to find out where they are, what they are doing, or who they are with;

Whereas 72 percent of teenagers who reported they'd been checked up on by a boyfriend or girlfriend 10 times per hour by email or text messaging did not tell their parents;

Whereas parents are largely unaware of the cell phone and Internet harassment experienced by teenagers;

Whereas Native American women experience higher rates of interpersonal violence than any other population group;

Whereas violent relationships in adolescence can have serious ramifications for victims, putting them at higher risk for substance abuse, eating disorders, risky sexual behavior, suicide, and adult revictimization;

Whereas the severity of violence among intimate partners has been shown to be greater in cases where the pattern of violence has been established in adolescence; and

Whereas the establishment of National Teen Dating Violence Awareness and Prevention Week will benefit schools, communities, and families regardless of socio-economic status, race, or sex: Now, therefore be it

Resolved, That the Senate—

(1) designates the week of February 4 through February 8, 2008, as ''National Teen Dating Violence Awareness and Prevention Week''; and

(2) calls upon the people of the United States, high schools, law enforcement, State and local officials, and interested groups to observe National Teen Dating Violence Awareness and Prevention Week with appropriate programs and activities that promote awareness and prevention of the crime of teen dating violence in their communities.

HONORING THE UNIVERSITY OF HAWAII

Mr. DODD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H. Con. Res. 264, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 264) honoring the University of Hawaii for its 100 years of commitment to public higher education.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 264) was agreed to.

The preamble was agreed to.

RELATIVE TO THE DEATH OF REPRESENTATIVE JULIA CARSON, OF INDIANA

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 407, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 407) relative to the death of Representative JULIA CARSON, of Indiana.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table en bloc; that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 407) was agreed to, as follows:

S. RES. 407

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable JULIA CARSON, late a Representative from the State of Indiana.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

CONGRATULATING THE VALDOSTA STATE UNIVERSITY FOOTBALL TEAM

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 408 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 408) congratulating the Valdosta State University football team on winning the 2007 Division II national championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 408) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 408

Whereas, on December 15, 2007, the Valdosta State University Blazers football team defeated Northwest Missouri State University by a score of 25-20 in Florence, Alabama, to win the 2007 National Collegiate Athletic Association (NCAA) Division II National Championship;

Whereas this victory gave Valdosta State University its 2nd football national championship title in 4 years;

Whereas Coach David Dean became only the 2nd 1st-year head coach in NCAA history to lead a team to the Division II title;

Whereas the Blazers finished the season with an impressive 13-1 record, including victories over Catawba College, the University of North Alabama, and California University of Pennsylvania in the playoffs to advance to the championship game against Northwest Missouri State University; and

Whereas 7 Valdosta State University players were named to the All-Gulf Conference team, including wide receiver Cedric Jones and safety Sherard Reynolds, who were also named to the All-American team: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates and honors the Valdosta State University Blazers football team on winning the 2007 National Collegiate Athletic Association Division II National Championship;

(2) recognizes and commends the courage, hard work, and dedication displayed by the Valdosta State University football team and staff throughout the season in order to obtain this great honor; and

(3) commends Valdosta State University, the city of Valdosta, and all of the fans of the Blazers football team throughout the State of Georgia for their endless support of this special team throughout the 2007 championship season.

ORDERS FOR TUESDAY, DECEMBER 18, 2007

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. Tuesday, December 18; that on Tuesday, following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders reserved for their use later in the day, and that there be a period of morning business for 90 minutes, with the time equally divided and controlled between the two leaders or their designees; that Senators be permitted to speak therein for up to 10 minutes each; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m. in order to accommodate the respective party conference meetings; that the motion to proceed to S. 2248 be adopted once this consent is granted and that all time postcloture be considered yielded back.

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

FOREIGN INTELLIGENCE SURVEILLANCE ACT

The PRESIDING OFFICER. The clerk will report the the bill by title.

The legislative clerk read as follows:

A bill (S. 2248) to amend the Foreign Intelligence Surveillance Act of 1978, and so forth and for other purposes.

ORDER OF BUSINESS

Mr. DODD. Mr. President, I would like to announce on behalf of the leader it is his intent to consider the House message on H.R. 2764, the State, Foreign Operations Appropriations Act.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DODD. Mr. President, if there is no further business today, I now ask unanimous consent that the Senate stand adjourned under the provisions of S. Res. 407, as a further mark of respect on the passing of Julia Carson, late Representative from Indiana.

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

The Senate stands in adjournment until 10 a.m. tomorrow, pursuant to S. Res. 407, and does so as a mark of further respect to the memory of Julia Carson, late Representative from the State of Indiana.

Thereupon, the Senate, at 8:01 p.m., adjourned until Tuesday, December 18, 2007, at 10 a.m.