Mr. REID. Well, now, Mr. President, we lost one of them, so we are now down to two rollcall votes and two that can be accepted by voice. So we are two steps forward and one back. So the answer is: Yes, we will have two votes that will be recorded. We should be able to start those in a few minutes.

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

Mr. REID. I would be happy to yield.

Mr. DORGAN. Mr. President, I think most Senators will feel good about the significant progress on FISA, and hopefully we will get that completed.

Senator THUNE and I were speaking a moment ago about the other piece of legislation we hope we might finish, when FISA is completed next Tuesday or Wednesday, and that is the Indian Health Care Improvement Act, which we started on the floor of the Senate.

I would ask the Senator: Might we expect to be able to bring that up for a day? We believe we can finish that in a day next week.

Mr. REID. I say to my friend: Is there anything that can be done on that tomorrow or Monday? Has the debate on all the amendments been completed?

Mr. DORGAN. Mr. President, I believe we have worked through most all areas of controversy, where we are waiting on some amendments that I believe Senator COBURN wishes some votes on. But I think we have made a lot of progress on both sides of the aisle to resolve items of controversy. I think if we could get it on the floor for 1 day, we can finish it. And, frankly, there is some urgency to Indian health care issues. As I said, Senators Murkowski, Thune, and others join me in hoping we can include that next week to be completed on the floor of the Senate.

Mr. REID. I ask my friend, the Senator from North Dakota: Is there a way we could have a consent agreement that would give us specific time for any amendments and votes on amendments, and after they are all done, final passage?

Mr. DORGAN. Mr. President, I have been working with Senator KYL and others to try to see if we can reach an agreement on any amendments. I believe there will be very few votes required. I think Senator COBURN has some that may require a couple of votes, but by and large I think we have worked through most of the issues. Senator KYL and Senator THUNE, on that side of the aisle, have been working with me.

But I would very much like to get whatever list or whatever time agreements we need so that we can bring that up. We really do need to finish that next week, following the disposition of FISA, if it is possible.

Mr. REID. I ask my good friend, during those two votes we are going to have in a short time, if we can go to work to see if we could have a specific numbers of amendments, how much time is left on them, we will complete it to final passage.

Mr. KYL. Mr. President, I have been working with the Senator from North Dakota. While we have not surveyed all of the Members on this side, I believe the issues are well known to us; they have surfaced. The three key issues have mostly been worked through, as I understand, and I believe Senator COBURN is willing to put a time agreement on the amendments he has. All of which is to say that I believe, unless there are some votes on our side that have not come forward—and we will certainly inquire—it should be possible to get a time agreement with specific amendments that is not very long and that would result in the bill being concluded in a relatively short time. But we do need to survey the rest of our Members.

Mr. THUNE. Mr. President, I would just echo what my colleague from North Dakota said and would agree that now we will have dealt with FISA and the economic stimulus bill, which I know are matters of great importance and urgency—this is a matter of great urgency to the people we represent. It is long overdue that we get this done. So I will do everything I can on our side to make it possible for us to limit any further amendments or anything that might further delay moving to a final vote.

I appreciate the leader's indulgence, along with my colleague from North Dakota, and would simply ask that when we complete action on this, we move to this bill.

Mr. REID. If I can respond to my three colleagues, originally we thought this bill would take 1 day, and we know it has been bifurcated because of other issues. But I would really think that before we spend another few days on this, we have to do everything we can to see if we can come up with a time agreement to give us a way to get to the end so we can have final passage.

We do not need to speak, as I have, about the drastic needs in Indian territory. We need to do this. So I hope that—my friends, this is certainly a bipartisan piece of legislation—we can work out some time agreements, and part of that will be final passage.

Mr. KYL. I do not know of any reason that cannot be done. There is certainly no intention on our side to take a long time or slow it down. I think the Senator from North Dakota would verify that I have worked to try to resolve issues that are outstanding. It is my belief that this can be done within a time period that is acceptable to the majority.

The PRESIDING OFFICER (Mr. PRYOR.) The majority leader has a unanimous consent request pending. Is there objection? Without objection, it is so ordered.

DOJ STAFF MEMO ON THE FUTURES MARKETS

Mr. DURBIN. Mr. President, I thank the majority leader for requesting 10 minutes for me in morning business.

The State of Illinois is home to some of the most dynamic and innovative financial services firms in the world. For the futures markets, Chicago is a global leader. I pay particularly close attention to the vitality of these markets. It is an important part not only of the economy of my home State but of the economy of our Nation. The work in the futures markets has a direct impact on everything from pork bellies to currencies to the price of oil.

I am deeply disturbed with what has taken place this week within the Department of Justice relative to those futures markets. As we have been told, the staff at the Justice Department recently wrote a memo to the Department of Treasury questioning the structure of clearing and settlement services in the U.S. futures industry. The staff has referred to concerns about restraint on competition and other issues.

What is troubling about this disclosure is that the Department of Justice staffers apparently are claiming that they were simply commenting on a Treasury proposal regarding the overall competitiveness of America's financial markets. But the comment period on the Treasury proposal ended 2 months ago, 2 months before the Department of Justice released this memo, and it is been more than 6 months since that same Department of Justice approved the merger of the Chicago Mercantile Exchange and the Chicago Board of Trade.

Well, people say: So what? Bureaucrats release memos. Who pays any attention to those? Well, let me tell you what happened yesterday. When this memo became public, the price of the Chicago Mercantile Exchange stock declined by over $100 in 1 day. That reduced shareholders' market capitalization by almost $6 billion. A memo from the Department of Justice to the Department of Treasury leaked to the Dow Jones Press Service, which became public, cost the Chicago Mercantile Exchange, in 1 day, market capitalization of almost $6 billion. There was no justification for this memo. The comment period was closed, the Department of Justice had acted on the merger, and there was no reason to release it.

I have joined with my colleague, Congressman RAHM EMANUEL, in sending a letter to Attorney General Mukasey and Secretary Paulson calling on them to not only look at the substance of this memo but also the circumstances. By what right was this staff memo issued in the first place or released to the press?

I want to quote one of the Commissioners of the Commodity Futures Trading Commission. That is the Government agency responsible for regulating these markets. This is what the Commissioner said:

> The Department of Justice staffer letter has unfortunately roiled the markets, and this is precisely the kind of behavior that Government regulators are supposed to take ordinary care and attention to avoid.

He is right. I think that letter was entirely inappropriate, and the fact that it was the leaked to the press—and I do not know whether it was leaked at Justice or at Treasury—is something that should be investigated. I do not want to read too much into this, but someone who understood the impact of the market and decided to short the stock could have made a lot of money yesterday. I am not saying that occurred, but that is how serious it is, that the stock would go down $100 in 1 day because of this action. Today, the stock has started to recover. I am glad. But still we have to answer, at the Federal level, why this ever occurred.

These markets are ready to be regulated and examined, and they should be. We want transparency and public trust at every single level. And we know that competition in this market goes far beyond the United States. These are now international and global markets, and the Chicago Mercantile Exchange is the one of the leaders in these markets. They should be closely regulated, closely watched, and should be subject to all of the laws and regulations concerning transparency. But when some staffer at the Department of Justice can take a potshot at this global market and cost them almost $6 billion in market capitalization in 1 day, I think we have a right to demand accountability.

I am joining with my colleagues in the Senate and in the House in calling on this administration to look into this matter as quickly as possible. I hope to find out why this comment letter was filed 2 months after the Treasury Department deadline if the memo was meant to be related to that effort. I hope to find out if the Department of Justice considered its influence on the markets prior to drafting this letter or leaking this letter, whatever was done.

I hope there is not more to this story than the Justice Department staffers are claiming, but I wonder. That is the reason I have written to these two leaders in the administration asking for a timely response.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BOND. 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. BOND. Mr. President, I understand that the bill is to be called back up, the FISA bill; is that correct?

The PRESIDING OFFICER. That would be the regular order.

Mr. BOND. If the proponent of the amendment is ready, I would suggest that we begin the final lap on these amendments.

FISA AMENDMENTS ACT OF 2007—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The bill clerk read as follows:

A 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.

Pending:

Rockefeller-Bond amendment No. 3911, in the nature of a substitute.

Whitehouse amendment No. 3920 (to amendment No. 3911), to provide procedures for compliance reviews.

Feingold amendment No. 3979 (to amendment No. 3911), to provide safeguards for communications involving persons inside the United States.

Feingold-Dodd amendment No. 3915 (to amendment No. 3911), to place flexible limits on the use of information obtained using unlawful procedures.

Feingold amendment No. 3913 (to amendment No. 3911), to prohibit reverse targeting and protect the rights of Americans who are communicating with people abroad.

Feingold-Dodd amendment No. 3912 (to amendment No. 3911), to modify the requirements for certifications made prior to the initiation of certain acquisitions.

Dodd amendment No. 3907 (to amendment No. 3911), to strike the provisions providing immunity from civil liability to electronic communication service providers for certain assistance provided to the Government.

Bond-Rockefeller modified amendment No. 3938 (to amendment No. 3911), to include prohibitions on the international proliferation of weapons of mass destruction in the Foreign Intelligence Surveillance Act of 1978.

Bond-Rockefeller modified amendment No. 3941 (to amendment No. 3911), to expedite the review of challenges to directives under the Foreign Intelligence Surveillance Act of 1978.

Feinstein amendment No. 3910 (to amendment No. 3911), to provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted.

Feinstein amendment No. 3919 (to amendment No. 3911), to provide for the review of certifications by the Foreign Intelligence Surveillance Court.

Specter-Whitehouse amendment No. 3927 (to amendment No. 3911), to provide for the substitution of the United States in certain civil actions.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

AMENDMENT NO. 3915

Mr. FEINGOLD. Mr. President, this is the amendment we call Use Limits Amendment, amendment No. 3915.

This amendment gives the FISA Court the option of preventing the Government from using information on U.S. persons that it has collected using targeting or minimization procedures that are later found to be illegal.

As the legislation now stands, if the Government uses procedures that are later declared unlawful, there is nothing to stop it from using the information it collected illegally. This does not make any sense, and it takes away any incentive for the Government to develop lawful procedures the first time around. It is also not consistent with the approach FISA takes with other illegally collected information.

If the Government conducts emergency surveillance that is later found to be improper, FISA already prohibits the Government from using that information. Importantly, under my amendment, information about foreigners or information that indicates a threat of death or bodily harm could always be used by the Government, even if it were collected under illegal procedures. The FISA Court also has the discretion to allow the Government to use illegally collected information about U.S. persons.

So it is an extremely modest safeguard, a very reasonable amendment. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I strongly urge my colleagues to defeat amendment 3915. It creates a superexclusionary rule on the intelligence community. The Attorney General and the DNI have advised they will recommend a veto.

It says: By requiring analysts to go back through relevant databases and exact certain information as well as to determine what other information is derived, this requirement places a tremendous burden, an unsurmountable operational burden on the intelligence community. I agree and yield the remainder of my time to the chairman.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I would say to the Presiding Officer that this amendment would prevent disclosure or dissemination of any collected information by U.S. persons if the FISA Court finds there are deficiencies in the Government's targeting or minimization procedures under the new authority.

There is no need to add another penalty to ensure compliance with the requirement of the statute. The amendment gives the court very little discretion to determine whether nondisclosure is the appropriate remedy. Nondisclosure could be required even if the information is particularly significant foreign intelligence information, or if there is only a minor deficiency in the procedure that cannot be corrected within 30 days.

It is a very short way of saying that I oppose this amendment strongly.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. I ask unanimous consent that the Senate now resume consideration of the following Feingold amendments, Nos. 3915 and 3913, and that the time until 5:25 p.m. be for debate with respect to these amendments en bloc;