

the Attorney General stating that “no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required.”

Why, then, must the bill before us contain an immunity provision for communications firms? The answer is that they are unable to invoke it because the very existence of whether a particular company—or any company—did or did not participate in any alleged surveillance has been designated as a state secret by the U.S. Government. This places the telecom companies in a Catch-22 scenario: if, hypothetically, a company did assist the Government, it cannot reveal that fact under the State Secrets Doctrine, and thus cannot claim the benefit of immunity; conversely, if a company did not provide any alleged assistance, it still cannot demonstrate that fact to conclusively dismiss the lawsuit, again because of the mandates of the State Secrets Doctrine. In the 40-plus active lawsuits, defendant telecom companies are in a “no-win situation.”

To those who may ask why Congress should concern itself with addressing these pending lawsuits, I would answer that the credibility and effectiveness of America’s intelligence community depends upon it. Particularly in the wake of the devastating attacks of September 11, 2001, any American company that, when reportedly presented with proper certification, assisted the Government in a matter of national security was doing so, in all likelihood, in the best interests of our Nation. And punishing such cooperation through subsequent lawsuits could have drastic future consequences.

This position has been asserted by former Attorney General John Ashcroft and former Deputy Attorney General James Comey, both of whom had well-documented misgivings about the administration’s approach to surveillance. This view is also held by the distinguished chairman of the Intelligence Committee, who on October 31 of last year wrote in the Washington Post that the telecom lawsuits are “unfair and unwise. As the operational details of the program remain highly classified, the companies are prevented from defending themselves in court. And if we require them to face a mountain of lawsuits, we risk losing their support in the future”—a development that Chairman ROCKEFELLER assessed would be “devastating to the intelligence community, the Justice Department and military officials who are hunting down our enemies.”

The immunity provision in this bill is narrow and limited. First, it is only retroactive. It clearly delineates what types of surveillance require a search warrant from the FISA Court and what types do not. The very fact that the FISA Court will be involved contrasts starkly with the “gray area” under

which the Terrorist Surveillance Program had operated prior to January of last year. This clarity will thus also make it clear as to whether a telecom company is complying with a lawful request and thus whether it will be entitled to statutory immunity.

As the Intelligence Committee report underscored, the action the committee proposes should be understood by the executive branch and provided as a one-time response to an unparalleled national experience in the midst of which representations were made that assistance to the Government was authorized and lawful.

In doing so, the underlying legislation acts prospectively to guard against any future infringements of constitutional liberties that might occur. By contrast, striking title II will accomplish nothing constructive in the future. To the contrary, as I indicated, it may be counterproductive by discouraging future cooperation by private entities.

Second, the bill only grants immunity for civil lawsuits. It would not provide amnesty to anyone—the telecommunications companies, Government officials or any other party—who engaged in any potential criminal wrongdoing. Should any criminal allegations arise against telecommunications officers, Government officials or others, such investigations would not be prevented by this provision. Nothing in this bill is intended to affect any of the pending suits against the Government or individual Government officials.

Third, this provision does not make any determination as to whether the program in question was legal. It only grants the telecommunications carriers immunity if the Attorney General certifies those carriers cooperated with intelligence activities designed to detect or prevent a terrorist attack and that such a request was made in writing and with the assertion that the program was authorized by the President and determined to be lawful.

Finally, this bill provides the fairest course of action for addressing corporations that, when presented with an urgent official request at a critical period for our Nation’s security, acted in a patriotic manner and provided assistance in defending this Nation. These companies were assured that their cooperation was not only legal but necessary and essential because of their unique technical capabilities. Also note that the President initially authorized the NSA program in the early days and weeks after the September 11 attacks, attacks that shocked our Nation and forced us to quickly react and adjust to the new reality of the 21st century, where terrorism was occurring in our own backyard. If a telecommunications company was approached by Government officials asking for assistance in warding off another terrorist attack

and those Government officials produced a document stating the President had authorized that specific activity and that activity was regarded as legal, could we say the company acted unreasonably in complying with this request?

In the interest of protecting our Nation in this new environment of the 21st century and bringing stability and certainty to the men and women who are in our intelligence community as they carry out their very vital and critical missions in defending and preserving our freedoms at home, I urge passage of FISA reform that is bipartisan, that respects an active balance among all branches of Government, that will establish a key role for the courts going forward in evaluating surveillance measures in the United States and against U.S. persons abroad and that we will allow the intelligence community to devote its full efforts to fighting and winning the war on terror.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Oklahoma.

#### ORDER OF PROCEDURE

Mr. INHOFE. Mr. President, there is confusion as to the order of the speakers. I ask unanimous consent that the junior Senator from Pennsylvania, Mr. CASEY, be recognized for up to 15 minutes, in morning business, to be followed by me, to be recognized for up to 35 minutes in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. CASEY. Reserving the right to object.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CASEY. Will the Senator modify his request to add Senator WEBB to that lineup to be the next Democratic speaker?

Mr. INHOFE. May I ask how long Mr. WEBB, the junior Senator from Virginia, wishes to speak?

Mr. CASEY. Ten minutes.

Mr. INHOFE. I amend my request that it be, first, Senator CASEY for 15 minutes, Senator WEBB for 10 minutes, and myself for 35 minutes in morning business.

This is the new request: I ask unanimous consent that the junior Senator from Pennsylvania, Mr. CASEY, be recognized for up to 15 minutes, after which I will be recognized for up to 35 minutes, and then the Senator from Virginia, Mr. WEBB, will be recognized for up to 10 minutes in morning business.

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

The Senator from Pennsylvania is recognized for up to 15 minutes.

Mr. CASEY. Mr. President, I thank the Senator from Oklahoma for working through that unanimous consent agreement.

## IRAQ

Mr. CASEY. I rise today to speak about the war in Iraq. There is a lot of talk in this Chamber and across this town and across the country about our economy, and that is justifiable. But we have to remember that in the midst of a difficult economy in America, there is a lot to talk about and to work on to respond to that. We still have a war in Iraq to worry about, to debate, and to take action on. I don't think we can lose sight of a war that grinds on without end in Iraq.

This war does burden our troops, obviously, with repeated and prolonged deployments and, in fact, drains our national resources. The war hampers our efforts in places such as Afghanistan and Pakistan, the real frontlines in the global struggle against Islamic terrorism and extremism.

So we must ask ourselves at least a couple of questions when it comes to the war in Iraq. There are many, but there are at least a few I can think of.

What are we in the Congress doing about this war today, this week, this month, and in the months ahead, even as we struggle to deal with a difficult economy?

The second question might be: When will the Iraqi Government start serious discussions on national reconciliation?

Third, how will we know when we have achieved our objectives in Iraq? How will we know that?

Finally, and I think the most compelling question is: When will our troops come home?

Last night, the President spoke about a number of topics, and one was the economy. One of the first words the President said with regard to the economy, he talked about a time of uncertainty. Mr. President—President Bush I mean—I disagree. With regard to the economy, this is not about something that is uncertain. It is very certain. The lives of Americans, the perilous and traumatic economy they are living through is not uncertain or vague or foggy. It is very certain. The cost of everything in the life of a family is going through the roof, and we have to make sure we respond to that situation.

I argue that word "uncertainty" does apply when it comes to the war in Iraq in terms of our policy. I would argue to the President what is uncertain, if there is uncertainty out there in our land, it is about the war in Iraq. Uncertainty, frankly, about what our plan is in Iraq and what is this administration and this Congress doing to deal with this war in Iraq. That is where the uncertainty is. I think the reality of the economy is very certain for American families.

While the headlines about Iraq have all but vanished from the front pages and television screens and the administration continues to divert attention elsewhere, we have a fundamental obligation as elected representatives of the

American people to continue to focus on the war until we change the policy and bring our troops home.

We marked the first year anniversary of the President's decision to initiate a troop escalation in Iraq, and we are coming upon the fifth anniversary of the invasion of Iraq.

Last night, in his State of the Union Address, the President described the surge in very positive terms. Make no mistake about it—we all know this—our soldiers have succeeded in their mission with bravery and heroism and violence in many parts of Iraq is, in fact, down. Yet despite all that, despite all that effort, despite all that work, Iraq today is still not a secure nation, and it will not be secure until its leaders can leave the Green Zone without fear of assassination. It will not be secure until they can leave the Green Zone without fear of suicide bombings. It will not be secure until its own national Army and police forces can stand up and protect all of Iraq's people without regard to ethnicity or creed.

In assessing whether the surge has worked, we should pay attention to the President's words from a year ago. President Bush declared in January 2007, when he first announced the surge:

Iraqis will gain confidence in their leaders and the government will have the breathing space it needs to make progress in other critical areas.

Those are the President's words. So let's judge this issue by his words. Judged by those standards enunciated by the President, we can only conclude the surge has not worked, if that is what the objective was. I add to that, when I was in Iraq in August and I talked with Ambassador Crocker about the terminology used by this administration with regard to the war, because I said sometimes the terminology is way off and misleading, he said: The way I judge what is happening here is whether we can achieve sustainable stability. That is what he said, sustainable stability.

Based upon what Ambassador Crocker said and based upon what the President said, if we measure what is happening now against those standards, the surge has not worked, based upon those assertions by the Ambassador and by the President.

The troop escalation did not prompt the Iraqi Government to make the hard choices or to meet the benchmarks laid out by the administration. As General Petraeus told me in that same meeting this past summer in Baghdad, the war in Iraq can only be won politically, not militarily, and he said that on the public record as well. But on national reconciliation, oil sharing, and other key issues where Iraqis must forge agreement in order to allow U.S. forces to eventually withdraw, we do not see nearly enough progress. In fact, the

evidence of substantial progress is very bleak.

We heard recently about things that have been happening in Iraq. Although the Iraqi Parliament passed a deBaathification measure this past month, it is unclear how far the legislation will go toward addressing Sunni concerns, since serious disagreements exist on the law's implementation. Some contend that former Baathists will still be barred from important ministries such as Justice, Interior, and Defense.

As has often occurred in the past, once again the Iraqi political leadership has chosen to avoid the hard choices and instead kick the can down the road, ensuring further bloodshed and national fragmentation in the interim.

We all know how long this war has endured. It has endured longer than the war we know as World War II. It is longer than that war, with over 3,900 dead, 178 Pennsylvanians, the number of wounded in Pennsylvania is about 1,200 or more; across the country, 28,000. Our military forces have done everything we have asked of them. They have matched the bravery and success in every way possible of those great American warriors who preceded them in past conflicts. But our troops, the best fighting men and women in the world, cannot force a foreign government to be stable, they cannot force the Iraqi national police to put aside their deep-seated sectarianism and corruption, and they cannot force Iraqi political leaders to want progress as much as our troops do and as much as the Iraqi people deserve.

We have much to do to make progress. But here is what is happening lately. This is a very important point, and I conclude with it. The President is showing every sign that he intends, in the waning days of his administration, to lock the United States and, in particular, to lock our fighting men and women into a long-term strategic commitment in Iraq without consultation with the elected representatives of the American people in Congress. He has signaled to the Iraqi Government that the United States can maintain significant U.S. troop levels in Iraq for at least 10 years—10 years—if not longer. He seeks to negotiate a long-term strategic agreement with the Iraqi Government that would commit the United States to providing security assurances to the Iraqi Government against external aggression—an unprecedented commitment that could embroil the United States in a future regional conflict or even a full-scale Iraqi civil war. The President's senior aides have proposed that such an agreement would need to be ratified by the Iraqi Parliament—the Iraqi Parliament—and bypass the U.S. Congress. That is unacceptable to me and I think to anyone in this body and to the American people, and it is